Family violence information sharing guidelines

Guidance for information sharing entities
Contents

Introduction ........................................................................................................................................... 6
Who should use these Guidelines? ........................................................................................................... 6
What is the legal status of these Guidelines? .......................................................................................... 7
How to use these Guidelines? .................................................................................................................. 7
Definitions ................................................................................................................................................ 10

Chapter 1: Overview of the family violence information sharing legislation ........................................ 12
Who does Part 5A apply to? ...................................................................................................................... 12
When can information be shared under Part 5A? ..................................................................................... 12
What type of information can be shared under Part 5A? ........................................................................... 13
What are risk assessment entities permitted to do under Part 5A? ............................................................ 15
What are protection entities permitted to do under Part 5A? ...................................................................... 17
Can ISEs share information with victim survivors of family violence? .................................................... 18
What information cannot be shared under Part 5A? ................................................................................ 19
What are applicable consent thresholds under Part 5A? .......................................................................... 19
What protections are in place if information is shared in good faith and with reasonable care under Part 5A? ................................................................................................................................. 19

Chapter 2: Interaction with privacy and other laws .............................................................................. 21
Can I already share the information? ...................................................................................................... 21
Does Victorian privacy law apply? .......................................................................................................... 22
How have Victoria’s privacy laws been modified by Part 5A? ................................................................. 23
Interface with Child, Youth and Families Act 2005 ................................................................................... 25
Can ISEs that are also bound by Commonwealth privacy laws share information under Part 5A? .... 26
Interaction with Commonwealth privacy law .......................................................................................... 26
Interaction with other legislation ............................................................................................................ 27
Responding to subpoenas .......................................................................................................................... 30
Information management and data security ............................................................................................. 30

Chapter 3: Information sharing entities ................................................................................................. 32
Who are prescribed information sharing entities under Part 5A? ............................................................ 32
Who can ISEs share information with? ..................................................................................................... 35
Can prescribed ISEs request or share information with other non-prescribed entities? ......................... 35
Can prescribed ISEs share information with Commonwealth or interstate organisations that are not prescribed under Part 5A? ................................................................................................................... 35
Can a prescribed ISE request information from Commonwealth or interstate organisations that are not prescribed under Part 5A? ......................................................................................................................... 36

Chapter 4: Identification and misidentification of perpetrators ............................................................... 37
Determining whether a person is a perpetrator or victim survivor ............................................................ 37
What happens when ISEs disagree about the identity of a perpetrator or victim survivor? ....................... 38
Chapter 5: Excluded information ................................................................. 40
Exceptions to information sharing .......................................................... 40
Refusing a request to share information on the basis of an exception ........ 41
Protection for workers when excluded information is shared ................. 41
Restrictions on sharing information under other laws .............................. 41

Chapter 6: Consent .................................................................................... 43
What is consent? ...................................................................................... 43
Can another person give consent on behalf of a person who lacks capacity? 46
When can consent be implied? ................................................................. 46
How should consent be documented? ..................................................... 47
What happens when consent is refused? ................................................. 47
What happens if consent is withdrawn? .................................................. 47

Chapter 7: Assessing and managing risks for an adult victim survivor of family violence – consent and notification .................................................. 49
Perpetrator information .......................................................................... 50
Victim survivor information ................................................................... 52
Third party information ......................................................................... 57

Chapter 8: Assessing and managing risks for a child victim survivor of family violence .......... 58
How does Part 5A interact with the Child Protection system? .................. 58
Is consent required to share information to assess or manage risk to a child victim survivor? .... 59
Guiding principles when sharing information to assess or manage risk to a child victim survivor .... 59
When would it be appropriate to seek a child’s views prior to sharing information? ................ 61
If the child doesn’t have capacity to provide their views, when would it be appropriate to seek the views of the non-offending parent prior to sharing information? ........................................ 62
When would it be appropriate to share information without seeking the views of a child, a non-offending parent or any other relevant third party prior to sharing their information? ......... 63
Do ISEs need to notify children, non-offending parents or third parties that their information has been collected? ................................................ 67
What happens when adolescents are involved either as victim survivors or using violence towards their families? ........................................... 68

Chapter 9: Sharing information about individuals from Aboriginal and Torres Strait Islander backgrounds ............................................................. 71
Approach to information sharing in Aboriginal communities .................. 71
When sharing information about a person from an Aboriginal or Torres Strait Islander background .......... 73
Guiding principles when sharing information about a person from an Aboriginal or Torres Strait Islander background ........................................... 73

Chapter 10: Sharing information about persons from diverse communities .................. 76
What to consider when sharing information about a person from a diverse community .......... 77
Guiding principles when sharing information about people from diverse communities ........... 78
Chapter 11: Sharing information about young people who are at risk of committing family violence ................................................................. 84
What are the consent requirements when sharing information in respect of a young person who is both a victim survivor of family violence and who is at risk of committing family violence? .................. 86
What are the consent requirements where a young person is at risk of committing family violence against a family member who is a child? ......................................................... 86
What are the consent requirements where a young person is at risk of committing family violence against an adult family member? ........................................................................ 86
Young persons that are engaging in sexually abusive behaviours against a family member ................................. 87
Further resources ...................................................................................... 87

Chapter 12: Record keeping and information management .................................................. 88
What information needs to be recorded? ....................................................................... 88
How does law enforcement information need to be handled? ..................................... 89
How should information be protected? ........................................................................ 89
How should information be retained? ......................................................................... 89
How should information be destroyed? ...................................................................... 89

Chapter 13: Access to and correction of information .......................................................... 91
Victim survivor and third party information .................................................................. 91
Perpetrator information ............................................................................................... 91
Correcting Information ............................................................................................... 91
Access to information under freedom of information law .............................................. 92

Chapter 14: Offences, complaints and good faith defence ................................................. 93
Offences ................................................................................................................ 93
Complaints ................................................................................................................ 94
Complaints to ISEs .................................................................................................... 94
Making complaints when state privacy laws apply ....................................................... 95
Making complaints when Commonwealth privacy law applies .................................. 95
Disclosure of information to investigate complaints .................................................... 95
Record keeping ........................................................................................................ 95
Possible outcomes ................................................................................................. 96

Appendix A: Information sharing process checklist when making a request ................... 97
Appendix B: Information sharing process checklist when responding to a request ....... 99
Appendix C: Information sharing consent form (for adult victim survivors only) ........ 101
Appendix D: Your Information and Your Safety Fact Sheet ............................................ 102
Introduction

These Family Violence Information Sharing Guidelines (Guidelines) explain how to share information under Part 5A of the Family Violence Protection Act 2008 (FVPA). Part 5A provides a clear legislative basis for information to be shared by prescribed information sharing entities (ISEs) to assess family violence risks and manage safety. Amendments have also been made to privacy legislation to remove the requirement that a serious threat must also be imminent before information can be shared without consent (see Chapter 2 on page 21).

In line with the FVPA, the safety and protection of those experiencing family violence and holding perpetrators to account sits at the heart of these Guidelines. ISEs must comply with these Guidelines when sharing information about family violence perpetrators, victim survivors and other persons.

The terms of reference of the Royal Commission into Family Violence (Royal Commission) acknowledge that:

Family violence is the most pervasive form of violence perpetrated against women in Victoria. While both men and women can be perpetrators or victims of family violence, overwhelmingly the majority of perpetrators are men and victims are women and children.

The causes of family violence are complex, and include gender inequality and community attitudes towards women. Contributing factors may include financial pressures, alcohol and drug abuse, mental illness and social and economic exclusion.

Further, the Royal Commission noted that family violence in Aboriginal and Torres Strait Islander communities, is compounded by discrimination and trauma associated with historical and ongoing injustices.

In line with the Royal Commission, the Guidelines adopt the language of victim survivor and perpetrator in recognition that these are the terms most widely used in the community (see Definitions). The term victim survivor refers to both adult and child victim survivors.

When sharing information under Part 5A, ISEs should be guided by the following overarching principles:

- **Safety first** – ISEs should give precedence to a victim survivor’s right to be safe from family violence over a perpetrator’s right to privacy
- **Proportionality** – ISEs should only share relevant information to the extent that is necessary to assess family violence risks and manage safety
- **Collaboration** – ISEs should coordinate services in a manner that respects the functions and expertise of each prescribed entity
- **Transparency** – ISEs should promote the agency of victim survivors by seeking their views and keeping them informed about how their information will be used where it is appropriate, safe and reasonable to do so.

When sharing information under Part 5A, ISEs should ensure that information is shared in way that avoids victim blaming and focuses on perpetrator accountability.

Who should use these Guidelines?

Part 5A applies to all ISEs prescribed by regulation in the Family Violence Protection (Information Sharing) Regulations 2017 (the Regulations). ISEs comprise a range of entities that provide services and support to victim survivors and perpetrators in response to family violence, including both specialist and universal services (see the Regulations for a detailed list of ISEs).

All individuals who are employed by, or undertake any work for, an ISE prescribed by regulation must comply with these Guidelines when requesting or sharing information under Part 5A of the FVPA.
Remember

It is a minimum expectation that any individual working for an ISE that wishes to request or share information under Part 5A of the FVPA must have undertaken training in the Family Violence Risk Assessment and Risk Management Framework (the Framework or family violence risk assessment tool or program that has been aligned to it). See <http://www.thelookout.org.au/sites/default/files/Family-Violence-Risk-Assessment-and-Risk-Management-Framework-and-Practice-Guides-1-3.pdf>.

What is the legal status of these Guidelines?

The responsible Minister under Part 5A of the FVPA has issued these Guidelines, which are legally binding on all prescribed ISEs (except for those specified in section 144I). These ISEs must adopt the provisions and standards set out in these Guidelines to share information under Part 5A. In particular, it is noted that ISEs must comply with these Guidelines in relation to seeking the views and wishes of child victim survivors and non-offending parents to the collection, use or disclosure of confidential information about the child.

All ISEs must review their internal policies and adapt their information sharing practices and business processes to be consistent with Part 5A and these Guidelines. Non-compliance with the Guidelines will not be an offence or attract any penalties, but may be taken into account in relation to privacy complaints and the issuing of state contracts. A failure to comply with the Guidelines may also lead to an ISE ceasing to be prescribed.

These Guidelines will be revised periodically to ensure relevance and accuracy – it is incumbent for ISEs to ensure they are using the most recent and updated version, which is available online (familyviolence.vic.gov.au). The legislation requires that any substantive changes to the Guidelines must be subject to a 28 period of consultation.

Remember

ISEs must comply with these Guidelines in relation to seeking the views and wishes of child victim survivors and non-offending parents to the collection, use or disclosure of confidential information about the child.

How to use these Guidelines?

Individuals working for ISEs should refer to these Guidelines as frequently as necessary. These Guidelines will be complemented by additional practitioner tools and workforce specific guidance to ensure practitioners have the knowledge and confidence to share information about victim survivors, perpetrators and third parties where their information is relevant to assessing or managing risk of family violence and it is lawful under Part 5A.

These Guidelines are in addition to (and will complement) ISEs’ existing obligations under the Children, Youth and Families Act 2005, Privacy and Data Protection Act 2014, the Health Records Act 2001 and the Privacy Act 1988 (Cth).

These Guidelines provide guidance on how to apply Part 5A, including whether and how to share and when not to share.

The Guidelines also include requirements for information sharing entities with respect to demonstrating their capacity to share information responsibly and appropriately and include the following considerations such as the appropriateness of an ISE’s:

- information management policy/practices and related governances structures
- security, storage and authorisation arrangements
- internal policies and information management training.
These Guidelines are divided into the following Chapters.

Chapter 1 Overview of the family violence information sharing legislative framework
Provides an overview of key elements of the family violence information sharing legislative framework.

Chapter 2 Interaction with privacy and other laws
Provides information on the interaction of Part 5A with Victorian and Commonwealth privacy laws. It also explains how Part 5A and the Guidelines interact with other legislation and policy with which ISEs may be required to comply.

Chapter 3 Information sharing entities
Outlines how Part 5A and the Guidelines apply to prescribed information sharing entities and how information can be shared between ISEs and non-prescribed entities.
It also outlines how Part 5A applies to:
• courts and tribunals
• agencies that are subject to both Victorian and Commonwealth privacy laws.

Chapter 4 Identification and misidentification of perpetrators
Provides guidance on how to share information when there is uncertainty around whether a perpetrator or victim survivor has been correctly identified and how to respond when a perpetrator or victim survivor has been misidentified.

Chapter 5 Excluded information
Sets out the circumstances in which information should not be shared.

Chapter 6 Consent
Provides an overview of the consent requirements for sharing information.

Chapter 7 Assessing and managing risks for an adult victim survivor of family violence – consent and notification
Outlines the consent and notification requirements when information is being shared to assess or manage risk to an adult victim survivor of family violence.

Chapter 8 Assessing and managing risks for a child or adolescent victim survivor of family violence
Outlines the requirements for sharing information to assess or manage risk to a child victim survivor of family violence (a person who under the age 18 years or over).

Chapter 9 Sharing information about individuals from Aboriginal and Torres Strait Islander backgrounds
Provides guidance on sharing information about individuals from Aboriginal and Torres Strait Islander backgrounds.

Chapter 10 Sharing information about persons from diverse and vulnerable communities
Provides guidance on sharing information about individuals from diverse and vulnerable communities.

Chapter 11 Sharing information about young people who are at risk of committing family violence
Provides guidance on sharing information about young people who are at risk of committing family violence.

Chapter 12 Record keeping and information management
Provides information on how ISEs should record and manage information.
Chapter 13 Access to and correction of information

Outlines the procedures ISEs should follow in relation to requests to access and correct information held by an ISE.

Chapter 14 Offences, complaints and good faith defence

Outlines the possible consequences for sharing information inappropriately, the processes for dealing with complaints that may arise from information sharing under Part 5A and the protection from liability that is available to individuals who share in good faith and with reasonable care.
## Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alleged perpetrator</td>
<td>A person alleged to pose a risk of committing family violence. Information about alleged perpetrators can only be shared with risk assessment entities for a family violence assessment purpose when little might be factually known.</td>
</tr>
<tr>
<td>CIP</td>
<td>Central Information Point.</td>
</tr>
<tr>
<td>Child</td>
<td>As defined in the Family Violence Protection Act 2008, a child means a person who is under the age of 18 years (which includes infants and adolescents).</td>
</tr>
<tr>
<td>Collection notice</td>
<td>A collection notice is a statement that is provided to an individual at or before the time (or if that is not practical as soon as possible after) an organisation collects personal information from that individual.</td>
</tr>
<tr>
<td>Commonwealth Privacy Act</td>
<td>Privacy Act 1988 (Cth).</td>
</tr>
<tr>
<td>Confidential information</td>
<td>Health information, personal information (including sensitive information), unique identifiers or identifiers.</td>
</tr>
<tr>
<td>Consent</td>
<td>Express or implied consent.</td>
</tr>
<tr>
<td>Family violence</td>
<td>As defined in the FVPA to mean any behaviour that occurs in family, domestic or intimate relationships that is physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening or coercive; or is in any other way controlling that causes a person to live in fear for their safety or wellbeing or that of another person.</td>
</tr>
<tr>
<td>Family violence assessment purpose</td>
<td>As defined in the FVPA to mean the purpose of establishing or assessing the risk of a person committing family violence or a person being subjected to family violence.</td>
</tr>
<tr>
<td>Family violence protection purpose</td>
<td>As defined in the FVPA to mean the purpose of managing a risk of a person committing family violence (including the ongoing assessment of the risk of the person committing family violence) or a person being subjected to family violence (including the ongoing assessment of the risk of the person being subjected to family violence).</td>
</tr>
<tr>
<td>Framework</td>
<td>The Family Violence Risk Assessment and Risk Management Framework approved by the relevant Minister under section 188 of the Family Violence Protection Act 2008 (sometimes referred to as the CRAF).</td>
</tr>
</tbody>
</table>
Guidelines | The *Family violence information sharing guidelines*.
---|---
Handling | As defined in section 3 of the *Privacy and Data Protection Act 2014*.
HCC | The Health Complaints Commissioner appointed under section 111 of the *Health Complaints Act 2016*, to whom complaints can be made under Part 6 of the *Health Records Act 2001*.
Health information | As defined in section 3(1) of the *Health Records Act 2001*.
HPPs | The Health Privacy Principles set out in Schedule 1 to the *Health Records Act 2001*.
IPPs | The Information Privacy Principles set out in Schedule 1 to the *Privacy and Data Protection Act 2014*.
ISE | Information sharing entity as defined in the FVPA to be a person or body prescribed, or a class of person or body prescribed, to be an information sharing entity.
Perpetrator | A person of concern as defined in the FVPA is a person that an information sharing entity reasonably believes that there is a risk that the person may commit family violence. This will have been identified through undertaking a Framework based family violence risk assessment.
Personal information | As defined in section 3 of the *Privacy and Data Protection Act 2014*.
Protection entity | A prescribed information sharing entity that is authorised to request information for a family violence protection purpose.
Reasonable belief threshold | A reasonable belief requires the existence of facts that are sufficient to induce the belief in a reasonable person. Belief requires something more than suspicion.¹
Risk assessment entity | An information sharing entity prescribed to be a risk assessment entity. Risk assessment entities can request and voluntarily receive information from ISEs for a family violence assessment purpose.
Royal Commission | Victorian Royal Commission into Family Violence.
Share | Unless indicated otherwise, this term is used to refer to collecting, using and disclosing information.
Third party | A linked person as defined in the FVPA is any person whose confidential information is relevant to a family violence assessment purpose or family violence protection purpose other than a person who is a primary person (i.e. the victim survivor), a person of concern (i.e. the perpetrator) or is alleged to pose a risk of family violence (i.e. alleged perpetrator).
Victim Survivor | A primary person (adult or child) as defined in the FVPA is a person that an information sharing entity reasonably believes there is risk that the person may be subjected to family violence.

¹ See *George v Rockett* (1990) 170 CLR 104.
Chapter 1: Overview of the family violence information sharing legislation

This Chapter gives a broad overview of Part 5A of the FVPA, and how the family violence information sharing laws work.

Who does Part 5A apply to?

Part 5A applies to all ISEs prescribed by regulation in the Family Violence Protection (Information Sharing) Regulations 2017 (see Chapter 3 on page 32 for more detail on prescribed ISEs).

ISEs will be able to share information for a family violence protection purpose. Those ISEs that are further prescribed as risk assessment entities will also be able to share for a family violence assessment purpose (see Chapter 3 on page 32 for more detail on ISEs).

An ISE should always prioritise requests for information under Part 5A. In particular, where a serious threat has been identified, ISEs should respond to those requests for information without delay.

When can information be shared under Part 5A?

A prescribed ISE is permitted to share information for two main purposes:

- a family violence assessment purpose
- a family violence protection purpose.

Family violence assessment purpose

Sharing for a family violence assessment purpose covers information sharing at the outset when little might be factually known. During this stage, the primary focus is on identifying the perpetrator and victim survivor, and establishing the level of risk the perpetrator poses to the victim survivor.

Family violence protection purpose

Once the initial family violence risk has been established (i.e. the perpetrator and victim survivor have been identified), Part 5A permits information to be shared for a family violence protection purpose. This means managing the risk of the perpetrator committing family violence, or the risk of the victim survivor being subjected to family violence.

Managing risk involves removing, reducing or preventing the escalation of risk. In recognition that risk is dynamic and can change over time, Part 5A permits information to be shared for the purposes of ongoing risk assessment, which is part of the family violence protection stage. For example, a specialist family violence case manager can request and share information from other ISEs to assist with ongoing safety planning for the victim survivor.

Remember

- Family violence is defined broadly under the FVPA. It can encompass physical or sexual violence; emotional or psychological abuse; economic abuse; threatening or coercive behaviour or behaviour that in any other way controls or dominates the family member and causes them to feel fear for their safety or wellbeing or that of another person.
- In relation to children, behaviour by a person that causes a child to hear or witness, or be otherwise exposed to the effects of the behaviour above, can constitute family violence.
- Children experiencing family violence should be recognised as victim survivors in their own right.
Their safety and wellbeing should be paramount and their distinct needs should be recognised when planning and delivering responses to family violence.

**Remember**

Prior to requesting or sharing information under Part 5A, ISEs should make sure that the organisations they are sharing with have been appropriately prescribed as an ISE by regulations. If a responding worker does not have an existing relationship with the person requesting the information, then they should verify their identity (e.g. by asking them to send an email from their official work account).

**What type of information can be shared under Part 5A?**

Any information that is relevant to assessing and managing family violence risk is permitted to be shared under Part 5A between ISEs, provided the information is not excluded (see Chapter 5 on page 40), does not contravene another law (see Chapter 5 on page 40) and applicable consent requirements have been met (see Chapters 6 on page 43, 7 on page 49 and 8 on page 58). This includes personal, health and sensitive information, as well as unique identifiers. Risk in this context should be understood as both risk of harm to the victim survivor from past and future family violence incidents and future risk of family violence occurring. In determining what information is relevant, practitioners should use their professional judgement and refer to the Framework [http://www.thelookout.org.au/sites/default/files/Family-Violence-Risk-Assessment-and-Risk-Management-Framework-and-Practice-Guides-1-3.pdf]. Professional judgement is based on the worker’s experience, skills and knowledge of the case. Professional judgement includes any information known to an agency relevant to the assessment and management of risk.

Information that is not relevant to assessing or managing a risk of family violence must not be shared.

**Case Study – information not relevant to a family violence assessment or protection purpose**

Li is a victim survivor of family violence, engaged in counselling services with Jemma, at a local specialist family violence agency (SFVA).

At the same time, Li has also been accessing integrated family services, working with a case worker – Alan, restoring her relationship with her children by building upon her parenting skills, promoting a positive attachment with them and learning household budgeting skills. Li has disclosed to Alan that she is also receiving counselling with Jemma, but does not disclose the reasons.

Alan contacts Jemma at the local SFVA seeking information about why Li is in counselling and what other services Li is accessing. Alan believes this will enable collaboration to better support Li with parenting of the children.

While it is true that Alan and Jemma could better support Li by working together, sharing information in this circumstance does not meet a family violence risk assessment or family violence protection purpose as Alan is not aware of the family violence occurring.

Therefore, Alan and Jemma must rely on other general privacy legislation and their organisational policies in respect to sharing personal information, not Part 5A to share Li’s personal and health information.

If Jemma wanted additional information from Alan in future, this may meet the purpose test. See consent provisions in Chapter 6 on page 43.
Remember

- It is a minimum expectation that all authorised individuals within an ISE using the legislation will have undertaken training in the Framework or family violence risk assessment tool or program that has been aligned to it <http://www.thelookout.org.au/sites/default/files/Family-Violence-Risk-Assessment-and-Risk-Management-Framework-and-Practice-Guides-1-3.pdf>.


Remember

- A person’s privacy should be displaced only to the extent that is necessary to assess and manage family violence risks. This means if it is not necessary to share a person’s information in an identifiable way, ISEs should only share de-identified information to maintain that person’s anonymity.

Case Study – sharing information in a de-identifiable way that maintains a person’s anonymity

Mike, from a Victim Assistance Program (VAP), is working with Christopher who is a victim survivor of family violence. Mike became involved after receiving a referral from the Men’s Referral Service following an L17 from the police. The police had attended an incident where Christopher was assaulted by his partner, Samuel. As a result of escalating violence demonstrated in this incident, Samuel asked Christopher to move out of the home they shared together.

Christopher has now told Mike that he is considering reconciling with Samuel, stating that Samuel is actually a ‘really great guy’ and things have only ‘got out of hand once or twice in the heat of the moment’. In light of Christopher disclosing his plans to reconcile, Mike has discussed his concerns about Samuel’s violence with Chris and whether Christopher has been in contact with Samuel. Mike also informs Christopher that he will contact the police station that issued the initial L17. Mike seeks information from the police to assist with the comprehensive family violence risk assessment for Christopher and to manage his safety. The police provided information that Samuel has recently been attending Christopher’s previous workplace and harassing the boss, Dan, in an attempt to locate Christopher. Dan has reportedly not felt comfortable informing Christopher about the incidents and instead got a Personal Safety Intervention Order against Samuel.

Under Part 5A, Mike is permitted to share this information with Christopher for a family violence protection purpose (i.e. to manage risk). However, unless Dan consents to disclosing his information, wherever possible, Mike should share this information in a de-identifiable way that protects the anonymity of Dan. For example, Mike could say, ‘You should be aware that Samuel’s use of violence appears to be getting worse. An Intervention Order (IVO) has recently been placed against Samuel and it appears he has been attempting to locate you’. Mike should avoid mentioning that the IVO protects Dan or that it occurred at his previous workplace (as this could arguably enable Dan’s identity to be ascertained).

It is important to note that Part 5A authorises and obligates certain ISEs to request, collect, use and disclose relevant information to inform the assessment and management of family violence risk. However, initial and ongoing risk assessment should occur outside of the regime at any time where workers identify indicators of family violence risk. This can occur regardless of an ISE’s prescribed functions under Part 5A.
What are risk assessment entities permitted to do under Part 5A?

A prescribed risk assessment entity can request information from any other prescribed ISE about the following people for a family violence assessment purpose (i.e. to establish and assess family violence risk):

- a perpetrator
- an alleged perpetrator
- a victim survivor (adult or child)
- a third party.

Making a request for information

Under Part 5A, prescribed risk assessment entities are able to request information about an alleged perpetrator for a family violence assessment purpose, and other prescribed ISEs are able to share information with them about alleged perpetrators to support assessment. For example, a person may present at a service with physical injuries that they claim to be a result of an accident. The service suspects that these injuries may have been inflicted by the person’s partner given the nature of the injuries and the partner’s irate and controlling behaviour. Given it may be difficult in these circumstances for a risk assessment entity to form a reasonable belief that the partner poses a risk of committing family violence, information about the alleged perpetrator can be shared for a family violence assessment purpose (but not for a protection purpose). This is because very little might be known at the outset about given circumstances and it is the role of risk assessment entities to establish that family violence risks do in fact exist, including who the actual perpetrator and victim survivor are. Please refer to Chapter 4 on page 37 for guidance on what to do if it is thought that the perpetrator or victim survivor has been misidentified.

A prescribed risk assessment entity that receives information must only handle that information for a family violence assessment purpose:

- until risk has been established, when the information can be used for a protection purpose
- unless otherwise permitted by other laws.

Penalties will apply if ISEs use information obtained under Part 5A for purposes that are not consistent with Part 5A (see Chapter 14 on page 93).

Please see Chapter 3 on page 32 for further information on the entities that are prescribed as risk assessment entities.

Obligatory sharing – when there has been a request for information

If a prescribed risk assessment entity makes a request for information from another prescribed ISE for a family violence assessment purpose, the responding ISE must share relevant information it holds provided:

- the information is not excluded and sharing would not contravene another law (see Chapter 5 on page 40)
- applicable consent requirements have been met (see Chapters 6 on page 43, 7 on page 49 and 8 on page 58).

When sharing information for a risk assessment purpose in response to a request from a risk assessment entity, a prescribed ISE does not need to hold a reasonable belief that the disclosure of relevant information is necessary for a family violence assessment purpose prior to sharing information with a prescribed risk assessment entity. The purpose of the assessment itself is to ensure access to the widest range of information is available to risk assessment entities in order for them to be able to establish the presence of family violence risk and to undertake an initial comprehensive risk assessment.
Case Study – obligation to share information upon receiving a request for a family violence risk assessment purpose

Sally works in a Support and Safety Hub, a prescribed risk assessment entity under Part 5A. Sally receives a phone call from a distressed woman named Anh who tells Sally that her partner, Tim, is violent and controlling. Sally manages to get down some brief details about Tim, including his full name and address, and Anh’s safest contact details, but the conversation abruptly ends when Anh hangs up.

Sally is keen to establish and understand the level of family violence risk posed by Tim to assess Anh’s risk. Even though at this stage, Sally may not have sufficient information to identify that Tim is a perpetrator based on Anh’s allegation, Sally is permitted under Part 5A to request relevant information about Tim, as an alleged perpetrator, from other prescribed ISEs such as police to establish and assess family violence risk.

The responding ISE must share relevant information they have about Tim (for example, current or previous family violence intervention orders) that could assist Sally undertake a family violence risk assessment, provided:

- the information is not excluded information (for example, the information might prejudice the investigation of a crime by police) and sharing would not contravene another law
- applicable consent requirements have been met (in this case, as Tim is the alleged perpetrator, Tim’s consent is not required).

Note, in this instance, until Sally has Anh’s consent, Sally should not share Anh’s information with other ISEs. Sally and any responding ISE should identify the information that is relevant to assessing whether Tim poses a risk of committing family violence.

Please refer to Chapter 4 on page 37 for guidance on what to do if the perpetrator or victim survivor may have been misidentified.

Voluntary sharing – where there has been no request for information made

Any prescribed ISE is permitted to share information with a risk assessment entity on a voluntary basis (i.e. without a request) for a family violence assessment purpose.

This is to ensure that prescribed ISEs are able to proactively share information that could assist a risk assessment entity to assess and establish if family violence risk is present – even in the absence of a request.

Case Study – voluntary information sharing for a family violence risk assessment purpose where no request for information has been made

Ben is currently in prison serving a three year sentence for aggravated burglary. Raj, a prison officer (an employee of a prescribed protection entity), has overheard Ben repeatedly mention the fact that the first thing he intends to do upon his release is ‘hunt down’ his wife, Linda, and ‘make her pay’ for leaving him and starting a relationship with his cousin while he has been in prison.

As the prison is a prescribed ISE, Raj would be expected to speak with the relevant Framework trained supervisor about what Ben has been saying. Under Part 5A, they would be permitted to share information about Ben, including his impending release date from prison with a prescribed risk assessment entity (for example, police, a Support and Safety Hub or a specialist family violence agency) to enable them to assess and establish the risk posed by Ben to Linda (family violence assessment purpose). Under Part 5A, this information could also be provided to Linda directly for a family violence protection purpose but ideally it is best for this information to be shared with Linda by those who have the best capacity to convey this information to her and plan for her safety (i.e. her
Case Study – voluntary information sharing for a family violence risk assessment purpose where no request for information has been made

Linda is on the Victim Survivor’s Register so she could be informed about Ben’s release date through this mechanism. But this specific example highlights that it is not only important for Linda to be aware of Ben’s release date, but that Linda and her support service are also aware of the recent threats Ben has been making towards her, in order to assess and manage her level of risk and safety appropriately. If Linda is not already, she may also need to be referred to a specialist family violence service for ongoing risk management.

What are protection entities permitted to do under Part 5A?

Once risk of family violence (including identity of the perpetrator) has been established, all ISEs (protection entities) can request information from any other ISE about the following people for a family violence protection purpose (i.e. to manage the risk of someone committing family violence or being subjected to family violence):

- a perpetrator
- a victim survivor (adult or child)
- a third party.

Part 5A does not permit information to be requested and shared about alleged perpetrators\(^2\) at this stage, as family violence risk should have already been established and an actual perpetrator and victim survivor identified.

A protection entity that receives information can only use that information for a family violence protection purpose, unless otherwise permitted by other laws. Penalties will apply if ISEs use information obtained under Part 5A for purposes that are not consistent with Part 5A (see Chapter 14 on page 93).

Please see Chapter 3 on page 32 for further information on ISEs.

Obligatory sharing – when there has been a request for information

If an ISE makes a request for information from another ISE for a family violence protection purpose, the responding entity must share relevant information it holds provided:

- the responding ISE reasonably believes that the disclosure of the relevant information is necessary for a family violence protection purpose. This is intended to act as a safeguard to prevent unnecessary or irrelevant information from being shared.
- the information is not excluded and sharing would not contravene another law (see Chapter 5 on page 40)
- applicable consent requirements have been met (see Chapters 6 on page 43, 7 on page 49 and 8 on page 58).

Remember

- It is expected that all relevant individuals within the prescribed ISEs that are using the legislation will have undertaken training in the Framework or family violence risk assessment tool or program that has been aligned to it <http://www.thelookout.org.au/sites/default/files/Family-Violence-Risk-Assessment-and-Risk-Management-Framework-and-Practice-Guides-1-3.pdf>.

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\(^2\) Alleged perpetrators are person who are alleged to pose a risk of family violence, but a risk assessment has not yet been conducted to allow for a reasonable belief to be formed that there is risk the person may commit family violence.
Remember

exercising your professional judgement on whether a particular circumstance is relevant to assessing and managing risk.

- Because risk levels can change quickly, Part 5A permits all ISEs to request and share information for a family violence protection purpose so that risk can continually be managed and reviewed via an ongoing process of assessment and monitoring.

Case Study – obligation to share information upon receiving a request for a family violence protection purpose

Jane, a case manager at a specialist family violence service (a protection entity), has undertaken a family violence risk assessment and assessed that Peta is at risk of family violence from her partner Sergio.

Peta provides Jane with the details of a men’s behaviour change program which she understands Sergio is attending. Jane calls the men’s behaviour change program (a protection entity) and speaks with Sergio’s group facilitator, Ray. Jane makes a request to Ray for ‘anything and everything’ he knows about Sergio as she needs this information in order to undertake ongoing risk assessment and put in place effective risk management strategies for Peta.

While Part 5A requires Ray, as an employee of the responding ISE, to provide relevant information about Sergio for a family violence protection purpose, Ray must form a reasonable belief that:

- the disclosure of relevant information is necessary for a family violence protection purpose

- the information is not excluded

- any applicable consent thresholds are met (in this case, because Sergio has been determined to be the perpetrator, consent to share his information is not required).

In this case, despite the request for ‘anything and everything’, Ray should make a professional judgement and only share information that he reasonably believes is necessary for a family violence protection purpose. For example, Ray might consider sharing his risk assessment on Sergio and any risk factors that have been indicated through the men’s behaviour change program (e.g. whether Sergio has attended substance affected, engaged in aggressive behaviour or failed to attend consecutive sessions), as this information could assist Jane manage the risks to Peta. Ray might not share some of the other information he has about Sergio, including information about Sergio’s history of childhood sexual abuse, as he does not reasonably believe this is necessary for a family violence protection purpose. Ray may also put Peta in contact with the relevant partner contact worker, if available.

Voluntary sharing – where there has been no request for information made

Any ISE is permitted to share information with another ISE on a voluntary basis (i.e. without a request) for a family violence protection purpose (see consent in Chapters 6 on page 43, 7 on page 49 and 8 on page 58).

This is to ensure that ISEs are able to proactively share information that they believe could assist another ISE to manage family violence risk, even in the absence of a request.

Can ISEs share information with victim survivors of family violence?

Under Part 5A, an ISE is permitted to share information with a victim survivor if they reasonably believe it will assist them to manage their safety or that of their children (see Chapter 4 on page 37 regarding the identification of a victim survivor). Sharing relevant information with victim survivors can potentially increase their safety. While there is no obligation or mandatory duty to share information, it is important for an ISE to assess whether sharing information with a victim survivor is necessary to assist their own
safety planning. An ISE should share relevant information that will support the safety and protection of victim survivors. However, there are some circumstances where it may not be appropriate or relevant to share information and the appropriateness of doing so should be considered in relation to the specific circumstances of the case.

When deciding whether to share information with a victim survivor, an ISE should consider the effect that information may have on the victim survivor and the appropriate supports that should be put in place to assist the victim survivor manage their safety. This may include informing other relevant ISEs about the information disclosed to the victim survivor, to ensure the information is used in a safe manner.

A victim survivor is only permitted to use this information for safety management purposes. A victim survivor is not permitted to use this information for any other purposes (for example, posting the perpetrator’s information on social media). It is important that the victim survivor be made aware of the purpose of the information they receive and be informed of the limitations around how they can use this information. For information on offences and complaints see Chapter 14 on page 93.

**What information cannot be shared under Part 5A?**

ISEs are not permitted to share excluded information, or information that continues to be restricted from being shared under other laws.

This recognises there are a range of limited circumstances where confidential information should not be permitted to be shared under Part 5A due to other policy reasons (e.g. where sharing could endanger a person’s life or prejudice a law enforcement investigation). For more guidance, please refer to Chapter 5 on page 40.

**What are applicable consent thresholds under Part 5A?**

When sharing information to assess or manage risk of family violence to an adult victim survivor (see Chapter 7 on page 49):

- information about perpetrators of family violence, including adolescents who use violence, can be shared without their consent to assess and manage risk
- consent will be required from adult victim survivors to share their information, unless sharing is necessary to lessen or prevent a serious threat to an individual’s life, health, safety or welfare (an adult victim survivor’s consent will not be required if a child’s safety is also at risk under s144NC)
- relevant third party (including both adults and children) information can be shared with consent, unless sharing is necessary to lessen or prevent a serious threat to an individual’s life, health, safety or welfare, or some other exception under privacy law that allows sharing without consent.

When sharing information to assess or manage risk of family violence to a child victim survivor, consent is not required to share relevant information about any person, including the child, a parent who is also a victim survivor or any relevant third party. For more guidance, please refer to Chapter 8 on page 58.

**What protections are in place if information is shared in good faith and with reasonable care under Part 5A?**

If the person sharing information acted in good faith and with reasonable care then they will not be held liable in relation to the use or disclosure of information (see Chapter 14, on page 93).

If information is shared inappropriately, then offences may apply and penalties imposed. There are two offences under Part 5A — one for unauthorised use or disclosure of information and one for intentional or reckless unauthorised use and disclosure of information.
Figure 1: Overview of Part 5A

Adult Victim
An ISE reasonably believes that there is a risk that the person may be subjected to family violence.

Child Victim
An ISE reasonably believes that there is a risk that the person (under the age of 18 years) may be subjected to family violence.

Perpetrator
An ISE reasonably believes that there is a risk that the person may commit family violence.

Alleged Perpetrator
A person who is alleged to pose a risk of family violence.

Third Party
A person who information is relevant to a family violence assessment purpose or a family violence protection purpose.

WHO CAN SHARE
Organisations that form part of the “Trusted Zone” are authorized to share information. These organisations:

Prescribed by regulations

WHY THEY CAN SHARE
Information about a person at risk of being subjected to family violence (including adults and children), and a person at risk of committing family violence, can be shared for the purpose of:

Establishing and managing risk.

MANAGING RISK

WHAT CANNOT BE SHARED
Excluded information cannot be shared. For example, if sharing the information might endanger a person’s life or health, or if it is information related to a physical or sexual injury, it is subject to legal professional privilege. A full list of excluded information is included in the legislation.

More information is available in the “Complaints about privacy breaches” section.

The regime will be reviewed after 2 years, and then again after 5 years.

A good faith defense protects workers who share information in good faith and with reasonable care.

All prescribed organisations must respond to information requests unless an exemption applies.
Chapter 2: Interaction with privacy and other laws

This Chapter provides general guidance on how Part 5A interacts with existing Victorian and Commonwealth privacy laws under the Privacy and Data Protection Act 2014 (Vic) (PDP Act), the Health Records Act 2001 (HR Act) and the Privacy Act 1988 (Commonwealth Privacy Act) as well as relevant provisions in the Children, Youth and Families Act 2005 (CYFA).

This Chapter also sets out the provisions in other laws that are specifically overridden to remove restrictions on sharing or using information when relevant to assessing or managing a risk of family violence under Part 5A as well as information for ISEs on responding to subpoenas and keeping information secure.

ISEs may also be subject to other laws governing the sharing of information that continue to apply. ISEs should ensure that they are aware of their obligations under any such other laws and provide appropriate guidance to their workforce.

Key Points

- Sharing information about family violence is already permitted under in certain circumstances under other laws.
- ISEs continue to be subject to their existing obligations under the Commonwealth Privacy Act, PDP Act and HR Act, as applicable.
- However, Part 5A also provides ISEs with exceptions to assist them to assess or manage family violence risk, including authority to refuse a perpetrator access to their personal or health information if it may increase risk to a victim survivor.
- ISEs are able to collect personal or health information about a perpetrator from sources other than the perpetrator, without their consent and without having to notify them.
- Part 5A does not override any existing permissions or obligations under the CYFA.
- Part 5A overrides provisions in 23 other Acts that could prevent an ISE from being able to share some information under Part 5A.
- The Freedom of Information Act 1982 (Vic) (the FOI Act) now includes family violence specific exemptions.

Can I already share the information?

When considering whether information can be shared for family violence assessment or protection purposes, it may be helpful to consider whether that information can already be shared under existing privacy and other laws.

Part 5A makes it clear that nothing in the family violence information sharing scheme is intended to prevent an ISE from collecting, using or disclosing information where it is allowed under another Act, including where it is already allowed under the PDP Act or the HR Act.

That is, if information could lawfully be shared without relying on Part 5A then the requirements of Part 5A do not have to be met before doing so.
Some examples – existing permission to share information under other laws, rather than Part 5A

- Victoria Police is able to share information for both a risk assessment and protection purpose under Part 5A. However, as a ‘law enforcement agency’ under the PDP Act, Victoria Police may still use and disclose personal information for law enforcement purposes as currently permitted under section 15 of the PDP Act, without considering any of the requirements of Part 5A (e.g. police are not required by law to obtain any person’s consent for law enforcement purposes).

- An ISE may use and disclose personal and health information in accordance with the PDP Act and the HR Act. The use or disclosure could be for the primary purpose for which the information was collected or for a related secondary purpose that the person would reasonably expect (see Information Privacy Principle 2.1 or Health Privacy Principle 2.2).

- For example, a women’s refuge collects personal information from a client for the purpose of providing safe accommodation and support to the client and the client’s children. The women’s refuge may use and disclose the client’s personal information for that purpose. Or it may use it for a related secondary purpose that the client would reasonably expect, such as disclosing the client’s details to a related support service but which may not be a prescribed ISE – for example, a legal support service.

- Except where it would amount to a breach of confidence by a registered health practitioner, an ISE may also use or disclose personal or health information under the PDP Act or the HR Act if the ISE reasonably believes the use or disclosure is reasonably necessary for a law enforcement function by a law enforcement agency, such as the prevention, investigation or prosecution of a criminal offence by Victoria Police (see Information Privacy Principle 2.1 or Health Privacy Principle 2.2).

- A men’s behaviour change program provider prescribed as an ISE overhears a client attending one of its programs telling another participant that he is currently selling drugs. The men’s behaviour change program could notify Victoria Police and disclose such personal information about the client as is reasonably necessary to allow Victoria Police to investigate whether the client has committed a crime, without considering any of the requirements of Part 5A (e.g. whether the disclosure is for a family violence assessment or protection purpose).

Does Victorian privacy law apply?

Part 5A works within the existing Victorian privacy laws, with some modifications to allow ISEs to restrict access to information where appropriate and to allow the information sharing scheme to work as intended.

Part 5A specifically requires any ISEs that are not already bound by the PDP Act or the Commonwealth Privacy Act to ensure that any personal information they handle under Part 5A is handled in accordance with the PDP Act. For example, ISEs will be obliged to take reasonable steps to ensure that the personal information they collect is kept accurate, complete and up-to-date, and to protect that information from misuse, loss and unauthorised access, modification or disclosure.

The HR Act will also continue to apply to any ISE that is an ‘organisation’ (such as a public sector agency or hospital) or a ‘health service provider’ within the meaning of that Act, as well as to any other ISE that collects, holds or uses health information. This means that any health information they handle under Part 5A must be handled in accordance with the HR Act. Again, this includes among other things taking reasonable steps to ensure that the health information an ISE collects is accurate, complete and up-to-date, and protected from misuse, loss and unauthorised access, modification or disclosure.

Complying with Victorian privacy law

ISEs should ensure they are familiar with their obligations under the PDP Act (which sets out the Information Privacy Principles) and the HR Act (which sets out the Health Privacy Principles). These
Guidelines should not be relied on as a comprehensive summary of ISE’s existing obligations under privacy laws or taken as a substitute for advice where needed.

The PDP Act governs the handling of ‘personal information’, which means any recorded information or opinion (whether true or not) about an individual whose identity is apparent or can reasonably be ascertained from that information or the opinion. Examples of personal information include a person’s name, sex, gender, date of birth, address, financial details, marital status, and education and employment history.

The HR Act governs the handling of ‘health information’, which includes (but is not limited to) information or an opinion about:

- an individual’s disability or physical, mental or psychological health
- an individual’s expressed wishes about the future provision of health services to them
- a health service provided, or to be provided, to an individual
- other personal information collected to provide, or in providing, a health service.

In complying with the PDP Act, ISEs must comply with the Information Privacy Principles (IPPs) set out in that Act. As noted above, any ISE that collects, holds or uses health information under Part 5A must do so in accordance with the HR Act, which includes complying with the Health Privacy Principles (HPPs) set out in Schedule 1 to that Act. Among other things, this includes:

- taking reasonable steps when collecting information to ensure that the individual is aware of, among other things, the purposes for which their information is being collected and to whom that information is usually disclosed (this is generally called a collection notice) (IPP 1.3 and HPP 1.4)
- taking reasonable steps to ensure that the personal information or health information an ISE collects, uses or discloses is kept accurate, complete and up-to-date and, in the case of health information, relevant to the ISE’s functions or activities (IPP 3.1 and HPP 3.1)
- taking reasonable steps to protect any personal or health information held by the ISE from misuse, loss and unauthorised access, modification or disclosure (IPP 4.1 and HPP 4.1)
- documenting clearly expressed policies on the organisation’s management of personal or health information (i.e. privacy policies), including in the case of health information the steps an individual must take to obtain access to their health information, and make these policies available to anyone who asks for them (IPP 5.1 and HPP 5.1).

A range of resources on compliance with the PDP Act are available on the Office of the Victorian Information Commissioner’s website (http://www.ovic.vic.gov.au). These resources include information on privacy and data security, complying with the IPPs, undertaking privacy impact assessments and general guidance on drafting privacy policies and collection notices.

For ISEs that will be handling health information under Part 5A, a number of resources are available on the Health Complaints Commissioner’s website (http://hcc.vic.gov.au), including a free online introductory training portal and information on other face-to-face training offered by the Commissioner’s office.

ISEs should review their privacy policies and other organisational materials to ensure they are updated to reflect any changes to their organisation’s management of personal or health information under Part 5A, and with regard to some of the general and family violence specific modifications to privacy laws described below.

**How have Victoria’s privacy laws been modified by Part 5A?**

While ISEs are required to comply with the PDP Act, the HR Act and the Commonwealth Privacy Act where applicable, Part 5A provides ISEs with certain particular exceptions to assist them in assessing and managing family violence risks.
Family violence modifications for ISEs – access to personal information

First, Part 5A specifically allows an ISE to refuse a perpetrator’s or an alleged perpetrator’s request for access to their own personal or health information under the PDP Act or the HR Act if the ISE reasonably believes that giving the person access would increase the risk of family violence to a victim survivor. This is to ensure that victim survivors are not unduly exposed to increased risk from perpetrators accessing information about themselves that could also include information about victim survivors.

ISEs are able to provide any individual, including a perpetrator, with access to their own personal or health information where it is safe to do so. However, ISEs should ensure that an appropriate risk assessment has been completed and be satisfied that providing access to information would not increase the risk to a victim survivor’s safety before allowing access to information by a perpetrator or alleged perpetrator.

If the ISE determines that a person has been incorrectly identified as a perpetrator of family violence and that the person is not in fact believed to present a risk of committing family violence, that person should have the same right to access and correct their information as any other person. ISEs should have processes in place for documenting the correction of information.

ISEs bound by the FOI Act should note that the FOI Act also now includes a family violence specific ground of refusal that will allow an agency to refuse a freedom of information request for access to documents when doing so would increase the risk of family violence to a victim survivor.

ISEs prescribed under Part 5A should ensure their relevant business areas responding to freedom of information requests are made aware of the new family violence risk exception.

Family violence modifications for ISEs – collection of personal information

The PDP Act and the HR Act now include provisions to ensure ISEs are able to collect personal or health information without being required to comply with certain requirements that might be inconsistent with effective family violence risk assessment and safety management.

These sections provide that ISEs:

• are not required to collect personal or health information about a perpetrator or alleged perpetrator directly from that person, despite anything in IPP 1.4 or HPP 1.3, although ISEs may still do so where it is safe, reasonable and appropriate

• are not required to notify a perpetrator or alleged perpetrator where information about them is collected from someone else, despite anything in IPP 1.5 or HPP 1.5, although ISEs may still do so where it is safe, reasonable and appropriate

• are not required to obtain consent from a perpetrator or alleged perpetrator before collecting ‘sensitive information’ about that person (such as information about their criminal record), despite anything in IPP 10.1

• are not required to obtain consent from any person before ‘sensitive information’ is collected about them in relation to a child victim survivor, despite anything in IPP 10.1. ISEs are encouraged to consider discussing the relevant individual’s wishes and preferences for the use of their information and ensure that these are taken into account wherever appropriate, while also making it clear that their information may be shared in order to assess or manage a risk to a child notwithstanding those wishes or preferences.

For further guidance on seeking consent and notifying individuals on how their information may be used, please refer to Chapters 6 on page 43, 7 on page 49 and 8 on page 58.

For further discussion on individuals’ rights of access to information shared under Part 5A, please refer to Chapter 13 on page 91.
Remember

- Victoria’s privacy laws have been modified to allow any organisation bound by the PDP Act or HR Act (irrespective of whether they are prescribed under Part 5A) to use or disclose personal or health information without consent if they reasonably believe it is necessary to lessen or prevent a serious threat to an individual’s life, health, safety or welfare. This has broader application to both family violence and non-family violence threats.

- Previously, the PDP Act and the HR Act allowed organisations to use or disclose personal or health information for a secondary purpose if it was necessary to lessen or prevent a serious and imminent threat. Now, the imminence threshold has been removed and it is no longer necessary to wait until a serious threat is also imminent before using or disclosing the information. This means organisations may act more proactively to manage serious threats as soon as they become apparent, including serious threats that arise in contexts other than family violence.

- For more information on the ‘serious threat’ thresholds under the PDP Act or the HR Act, please refer to the Office of the Victorian Information Commissioner’s website or the Health Complaints Commissioner’s website as appropriate.

- A disclosure by an individual in good faith and with reasonable care under Part 5A will not constitute a contravention of another Act, including a contravention of the PDP Act or the HR Act (see Chapter 14 on page 93). However, ISEs should note that this good faith protection does not apply to other kinds of disclosures made in accordance with the PDP Act or the HR Act – it applies only if the disclosure was made under Part 5A.

Complaints about interferences with privacy under Victorian privacy laws

ISEs that are not already bound by the PDP Act or the Commonwealth Privacy Act will be required to handle personal information under Part 5A in accordance with the PDP Act, and any ISE that collects, holds or uses health information in accordance with Part 5A will be obliged to do so in accordance with the HR Act.

As such, any individual who believes an ISE has interfered with their privacy in the course of handling their personal or health information under Part 5A may make a complaint to the Office of the Victorian Information Commissioner or the Health Complaints Commissioner, as applicable.

For further information about complaints to the Office of the Victorian Information Commissioner, please refer to Chapter 14 on page 93 and the Commissioner’s website.

For further information about complaints to the Health Complaints Commissioner, please refer to Chapter 14 on page 93 and the Commissioner’s website.

Interface with Child, Youth and Families Act 2005

The CYFA provides a legislative framework for ensuring that child, youth and family services best support children’s needs. Part 5A will not interfere with or override ISEs existing permissions or obligations under the CYFA. For example, the Act provides for a number of decision-making principles to be considered when the Department of Health and Human Services or a community service is making decisions or taking action in relation to a child. This includes both Child Protection within the Department of Health and Human Services and community-based Child FIRST/Integrated Family Services.

These principles require services to use a practice approach that is child-centred and family-sensitive—decisions and actions must protect the child from harm, protect the child’s rights and promote the child’s development. These principles require practitioners to focus on children’s safety, stability and development in the context of their age and stage of life, as well as their culture and gender.
Can ISEs that are also bound by Commonwealth privacy laws share information under Part 5A?

A number of ISEs are currently subject to the Commonwealth Privacy Act. These ISEs will continue to be bound by the Commonwealth Privacy Act. However, ISEs bound by the Commonwealth Privacy Act will be able to share information under Part 5A.

Interaction with Commonwealth privacy law

Part 5A does not generally affect the Commonwealth Privacy Act or any other Commonwealth Act, although it does contain certain provisions that will have implications for ISEs bound by the Commonwealth Privacy Act.

ISEs that are subject to the Commonwealth Privacy Act will be permitted to share information in accordance with Part 5A. ISEs bound by the Commonwealth Privacy Act must continue to comply with that Act and the Australian Privacy Principles (APPs).

ISEs that are bound by the Commonwealth Privacy Act should ensure they are familiar with their obligations under that Act.

For the purposes of the APPs, it is intended that Part 5A will operate as an explicit authorisation by or under an Australian law to share personal and/or health information for family violence assessment or protection purposes.

Notification of collection

An entity bound by the APPs is required to take reasonable steps to inform an individual about certain matters when their personal and/or health information is collected. ISEs should have regard to the guidance on APP 5 issued by the Office of the Australian Information Commissioner <http://www.oaic.gov.au>.

Access

Part 5A specifically provides that an ISE may refuse a perpetrator’s or an alleged perpetrator’s request for access to their personal or health information under the Commonwealth Privacy Act APPs if the ISE reasonably believes that giving the person access would increase the risk to a victim survivor’s safety from family violence.

This is intended to provide ISEs with a greater ability to ensure that victim survivors are not unduly exposed to increased risk of perpetrators accessing information about them. ISEs should note that this does not prevent them from being able to provide individuals, including perpetrators, with access to their personal or health information where it is safe and appropriate to do so.

For further discussion on individuals’ rights of access to information shared under Part 5A, please refer to Chapter 13 on page 91.

Complaints about interferences with privacy under Commonwealth privacy laws

Any individual who believes that an ISE bound by the Commonwealth Privacy Act has unlawfully interfered with their privacy in the course of handling their personal information (including health information) under Part 5A may make a complaint to the Australian Information Commissioner.

For further information about complaints to the Australian Information Commissioner, please refer to Chapter 14 on page 93 and the Commissioner’s website <http://www.oaic.gov.au>.
Interaction with other legislation

Part 5A contains a provision that explicitly overrides certain provisions in other Acts that could prevent an ISE from being able to share some information under Part 5A.

Section 144QC authorises ISEs to collect, use or disclose personal or health information in accordance with Part 5A despite anything to the contrary in any of the provisions specified in Schedule 1 to the FVP Act or the regulations.

Provisions in the following pieces of legislation restricting the sharing of the information have been overridden by Part 5A, and can therefore be shared when relevant for a family violence assessment or protection purpose.

<table>
<thead>
<tr>
<th>Information that can identify the following persons or court venues</th>
<th>Information that can be shared under Part 5A for a family violence assessment or protection purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 16ZE(3A) Child Wellbeing and Safety Act 2005</td>
<td>A person who has made a reportable conduct notification or a child who is subject to an allegation</td>
</tr>
<tr>
<td>Section 534 Children, Youth and Families Act 2005</td>
<td>A child, other party or witness in a proceeding in the Children’s Court or the particular venue in which the proceedings were heard</td>
</tr>
<tr>
<td>Section 166 Family Violence Protection Act 2008</td>
<td>A party to a proceeding under the Family Violence Protection Act 2008, a witness in a proceeding, a person the subject of an order or the venue of the court</td>
</tr>
<tr>
<td>Section 123 Personal Safety Intervention Orders Act 2010</td>
<td>A child who is a party or witness to a proceeding under the Personal Safety Intervention Orders Act 2010 or the venue of a court</td>
</tr>
<tr>
<td>Section 141 Health Services Act 1988</td>
<td>A patient that has accessed a health service</td>
</tr>
<tr>
<td>Section 23 Human Services (Complex Needs) Act 2009</td>
<td>A person considered or found to be an eligible person, a person to who a care plan relates or a member of any such person’s family under the Human Services (Complex Needs) Act 2009</td>
</tr>
<tr>
<td>Sections 3 and 4 of the Judicial Proceedings Reports Act 1958</td>
<td>A party to a proceeding</td>
</tr>
<tr>
<td>Section 43 Victims of Crime Assistance Act 1996</td>
<td>A party or another person who appeared at a hearing of the Victims of Crime Assistance Tribunal</td>
</tr>
</tbody>
</table>

Information obtained in the following official capacities

| Section 128 Disability Act 2006                                | A person who is the Disability Services Commissioner, acting Disability Services Commissioner, or a delegate, employee or engaged by the office of the Disability Services Commissioner unless it is necessary to do so in the connection with a function or duty under the Act |
| Section 55 Commission for Children and Young People Act 2012  | As a Commissioner, delegate of the Commissioner, authorised person or member of staff of the Commission for Children and Young People |

Information collected or obtained in the following ways

| Section 36 Children, Youth and Families Act 2005 | By way of a referral to a community-based child and family service or other community service for the purpose of assessing risk or determining an |
### Other legislation that restrictions information sharing that is overridden by Part 5A

<table>
<thead>
<tr>
<th>Other legislation that restrictions information sharing that is overridden by Part 5A</th>
<th>Information that can be shared under Part 5A for a family violence assessment or protection purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 205(2) and 206(2) <em>Children, Youth and Families Act 2005</em></td>
<td>From an investigation by a protective intervener</td>
</tr>
<tr>
<td>Section 207(2) <em>Children, Youth and Families Act 2005</em></td>
<td>From a protection report provided to a police officer from the Secretary of the Department of Health and Human Services</td>
</tr>
<tr>
<td>Sections 210(2) and 211(2) <em>Children, Youth and Families Act 2005</em></td>
<td>From an investigation into a report that a child is in need of therapeutic treatment by a protective intervener</td>
</tr>
<tr>
<td>Section 140 <em>Confiscation Act 1997</em></td>
<td>Disclosed in the course of performing a duty under or in connection with the <em>Confiscation Act 1997</em> or in connection with law enforcement</td>
</tr>
<tr>
<td>Section 36 <em>Disability Act 2006</em></td>
<td>Because of a person’s appointment as a community visitor</td>
</tr>
<tr>
<td>Section 39 <em>Disability Act 2006</em></td>
<td>Relating to the provision of disability services that may identify a person acquired in an official capacity by a person appointed to any office or engaged under the Act, a disability service provider or person employed or engaged by a disability service provider or a provider of services under this Act or a person who is or has been a member of the public service</td>
</tr>
<tr>
<td>Section 207 <em>Family Violence Protection Act 2008</em></td>
<td>By a police officer for the purpose of locating a respondent to effect service of a document under the <em>Family Violence Protection Act 2008</em></td>
</tr>
<tr>
<td>Section 141 <em>Health Services Act 1988</em></td>
<td>By reason of being a health service (i.e. a hospital, a multi-purpose service, day procedure centre or a registered community health centre), on the board of a health service, a delegate to a board of a public hospital or public health service, a proprietor of a health service, engaged or employed in or by a health service or performing work for a health service if a person who is or has been a patient in, or has received health services from, a health service could be identified from that information</td>
</tr>
</tbody>
</table>
| Section 23 *Human Services (Complex Needs) Act 2009* | By reason of being:  
- the Secretary of the Department of Health and Human Services or a person engaged by or employed on behalf of the Secretary  
- a person who is or has been involved in the management of, engaged or employed at or worked for or at a service provider to whom a person has been referred to for the development of a care plan or a service provider identified in a care plan  
- a person who is or has been involved in the management of, engaged or employed at or worked for or at, a person or organisation that provides or has provided welfare services, health services, mental health services, disability services, drug and alcohol treatment services, |
<table>
<thead>
<tr>
<th>Other legislation that restrictions information sharing that is overridden by Part 5A</th>
<th>Information that can be shared under Part 5A for a family violence assessment or protection purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 124J(2) Magistrates’ Court Act 1989</strong></td>
<td>Offender services, emergency services or housing and support services to an eligible person under the Act</td>
</tr>
<tr>
<td><strong>Section 181 Personal Safety Intervention Orders Act 2010</strong></td>
<td>By reason of being a contractor, sub-contractor, a person employed by or engaged to provide services for a contractor or sub-contractor or authorised by the Secretary of the Department of Justice to access data under section 124I Magistrates’ Court Act 1989</td>
</tr>
<tr>
<td><strong>Section 48LB Sentencing Act 1991</strong></td>
<td>As a result of the electronic monitoring of an offender</td>
</tr>
</tbody>
</table>

**Firearms licences**

| Section 181 Firearms Act 1996 | Information with respect to firearms licences |

**Information about proceedings, orders or warrants**

| Section 537 Children, Youth and Families Act 2005 | Information on the court register |
| Section 582(5) Children, Youth and Families Act 2005 | Information that may be of use in the enforcement of court orders and fines |
| Section 164 Infringements Act 2006 | Information regarding enforcement of orders and warrants under the Infringements Act 2006 |
| Sections 3 and 4 of the Judicial Proceedings Reports Act 1958 | Particulars of judicial proceedings, including the identity of a party to a proceeding |
| Section 18(3) Magistrates’ Court Act 1989 | Orders of the Court and other matters entered into the register |
| Section 99A(5) Magistrates Court Act 1989 | Information obtained by the infringements registrar, the sheriff or any contractor or sub-contractor supporting the functions of the Infringements Court of the sheriff that may be of use in the enforcement of court orders and fines |
| Section 124 Personal Safety Intervention Orders Act 2010 | A report about a proceeding or order specified in section 123 of the Personal Safety Intervention Orders Act 2010 |
| Section 43 Victims of Crime Assistance Act 1996 | Evidence given at a hearing, documents produced to the Victims of Crime Assistance Tribunal or the identity of a party or another person who appeared at a hearing |

**Reports about a child**

| Section 35(2) Children, Youth and Families Act 2005 | Reports made to the Secretary about a child |

**Health information**

| Section 347 Mental Health Act 2014 | Health information from an electronic health information system |

**Student number and related information**
For further discussion of information that cannot be shared, or to which restrictions on sharing apply due to the continued application of other laws, please refer to Chapter 5 on page 40.

**Responding to subpoenas**

An ISE that has received information under Part 5A may be subpoenaed to produce the information held. A subpoena may request that certain documents be produced to the court, such as case notes, files or any other records. Subpoenaed documents do not automatically become evidence in legal proceedings, but even if the documents are not used in evidence, the information contained in them, if released, could potentially cause harm or distress to a victim survivor.

A court may issue a subpoena to an ISE to produce documents to assist the court in considering a matter before it. A subpoena may be sought by any party to a court proceeding (which may or may not relate to family violence) and must be complied with unless the court decides differently.

However, a subpoena may be challenged on a number of different grounds, including that it is oppressive, vexatious, a fishing expedition, or does not demonstrate a legitimate forensic purpose and/or on the basis of a privilege at law over the information.

If an ISE receives a subpoena to produce information about a victim survivor or a perpetrator, that ISE should seek legal advice on how to respond before producing any information.

Where a victim survivor’s record has been subpoenaed and the victim survivor is not a party to the proceeding, the ISE should notify the victim survivor that the subpoena has been received.

**Information management and data security**

Sharing relevant information can be critical to managing an individual’s safety and can even save lives. However, keeping information safe and secure is an equally critical part of managing risks to people’s safety, particularly when it comes to ensuring that an individual’s personal and health information is not able to be accessed by anyone who is not authorised to access it.

As discussed earlier in this Chapter in relation to Victorian privacy laws, any ISE that is not already bound by the PDP Act or the Commonwealth Privacy Act is required to ensure that any personal information it handles under Part 5A is handled in accordance with the PDP Act, including adhering to the Victorian Protective Data Security Framework. Further, any ISE that is an ‘organisation’ (such as a public sector agency or hospital) or a ‘health service provider’ within the meaning of the HR Act, as well as to any other ISE that collects, holds or uses health information, must continue to do so in accordance with the HR Act.

As also discussed earlier in relation to Commonwealth privacy laws, any ISE that is bound by the Commonwealth Privacy Act must continue to comply with that Act and the APPs.

Among other things, this means ISEs must take reasonable steps to ensure that the personal information or health information an ISE collects, uses or discloses is kept accurate, complete and up-to-date and, in the case of health information, relevant to the ISE’s functions or activities (see IPP 3.1, HPP 3.1 and APP 11.1).
ISEs should conduct regular Privacy Impact Assessments and protective data security risk assessments in relation to their information management and data security arrangements to identify risks and establish what reasonable measures are available to address them. Security measures to protect information held by an ISE should be proportionate and appropriate to the likely risk of a security breach and the gravity of harm that may be suffered by someone as the result of a security breach of unauthorised disclosure. When conducting these assessments and developing security measures, ISEs should exercise their professional judgement in good faith and be mindful that in a family violence context, unauthorised or inappropriate disclosures of information could potentially have extremely harmful consequences for a victim survivor’s safety and the safety of others.


**Protective data security and law enforcement data security**

Part 5A does not replace or override existing laws and standards in relation to protective data security and law enforcement data security. ISEs must continue to comply with any applicable requirements that already apply to that organisation.

In particular, any ISE that is an agency or body to which Part 4 of the PDP Act applies (e.g. a Victorian government department or special body) must continue to comply with any applicable Protective Data Security Standards issued by the Office of the Victorian Information Commissioner. Those agencies or bodies should ensure that any significant changes in their operating environment or security risks as a result of information sharing under Part 5A are taken into account in reviewing any Protective Data Security Plan prepared under section 89 of the PDP Act.

Any ISE that is a contracted service provider of a Victorian government department or agency should ensure that it also complies with any applicable Protective Data Security Standards issued by the Office of the Victorian Information Commissioner, having regard to any Protective Data Security Plan prepared by the department and any applicable departmental policies or requirements relating to data security.

Victoria Police and the Crime Statistics Agency should continue to comply with any Law Enforcement Data Security Standards (including the Crime Statistics Data Security Standards) issued by the Office of the Victorian Information Commissioner under Part 5 of the PDP Act.


**Record keeping**

For further details on ISEs’ specific record keeping obligations under Part 5A, please refer to Chapter 12 on page 88.
Chapter 3: Information sharing entities

This Chapter sets out who are prescribed as information sharing entities under Part 5A and what they are permitted to do. This Chapter also sets out how prescribed ISEs can request and share information with other non-prescribed ISEs, as well as Commonwealth and interstate organisations.

Key points:

- There are two main categories of ISE’s – risk assessment entities, and protection entities.
- ISE’s can share information with a risk assessment entity, or where risk has been established, a protection entity or a victim survivor.
- ISEs can share and request information from entities not prescribed as an ISE (including interstate entities) under existing Victorian and Commonwealth privacy laws if a family violence risk to a victim survivor is assessed as serious (see Chapter 2 on page 23 for more information).

Who are prescribed information sharing entities under Part 5A?

ISEs authorised to share information under Part 5A are prescribed in the Family Violence Protection (Information Sharing) Regulations 2017.

<table>
<thead>
<tr>
<th>List of prescribed ISEs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Risk assessment entities</strong></td>
</tr>
<tr>
<td>• State funded specialist women’s family violence services (including refuge staff)</td>
</tr>
<tr>
<td>• State funded specialist men’s family violence services (including Men’s Behavioural Change Programs)</td>
</tr>
<tr>
<td>• State funded sexual assault services</td>
</tr>
<tr>
<td>• Nominated Child Protection representatives</td>
</tr>
<tr>
<td>• Child FIRST (excluding broader family services)</td>
</tr>
<tr>
<td>• Victims Support Agency (including contracted Victim Assistance Program providers and Victims of Crime Helpline staff)</td>
</tr>
<tr>
<td>• Victoria Police including sworn officers and VPS staff, but excluding PSOs and reservists</td>
</tr>
<tr>
<td>• Support and Safety Hubs</td>
</tr>
<tr>
<td><strong>Protection entities</strong></td>
</tr>
<tr>
<td>• Magistrates’ Court Family Violence Registrars</td>
</tr>
<tr>
<td>• Magistrates’ Court Family Violence Applicant and Respondent Support workers</td>
</tr>
<tr>
<td>• Magistrates’ Court of Victoria Koori Court Family Violence and Victim Support Practitioners</td>
</tr>
<tr>
<td>• Court Integrated Services Program</td>
</tr>
<tr>
<td>• Children’s Court Registry Manager, Children’s Court Family Violence Registrar and Manager - Alternative Dispute Resolution at the Children’s Court</td>
</tr>
<tr>
<td>• RAMPs (note RAMPs would include Child Protection and other services but only when participating in RAMPs)</td>
</tr>
<tr>
<td>• Corrections (including Adult Parole Board)</td>
</tr>
</tbody>
</table>

Note that Part 5A permits Courts and Tribunals to be prescribed as ISEs in relation to their administrative functions only. However, they are not obliged to respond to requests for information or to comply with these Guidelines.
Under Part 5A, there are two purposes for which information can be shared:

**Family Violence Risk Assessment Purpose** - Risk assessment entities (RAEs)

- A smaller specialist sub-set of ISEs have the broadest powers to request, collect and use information for a family violence assessment purpose (i.e. to establish and assess risk at the outset).
- At the assessment phase, ISEs are permitted to share information with RAEs either voluntarily or in response to a request.
- Subject to the consent requirements of the legislation, information can be shared about a victim, perpetrator or third party if it is relevant to assessing risk of family violence (see Chapter 1 on page 12).
- An ISE is not required to meet the reasonable belief threshold when requesting or sharing information for family violence risk assessment purposes, as the very purpose of the assessment itself is to ensure access to the widest range of information in order to establish whether a risk does in fact exist (including who the actual perpetrator and victim survivor are).
- There is additional permission to share information about an alleged perpetrator for a family violence risk assessment purpose prior to the risk being established. For more information on what RAEs are permitted to do under Part 5A, please refer to Chapter 1 on page 12.
- All RAEs will also be protection entities. In addition to requesting and receiving information for family violence assessment purposes, RAEs will also be able to request or share information for a protection purpose.

**Family Violence Protection Purpose**

- Once initial risk has been established, all ISEs (also known as protection entities) will be permitted to request, collect, use and disclose information for family violence protection purposes (i.e. to manage risks, including ongoing assessment of an established risk).
- At the protection stage, information can be shared about the perpetrator, victim survivor or third party provided they meet the relevant consent thresholds (see Chapter 1 on page 12), but not about an alleged perpetrator, as family violence risk should have already been established and an actual perpetrator and victim survivor identified.
- If an ISE is requested to share information with another ISE for a protection purpose, the responding ISE must form a reasonable belief that sharing the information is necessary for that protection purpose. This is intended to ensure only relevant and necessary information is shared. For more information on what protection entities are permitted to do under Part 5A, please refer to Chapter 1 on page 12.
<table>
<thead>
<tr>
<th>Family violence assessment phase</th>
<th>Family violence protection phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>- ISEs can voluntarily share information with RAEs</td>
<td></td>
</tr>
<tr>
<td>- RAEs can request information from ISEs</td>
<td></td>
</tr>
<tr>
<td><strong>Scope</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Purpose</strong></td>
<td></td>
</tr>
<tr>
<td>This phase gives RAEs the broadest powers to request, collect and use information for family violence <strong>assessment</strong> purpose (establishing and assessing risk)</td>
<td></td>
</tr>
<tr>
<td>This phase gives ISEs the power to request, collect, use and disclose information for family violence <strong>protection</strong> purpose (managing risk) once an identified risk has been established</td>
<td></td>
</tr>
<tr>
<td><strong>Can share information about</strong></td>
<td></td>
</tr>
<tr>
<td>A perpetrator, an alleged perpetrator, a victim survivor including adults and children, a third party</td>
<td></td>
</tr>
<tr>
<td><strong>Obligatory Sharing</strong></td>
<td></td>
</tr>
<tr>
<td>If an RAE makes a request to any ISE, the responding entity <strong>must share</strong> relevant information, provided:</td>
<td></td>
</tr>
<tr>
<td>- the information is not excluded</td>
<td></td>
</tr>
<tr>
<td>- applicable consent requirements have been met</td>
<td></td>
</tr>
<tr>
<td>If an ISE makes a request to another ISE, the responding entity <strong>must share</strong> relevant information, provided:</td>
<td></td>
</tr>
<tr>
<td>- the responding entity reasonably believes that the disclosure of relevant information is necessary for a protection purpose. This is intended as a safeguard to prevent unnecessary or irrelevant information from being shared</td>
<td></td>
</tr>
<tr>
<td>- the information is not excluded</td>
<td></td>
</tr>
<tr>
<td>- applicable consent requirements have been met</td>
<td></td>
</tr>
<tr>
<td><strong>Voluntary Sharing</strong></td>
<td></td>
</tr>
<tr>
<td>An ISE is permitted to share information with an RAE on a voluntary basis (i.e. without a request) for the purpose of risk assessment, provided:</td>
<td></td>
</tr>
<tr>
<td>- the information is not excluded</td>
<td></td>
</tr>
<tr>
<td>- applicable consent requirements have been met</td>
<td></td>
</tr>
<tr>
<td>An ISE is permitted to share information with another prescribed ISE on a voluntary basis (i.e. without a request) for a protection purpose, provided:</td>
<td></td>
</tr>
<tr>
<td>- the information is not excluded</td>
<td></td>
</tr>
<tr>
<td>- applicable consent requirements have been met</td>
<td></td>
</tr>
</tbody>
</table>
Who can ISEs share information with?

ISEs can share information with:

- RAEs for a family violence risk assessment purpose
- all other ISEs (i.e. protection entities) for a family violence protection purpose
- a victim survivor if they reasonably believe it will assist them to manage their safety or that of their children. However, ISEs are not obligated to do so. The victim survivor should only use this information for safety management purposes.

ISEs are not permitted to share information with a perpetrator or alleged perpetrator. Where the identity of the victim survivor is unclear or a victim survivor is also a perpetrator of family violence, an ISE will be expected to use their professional judgement to ensure that information is not shared that may put another person at risk of family violence. Refer to Chapter 4 on page 37 for more information on what to do when ISEs are uncertain or disagree about identification of the victim survivor or perpetrator.

Can prescribed ISEs request or share information with other non-prescribed entities?

ISEs may wish to share information with, or request information from, entities that are not prescribed as ISEs in order to protect a victim survivor of family violence – for example, a victim survivor’s GP.

If an entity is not prescribed under Part 5A, Part 5A cannot be relied on as the legal basis for information to be shared. Instead, any information sharing must occur according to applicable laws, such as existing privacy laws. For example, for victim survivors under serious threat, any information that may lessen that threat can be shared under Victoria’s privacy laws with any entity regardless of whether they are prescribed and whether or not there has been consent.

Remember

Victoria’s privacy laws have been modified to allow any organisation bound by the PDP Act or HR Act (irrespective of whether they are prescribed under Part 5A) to use or disclose personal or health information without consent if they reasonably believe it is necessary to lessen or prevent a serious threat to an individual’s life, health, safety or welfare. This has broader application, which covers both family violence and non-family violence threats.


Can prescribed ISEs share information with Commonwealth or interstate organisations that are not prescribed under Part 5A?

ISEs may wish to share information with Commonwealth agencies or organisations located interstate. This may assist with protecting a victim survivor of family violence in situations where:

- an incident occurs in Victoria but the perpetrator and victim survivor reside outside of the state
- both the perpetrator and victim survivor have moved outside Victoria
- the perpetrator resides in Victoria but the victim survivor resides elsewhere
- the victim survivor resides in Victoria and the perpetrator resides elsewhere.

Part 5A does not affect or prevent the lawful collection, use or disclosure of information where it is otherwise permitted. Information may be shared between Victorian ISEs and other organisations under
existing privacy laws, including an entity outside Victoria if the entity receiving the information complies with laws, a binding scheme or contractual obligations that impose substantially similar obligations to those imposed by Victorian privacy laws. The Commonwealth and all Australian state and territory governments are currently subject to binding obligations with respect to sharing information that would meet these requirements.

However, when sharing with all other entities, ISEs must be satisfied that the receiving entity complies with substantially similar obligations. Where a receiving entity does not comply with similar obligations or an ISE is uncertain as to whether or not they comply, information should only be shared about a person if there is a serious threat to a person (whether they consent or not).

**Can a prescribed ISE request information from Commonwealth or interstate organisations that are not prescribed under Part 5A?**

ISEs may also seek to request information from interstate organisations or Commonwealth agencies that hold information relevant to a family violence assessment or protection purpose.

While there is nothing to stop ISEs from making information requests of other Commonwealth or interstate organisations that are not prescribed under Part 5A, these Commonwealth or interstate organisations are not subject to Part 5A and they will only share information in accordance with the laws of their own jurisdiction.
Chapter 4: Identification and misidentification of perpetrators

This Chapter provides information to guide ISEs on appropriately identifying victim survivors and perpetrators in family violence matters. It also provides guidance on how to share information when there is uncertainty around whether a perpetrator or victim survivor has been correctly identified and how to respond when it has become apparent that a perpetrator or victim survivor has been misidentified.

Key points:

• ISEs may encounter situations where there is uncertainty about the identification or misidentification of the perpetrator or victim survivor.
• Accurately identifying the perpetrator and victim survivor will ensure ISEs properly apply the consent provisions under Part 5A.
• An ISE who believes a person has been incorrectly identified must attempt to correct the misidentification and apply the consent provisions of Part 5A.

Determining whether a person is a perpetrator or victim survivor

In some circumstances, an ISE may have difficulty in determining who is in need of protection from family violence and who is perpetrating family violence. For example, each adult in a relationship might claim that their partner is perpetrating family violence toward them. It is critical to remember in these situations that family violence involves a pattern of power and control.


• whether there is a history of violence perpetrated by one party against the other
• the nature of any injuries sustained by both parties
• whether one person was acting in self-defence
• the context in which the violence took place, the intent of its use, and its effects on the person
• the degree to which the person appears to have a sense of agency in decision making (victim survivors tend to report less agency, whereas perpetrators are more likely to say that there is equal power in decision making, or that the other person ‘doesn’t want a say’, or does not have capacity to contribute to decision making)
• the extent of the person’s empathy with their partner (victim survivors often empathise with the perpetrator’s feelings, opinions or reactions, whereas perpetrators tend to blame the victim survivor)
• whether the person feels able to assert their will (for example, whether they feel able to do the things they want to do)
• whether the person seems to have a sense of entitlement to exert their will regardless of their partner’s wishes (for example, whether they do what they want regardless of what their partner wants)
• whether the person appears to be experiencing fear due to the other person’s behaviour or implied threats, what they are afraid might happen, and how this fear manifests (for example, whether they modify their behaviour in an attempt to minimise the violence).

ISEs should be particularly careful about incorrectly identifying a perpetrator when:

• a perpetrator has previously been the victim survivor of family violence by the person identified as the victim survivor
• both parties claim to be the victim survivor.

In some instances, a person may be both a victim survivor and a perpetrator, and the sharing of information should reflect the purpose for which it is being shared. For example, an adolescent may experience family violence from a parent while committing family violence against another parent or sibling (see Chapter 11 on page 84 for a case study of an adolescent that both uses and experiences family violence).

What happens when ISEs disagree about the identity of a perpetrator or victim survivor?

An ISE may receive a request to share information about a person that the ISE believes has been incorrectly identified as a perpetrator or a victim survivor.


If there continues to be conflicting views between ISEs about who the perpetrator or victim survivor is, then ISEs should only share information about that person in accordance with the applicable consent thresholds under Part 5A.

For example, if an ISE has requested information about a person it has assessed to be a perpetrator, but the responding ISE has assessed that person to be a victim survivor, then the responding ISE can only share that person’s information in accordance with the general rules for sharing a victim survivor’s information (i.e. when assessing and managing risks to an adult victim survivor, consent to share their information is required unless there is a serious threat).

Case Study – different claims regarding who the perpetrator or victim survivor is

Police attend an incident where Dan answers the door with some scratches and claims that his partner, Nui Nui, has perpetrated family violence against him. Dan denies that he has used violence against his partner and Victoria Police undertake a primary aggressor assessment and determine that Nui Nui is the primary aggressor. Police submit an L17 currently naming Dan as the victim and request information from a Support and Safety Hub about Nui Nui. A specialist family violence worker (working in the Hub) has been working with Nui Nui for some time – from information provided by Nui Nui over time, the worker has assessed Nui Nui as the victim survivor of family violence from Dan and that she had been defending herself.

Victoria Police (as a risk assessment entity) are permitted under Part 5A to request information for a family violence assessment purpose in order to undertake a comprehensive risk assessment. The police member contacts the Hub for further information to establish who is the perpetrator and who is the victim survivor.

In the first instance, the specialist family violence worker should have a discussion with the police to understand the nature of their request. When discussing this request, the police and the worker are permitted to discuss the types of information being sought and to disclose any information that would assist the responding entity that holds the information to identify the relevant information to disclose.
Case Study – different claims regarding who the perpetrator or victim survivor is

This could include information such as the respective claims made, history of violence reported, the nature of any injuries and the context in which the violence took place (e.g. self-defence). These initial discussions, together with guidance from the Framework <http://www.thelookout.org.au/sites/default/files/Family-Violence-Risk-Assessment-and-Risk-Management-Framework-and-Practice-Guides-1-3.pdf>, and the nature of any information held by the Hub might make it clear who is perpetrating family violence or is in need of protection from family violence.

If Nui Nui is still considered to be the victim survivor by the Hub, then the Hub must disclose the information (provided it is not excluded information) but only with her consent (unless there is a serious threat). As the Hub has identified Dan as the perpetrator, any information about Dan can be shared by the Hub without his consent. If Nui Nui refuses to consent to her information being shared and a request for information is being rejected on that basis, then the Hub must provide their refusal to share the requested information in writing and request that the police correct their records.

What happens when it becomes clear that a person has been incorrectly identified as a perpetrator?

Where it is established that a person has been incorrectly identified as a perpetrator, an ISE must stop sharing information about that person under Part 5A and make a written record that information sharing has been stopped and why and keep this record on file. Individual officers will not be held liable for incorrectly sharing this information where it has been done in good faith and with reasonable care (see Chapter 14 on page 93).

If a person has been incorrectly identified as a perpetrator, the sharing of that person’s information should stop and the ISE should make their best effort to correct the information that has already been disclosed, and update relevant records. An ISE may also choose to notify a person that their information was shared without their consent in order to give them the opportunity to seek access to and correct their records.

Information about the person can continue to be shared in accordance with Victorian privacy laws or the applicable Part 5A thresholds for sharing information for that category of persons (e.g. if the person turns out to be a victim survivor, then the relevant consent thresholds under Part 5A must be met).

Remember

When information has been shared about a person incorrectly identified as a perpetrator:
- the sharing of that person’s information under Part 5A must stop
- efforts should be made to correct the information that has already been disclosed, including to the Central Information Point.

If information has been shared in good faith and with reasonable care (but a worker’s judgement turns out to be incorrect), the individual who shared that information is protected from liability.
Chapter 5: Excluded information

ISEs should be aware of their legal obligations in relation to the information they collect and retain and should advise their workforce accordingly.

This Chapter sets out excluded information that should not be shared by ISEs under Part 5A.

This Chapter also sets out a non-exhaustive list of secrecy and confidentiality provisions in other laws that continue to apply, meaning that information referred to under these provisions must not be shared under Part 5A for a family violence assessment or protection purpose.

Key points:

- There are exclusions to the family violence information sharing laws.
- Excluded information cannot be shared. For example: if sharing the information might endanger a person's life or result in physical injury, prejudice legal proceedings, a police investigation or coronial inquiry, contravene a court order, or if the information is subject to legal professional privilege. A full list of excluded information is set out below. Workers applying the exclusions are protected.
- Information that is restricted from being shared under other laws must be shared only in accordance with those laws. Important provisions that are likely to restrict the sharing of certain information under Part 5A are detailed below in this Chapter.

Exceptions to information sharing

Part 5A sets out the limited range of circumstances in which information is excluded from the information sharing scheme and should not be shared. These circumstances are if the collection, use or disclosure of that information could be reasonably expected to:

- endanger a person's life or result in physical injury (e.g. if sharing the address of the victim survivor could alert a person known to pose a threat to their whereabouts then this information should not be shared)
- prejudice the following matters:
  (a) the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance (e.g. if information reveals the details of a police investigation)
  (b) a coronial inquest or inquiry or the fair trial of a person or the impartial adjudication of a particular case (e.g. if the information was evidence adduced in a closed session of the court)
- disclose the contents of a document or a communication, that is of such a nature that the contents of the document, or the communication, would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege
- disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law
- contravene a court order or a provision made by or under this Act or any other Act that:
  (a) prohibits or restricts, or authorises a court or tribunal to prohibit or restrict, the publication or other disclosure of information for or in connection with any proceeding
  (b) requires or authorises a court or tribunal to close any proceeding to the public (e.g. if the Court closes proceedings under section 30 of the Open Courts Act 2013 or section 68 of the FVPA on the basis that an affected family member, protected person or witness may be caused distress or
embarrassment, then an ISE would not be able to share information about the proceedings that took place in closed court)

- be contrary to the public interest (e.g. information that could reveal covert investigative techniques).

Therefore, if an ISE considers that collecting, using or disclosing information would lead to one of the above outcomes, then that information should not be shared.

It may be necessary for an ISE to obtain legal advice to determine if any of these exemptions apply. ISEs may also have their own specific guidelines (consistent with these Guidelines) to further assist staff to understand these exceptions.

**Refusing a request to share information on the basis of an exception**

Any refusal to share on the basis that the information is excluded must be provided in writing. The Act provides that written reasons must be provided. However, there may be circumstances where it would be inappropriate to provide details of the specific ground for the exclusion (e.g. where the provision of the information would prejudice a criminal investigation). In these circumstances, it would be sufficient to refuse on the grounds that the information is excluded. However, where this is not the case, specific grounds for the exclusion should be provided.

Refusals to share information and their reason should be recorded by ISEs responding to the specific request.

**Protection for workers when excluded information is shared**

If a person decides that information is not excluded but sharing that information results in one of the above outcomes, that person will be protected from any consequences of their decisions provided they were acting in good faith and with reasonable care.

**Restrictions on sharing information under other laws**

Secrecy and confidentiality provisions in other laws will continue to apply unless expressly overridden or allowed for the purposes of the family violence scheme under those Acts, under Part 5A or in the regulations.

Information that is restricted from being shared by other laws that have not been overridden by the FVPA or the regulations should only be shared in compliance with those laws. ISEs should be aware of their obligations under other laws and that if a restriction on sharing is not explicitly overridden under the Act or regulations then that restriction will continue to apply. Penalties may apply for sharing this information when not authorised to do so under the relevant laws if the information was not shared in good faith and with reasonable care.

ISEs should be mindful that restrictions continue to apply to sharing the following information (although note that this list is not exhaustive):

<table>
<thead>
<tr>
<th>Other legislation that restricts information sharing that continues to apply</th>
<th>Information that cannot be shared under Part 5A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Details of an investigation</strong></td>
<td></td>
</tr>
<tr>
<td>Children, Youth and Families Act 2005</td>
<td>Details of an investigation into a registered foster carer or out of home carer cannot be shared under Part 5A unless the existing provisions of the CYFA allow it</td>
</tr>
<tr>
<td><strong>Information that can identify the following persons or court venues</strong></td>
<td></td>
</tr>
<tr>
<td>Children, Youth and Families Act 2005</td>
<td>The identity of person that has made a report to Child Protection or a referral to Child FIRST should not be shared under Part 5A unless the existing</td>
</tr>
</tbody>
</table>
Other legislation that restricts information sharing that continues to apply | Information that cannot be shared under Part 5A
---|---
provisions in the CYFA allow it | |
Section 330(1) *Crimes Act 1958* | A person that has made a disclosure about a sexual offence committed against a child under the age of 16 years |
Section 65 *Juries Act 2000* | A juror |
*Serious Sex Offenders (Detention and Supervision) Act 2009* | A victim survivor or a perpetrator subject to an order under the *Serious Sex Offenders (Detention and Supervision) Act 2009* |
**Information acquired through the following conciliation or alternative dispute resolution** | |
Section 40J *Legal Aid Act 1978* | Through an alternative dispute resolution |
*Children, Youth and Families Act 2005* | Through a conciliation conference |
**Information contained in Assessment reports** | |
Various Acts (including but not limited to section 73H of the *Family Violence Protection Act 2008* and section 53 of the *Personal Safety Intervention Orders Act 2010*) | Information contained in Children’s Court Clinic Reports should not be shared under Part 5A unless the legislation permits or the Court orders that the information can be shared |
**Sex offenders register** | |
*Sex Offenders Registration Act 2004* | Information contained on the sex offenders register |
**Criminal intelligence** | |
Sections 84 and 85 *Criminal Organisations Control Act 2012* | Information that is protected criminal intelligence or that was subject to a protection application not granted by the court under the *Criminal Organisations Control Act 2012* |
**Information related to organised crime offences** | |
Section 20(5) *Major Crime (Investigative Powers) Act 2004* | Information connected with a witness summons or order issued in relation to an organised crime offence |
**Preventative detention orders** | |
Section 13ZJ *Terrorism (Community Protection) Act 2003* | Information about a person detained under a preventative detention order |
**Witness protection** | |
Section 10 of the *Witness Protection Act 1991* | Information that may compromise the safety of a person in witness protection |
Chapter 6: Consent

Remember

When a client is first engaged in a service, it is necessary to explain to the client how their information may be shared under Part 5A (i.e. before the client has provided any information that could be shared under Part 5A). For existing clients, ISEs should explain the changes in the legislation and how this may impact them.

When information about a client is shared, there are different requirements under Part 5A for obtaining consent, depending on whose information is shared and what the purpose of sharing is (please refer to Chapters 7 on page 49 and 8 on page 58).

Key points:

- There are five elements of consent an ISE must apply when assessing an adult victim’s explicit or implied consent to share their information.
- Consent can be verbal or written, but both must be documented.
- Consent can be withdrawn.
- Where consent is refused by an adult victim survivor, ISEs can share information if it is to prevent a serious threat.
- Consent is not required if the information is necessary to assess or manage risk to a related child victim survivor.

What is consent?

Part 5A defines consent to mean express and implied consent. Consent can be either explicit or implied. Explicit consent is when a person has expressly, either verbally or in written form, given their consent to their information being shared. Implied consent is not explicitly given, but can be inferred through a victim survivor’s conduct or behaviour and the facts of a given situation (see below for more guidance).

Five elements of consent

Regardless of whether express or implied consent is relied upon as the basis for sharing under Part 5A, the following are essential elements of consent:

Figure 3: Five elements of consent
Each of these elements is discussed in more detail below. In addition, a pro-forma consent form to record consent is located at Appendix C. ISEs may use this form, adapt it to their circumstances or use their existing internal forms as appropriate.

**Remember**

When seeking written consent, service providers must be sensitive to the written language capacity of the person consent is being sought from.

**Capacity**

Generally, when a person has capacity to make a particular decision, they are able to do all of the following:

- **understand** the information relevant to the decision and the effect of the decision
- **retain** the information to the extent necessary to make the decision
- **use or weigh** that information as part of the process of making the decision and
- **communicate** their decision, views and needs in some way (including speech, gestures or other means).

A person is presumed to have decision-making capacity unless there is evidence to the contrary.

A person cannot give consent or make other decisions if they do not have the necessary capacity to do so. Incapacity may arise from age, injury, disease, illness, disability, physical impairment or presence of a mental illness. Where there is a doubt about a person’s capacity, this capacity must be re-assessed every time consent is required.

The following principles apply when assessing a person’s capacity:

- a person may have capacity for some matters and not others
- a lack of capacity may be temporary, not permanent
- avoid the assumption that a person lacks capacity based on appearances
- avoid the assumption that English literacy and/or lack thereof is an indicator of capacity to consent
- assess the person’s decision-making ability, not the decision they make. The ISE may not agree with the person’s decision, but that does not necessarily indicate a lack of capacity
- a person has decision-making capacity if it is possible for the person to make a decision with practicable and appropriate support.


**Voluntary**

A victim survivor must be free to exercise genuine choice. Consent must be given without coercion or threat and with sufficient time to understand the request and, if appropriate, obtain advice.

It is important to consider the experiences of victim survivors from Aboriginal or Torres Strait Islander communities or from culturally or linguistically diverse backgrounds. Some communities’ understanding of privacy may be influenced by experiences with discrimination, cultural traditions and beliefs, and experiences of trauma may make victim survivors fearful of giving consent to share their information.
For more guidance on sharing information about someone from an Aboriginal or Torres Strait Islander background, please refer to Chapter 9 on page 71. For more guidance on sharing information about someone from a diverse background, please refer to Chapter 10 on page 76.

Informed

The victim survivor must have full knowledge of all relevant facts, including:

- the personal information to be collected, used or disclosed
- the purpose or purposes it will be put to
- who will get the information, to whom it may be passed on, and what use the recipient(s) will make of the information
- the consequences of both giving consent, and of failing to give consent
- the circumstances in which their information may be shared without their consent.

Any discussion with the victim survivor must include an explanation that:

- the services provided by the service provider may be declined
- the victim survivor may choose to receive services from the service provider without having their information shared.

Remember

If an ISE is working with an adult or child from:

- a culturally or linguistically diverse background, the ISE should check if an interpreter (for verbal interactions) or translator (for written communication) is required where necessary to ensure consent, where required, is informed
- an Aboriginal or Torres Strait Islander background, the ISE should tailor their communication, which may involve cultural consultation, to address any particular concerns they might hold that could be influenced by past and current interactions with government (noting that some ISEs may be perceived as being closely connected with government).


Specific

Consent must be specific enough in all the circumstances. If the information given is too broad or vague, the consent may not be specific enough to be regarded as valid. ISEs should consider:

- the nature of the personal information
- the proposed use or disclosure
- the recipient and its proposed use.

Current

Consent given at a particular time in particular circumstances cannot be assumed to endure indefinitely. It is effective practice to inform the individual of a specified period for which the consent will be relied on in the absence of a material change of circumstances that the organisation knows or ought reasonably to know. ISEs should make it clear to the individual that they are entitled to change their mind and revoke consent.
Can another person give consent on behalf of a person who lacks capacity?

Where a person is incapable of giving consent, an authorised representative may give consent on their behalf.

An authorised representative cannot be the perpetrator of family violence, a person alleged to be a perpetrator or a person under the control of the perpetrator.

Under Part 5A, the list of people who can be an authorised representative (at section 144ND(3)) is:

- the person’s guardian within the meaning of s4 of the *Family Violence Protection Act 2008*
- an agent for the person within the meaning on the *Medical Treatment Act 1988*
- an administrator or a person responsible within the meaning of the *Guardianship and Administration Act 1986*
- a person who is otherwise empowered under law to perform any functions or duties or exercise any powers as an agent or in the best interests of the person.

If a person does not have capacity to give consent and their authorised representative is not available, information cannot be shared unless there is a serious threat. For more guidance, please refer to Chapter 7 on page 49.

When can consent be implied?

Implied consent can be obtained where consent can reasonably be inferred from a person’s conduct or actions. This must be based on fact not assumption. It is risky to infer consent from a person’s mere failure to state their lack of consent. The person may not have heard, understood or had sufficient information on which to decide to refuse.

Consent should not be implied in a particular case just because:

- most people have consented to the same use or disclosure
- the benefits of consenting, as the organisation sees them, mean that the individual would probably consent if asked
- the individual has given consent in the past.

Implied consent involves difficult judgements. If a complaint results, implied consent may be difficult to establish. It is far better practice to obtain express consent and avoid the difficulties inherent in implied consent. If a worker at an ISE is unsure of whether consent can be implied, they should speak with their manager or equivalent. If information is shared on the basis of implied consent a file note of this should be made, with a record of the manager’s approval to share information with implied rather than explicit consent and the outcome of sharing the information.

Case Study – victim survivor gives implied consent

Voula is an older woman whose three small grandchildren live with her. She lives in a rented house five kilometres from a large regional centre. Voula’s son, Jim, has moved in with her and her grandchildren. Jim has been under a lot of stress and behaving aggressively since he split with his partner. When Voula approached Jim after she discovered that he had not paid rent as he had promised to do and she had received an eviction notice as a result, Jim threatened to hurt her. She knows that he uses drugs and thinks he is spending available money on drugs and gambling. The threats frightened Voula so much that she fled the house and walked to town with the children to contact services seeking refuge.

Voula contacts Agnes at a non-government family violence specialist service provider (who is a prescribed ISE) in a very distressed state. She goes through a risk assessment and enters crisis accommodation, with the view to enter a women’s refuge when an appropriate vacancy becomes available.
Case Study – victim survivor gives implied consent

available. Unfortunately, at the time of initial contact, the specialist family violence worker, Agnes, forgets to discuss information sharing with Voula or seek her consent for sharing her information. The process of entering refuge has been explained to Voula and she agrees that this is the safest option for her and the children. Agnes is made aware of a refuge vacancy that has just become available and it would be suitable for Voula and the children. Agnes tries to call Voula to discuss the refuge vacancy and get her consent to refer her and the children to the refuge. Voula is staying in the crisis accommodation, but has taken the children out for the day. She is not answering her phone and Agnes is aware the refuge vacancy will not stay available for long.

Agnes knows that safe refuge accommodation is the first priority for Voula and the children, after days of working with Voula while in crisis accommodation. Agnes’ manager, Helen, agrees that, even though Voula cannot be contacted to give verbal consent, the fact that she has entered crisis accommodation for safety and has said she wants to go to a refuge, implies that she has given consent to share information for this purpose.

Agnes proceeds with sharing information about Voula and the children with the women’s refuge for the purpose of referring to the vacancy. Only the information necessary to make the referral and to secure a place in the service is disclosed.

In Voula’s file, Agnes notes that information was shared with implied, rather than explicit consent and with her manager’s approval. She also notes the outcome of sharing the information.

How should consent be documented?

Consent can be obtained verbally or in writing. Where obtained verbally, service providers must make a written record of the information shared and the verbal consent.

Any consent obtained from a victim survivor must be stored on the victim survivor’s file.

Where consent is implied, a file note of this should be made, with a record of a manager’s approval to share information with implied rather than explicit consent and the outcome of sharing the information.

A consent form to record a person’s verbal or written consent is located at Appendix C. ISEs may use this form, adapt it to their circumstances or use existing forms as appropriate.

What happens when consent is refused?

Where consent has been refused for information to be shared, no information should be shared under Part 5A, unless:

- an ISE reasonably believes that the collection, use or disclosure of the confidential information is necessary to lessen or prevent a serious threat to an individual’s life, health, safety or welfare (for more guidance, please refer to Chapter 7 on page 49)
- sharing is necessary to assess or manage family violence to a child victim survivor (for more guidance, please refer to Chapter 8 on page 58).

The ISE should make it clear that the victim survivor can still receive services from the ISE without having their information shared.

What happens if consent is withdrawn?

A person may withdraw their consent at any time. The withdrawal of consent can occur verbally or in writing. Where obtained verbally, a written record of the withdrawal of consent must be made. Any withdrawal of consent must be stored on file as appropriate.
Figure 4: A guide for ISEs on how to share information that is relevant to assessing and managing risk of family violence
Chapter 7: Assessing and managing risks for an adult victim survivor of family violence – consent and notification

Remember

When a client is first engaged in a service, it is necessary to explain to the client how their information may be shared under Part 5A (i.e. before the client has provided any information that could be shared under Part 5A). For existing clients, ISEs should explain the changes in the legislation and how this may impact them.

This Chapter outlines the consent and notification requirements when information is being shared to assess or manage risk to an adult victim survivor of family violence (a person who is 18 years or over). Where information is being shared to assess or manage risk to a child victim survivor of family violence, different consent thresholds apply – for more guidance, please refer to Chapter 8 on page 58.

Key points

- Different consent thresholds apply when information is being shared to assess or manage risk to an adult victim survivor of family violence.
- **Perpetrator**: Consent to share information about the perpetrator or a person alleged to pose a risk of family violence is **not required**, regardless of the age of the perpetrator.
- **Adult victim survivor**: Consent to share information about an adult victim survivor is **required**, unless the ISE reasonably believes that sharing confidential information is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare.
- **Relevant third party**: Consent to share information that identifies a relevant third party is **required**, unless the ISE reasonably believes that sharing confidential information is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare.
- An ISE may share information about a perpetrator with an adult victim survivor to enable them to manage the risk of family violence.
- An ISE is not obliged to inform a perpetrator or alleged perpetrator if they have collected information about them.
- ISEs must notify adult victim survivors and relevant third parties when information about them has been collected.

Remember

- Consent thresholds do **not** apply to information sharing when assessing or managing risk to a **child victim survivor** of family violence (a person who is under 18 years of age). For more guidance, please refer to Chapter 8 on page 58.
- Nothing in Part 5A restricts permissions to share if this is allowed under other laws. For example, police currently do not need consent to share information on an L17. This will continue to be the case.
- ISEs should consider making a safety plan for any family member at risk of family violence.
What is a safety plan?

Safety planning is the process of identifying and documenting the steps required to optimise a state of safety for all victim survivors in a family. It can refer to any aspect of physical, social, emotional, financial and psychological safety, but it typically involves planning to avoid serious injury, to escape violence (crisis management), and to ensure the safety of children.

At a minimum, the safety plan should:

- consider any relevant information to safety planning for a child victim survivor
- list the contact numbers for a family violence organisation
- list emergency contact numbers
- identify a safe place for the victim survivor if they are in danger, and how to get there
- identify a friend, family member or neighbour who can assist in an emergency, and how to contact them
- identify a way for the victim survivor to get access to money in an emergency
- identify a place to store valuables and important documents so that the victim survivor can access them when needed.

For further information, please see:


Perpetrator information

Is consent required to share information about a perpetrator or alleged perpetrator?

No. Part 5A states that consent is not required to share information about a perpetrator of family violence or a person who is alleged to pose a risk of family violence. This is because the scheme prioritises victim survivor safety over perpetrator privacy.

Therefore, Part 5A permits relevant information to be shared about a perpetrator or alleged perpetrator without consent provided it is not excluded information (see Chapter 5, on page 40).

For guidance on sharing information about adolescents who use violence, please refer to Chapter 11 on page 84.

Determining if a person is a perpetrator of family violence

A person can be considered a perpetrator if an ISE reasonably believes that there is a risk that the person may commit family violence (described as a ‘person of concern’ in the legislation). This may include a person who is a respondent to a family violence intervention order. However there does not need to be an intervention order in place for a person to be considered a perpetrator of family violence.


Where an ISE believes that a person has been wrongly identified as a perpetrator by another ISE, please refer to Chapter 4 on page 37 for more guidance.
Determining if information is relevant

Information about a perpetrator can be shared without consent if the information is relevant for a family violence assessment or management (protection) purpose.

A family violence assessment purpose means the purpose of establishing or assessing the risk of a person committing family violence or a person being subjected to family violence.

A family violence protection purpose means the purpose of managing a risk of a person committing family violence or a person being subjected to family violence. A protection purpose includes the ongoing assessment of the risk of family violence.

Practitioners should refer to the Framework when determining whether a particular circumstance is relevant to assessing and managing risk, and hence whether information should be shared.

Case Study – determining what information is relevant

John is attending a men’s behaviour change program due to violence he has perpetrated against his ex-partner Melissa and their two children.

During a group discussion, John tells the group about bullying he is experiencing in his workplace. He also mentions that he has been drinking more heavily since his separation and that he has been hanging around outside Melissa’s workplace to see what she is up to.

Using his professional judgement, the coordinator of the men’s behaviour change program shares the information about John’s alcohol consumption and stalking behaviour with relevant prescribed ISEs under Part 5A (for example, Victoria Police or Melissa’s caseworker) and with Melissa directly without seeking John’s consent. This is because stalking behaviours and substance misuse are evidence-based risk indicators relevant to family violence risk assessment as described in the Framework.

Melissa and her professional support network require this information to manage ongoing risk, update the safety plan and address possible breaches of any current orders. The coordinator is not able to share information related to the bullying John is experiencing at work, unless this escalates family violence behaviours as this is not relevant to assessing and managing risk to Melissa.

Sharing perpetrator information with a victim survivor

An ISE may share information about a perpetrator with a victim survivor for the purpose of managing a risk of the perpetrator committing family violence, where the information is not excluded information (see Chapter 5, on page 40).

Where the victim survivor is a child (under 18 years of age), an ISE may share information about a perpetrator with the child or a parent who is not a perpetrator. Information should only be shared with a child where it is appropriate to do so (considering their age, capacity/functioning and developmental stage).

If perpetrator information is shared with a victim survivor, the victim survivor may use this information to manage the risk of family violence. The victim survivor must not otherwise use or disclose this information for another purpose unless permitted by another law. It is not an offence for a victim survivor to disclose this information. However, victim survivors should be informed that sharing this information may inadvertently increase their risk. Complaints mechanisms can be accessed if information is inappropriately shared (see Chapter 14, on page 93).
Case Study – ISE sharing perpetrator information with a victim survivor

Ling’s ex-partner, Mario, was convicted of multiple assaults and sentenced to a term of imprisonment. Ling is receiving support from a family violence specialist service. Ling’s case worker Beth is informed by Mario’s community corrections officer that Mario has been released from prison and will be living one suburb away from Ling.

Beth is able to tell Ling that Mario has been released and which suburb he is living in. Ling is able to use this information to manage her safety. For example, Ling may provide this information to a housing service for the purpose of seeking alternative accommodation or may inform her child’s school of Mario’s release and whereabouts if she believes Mario may attend the school in breach of a family violence intervention order.

Ling is not able to use this information for purposes not related to managing her safety. For example, Ling cannot post Mario’s address on social media.

Do perpetrators need to be notified that their information has been collected?

When an ISE collects information directly from a perpetrator or alleged perpetrator (for example, a men’s behaviour change program is likely to collect a range information directly from a perpetrator engaging in their service), the perpetrator or alleged perpetrator should be informed of how their information may be used or disclosed under Part 5A. This should occur at or before their engagement with the ISE or, if it is not practicable to inform the perpetrator at the outset of their engagement, then they should be informed as soon as practicable after (see Information Privacy Principle 1.3 or, in the case of health information, Health Privacy Principle 1.4).

Where information has been collected indirectly about a perpetrator or an alleged perpetrator (for example, from the victim survivor or from another ISE under Part 5A), ISEs are not obliged to notify the perpetrator or alleged perpetrator that information about them has been collected by them. Refer to Chapter 2 on page 21 for more detail.

Do perpetrators have rights to access information held about them?

As discussed in Chapter 2 on page 21, Part 5A specifically allows an ISE to refuse a perpetrator’s or an alleged perpetrator’s request for access to their personal or health information under the PDP Act or the HR Act if the ISE reasonably believes that giving the person access would increase the risk to a victim survivor’s safety from family violence. This provides ISEs with a greater ability to ensure that victim survivors are not unduly exposed to increased risk from perpetrators accessing information about them. ISEs should note that this does not prevent them from being able to provide individuals, including perpetrators, with access to their personal or health information where it is safe to do so. Refer to Chapter 2 on page 21 for more detail.

Victim survivor information

Is consent required to share information about an adult victim survivor?

Yes, consent of the adult victim survivor is required, unless the ISE reasonably believes that the sharing is necessary to lessen or prevent a serious threat to a person’s life, health, safety or welfare, or the information is relevant to assess risk of family violence to a child. For more guidance on the essential elements of consent, please refer to Chapters 6 on page 43 and 7 on page 49, and for guidance on assessing and managing risk for a child, please refer to Chapter 8 on page 58.
Serious threat

The information sharing legislation provides that an adult victim survivor’s information can be shared without their consent where an ISE reasonably believes that sharing confidential information is necessary to lessen or prevent a serious threat to an individual’s life, health, safety or welfare.

While consent is not required to share information about an adult victim survivor where there is a serious threat, it is best practice to try and involve victim survivors at every step of the process to ensure they have a clear understanding of, and confidence in, the process, wherever possible.

Victim survivors under serious threat will feel more reassured about their information being shared if they have been involved and understand why and how their information will be used and disclosed.

For example, ISEs should inform the victim survivor that there are serious threats to their life, health or safety and advise the victim survivor that only information necessary to prevent or lessen the serious threat will be shared, and the potential outcomes of sharing that information.

In cases where a victim survivor is at serious threat and there are children involved, ISEs must take any actions required under the Children, Youth and Families Act 2005. Different consent thresholds apply where child victim survivors of family violence are involved. For further guidance, please refer to Chapter 8 on page 58.

Imminence is no longer a legislative requirement

Before the family violence information sharing legislation, Victorian privacy laws allowed information sharing without a person’s consent where a threat to a person’s life, health or safety was serious and imminent. The information sharing legislation changes this and allows information to be shared where a threat is serious. There is no requirement to show that the threat is also imminent.

This change was made because in family violence and other situations a serious threat may exist but it might be hard to determine whether the threat is imminent. For example, in cases of long-term family violence where there have been repeated assaults, there may be no identifiable immediate threats to a victim survivor’s safety, but serious concerns about the victim survivor’s safety remain.

Reasonable belief

What is a reasonable belief will vary depending on the circumstances of each situation. To hold a reasonable belief requires the existence of facts that are sufficient to induce the belief in a reasonable person. To hold a reasonable belief requires something more than suspicion but does not require that the circumstances have been objectively established.

Necessary

It is not enough for an ISE to form a reasonable belief that there is a serious threat. The ISE must also believe that it is necessary to share information in order to lessen or prevent the threat. In determining whether sharing might be regarded as necessary, consider the following:

- Is the sharing motivated by an intention to lessen or prevent the threatened harm?
- Is the information being shared relevant to managing the threat?
- Is the recipient in a position to act on the information to lessen or prevent the harm from eventuating?

To lessen or prevent

The use or disclosure of confidential information must allow the ISE using or receiving it to take steps it would not otherwise be able to take: either to attempt to remove the serious threat entirely or to reduce it.

When making this assessment, ISEs must consider whether sharing information would actually increase the threat to the victim survivor or any other persons. If the threat cannot be prevented or lessened, and
sharing information would actually increase the threat, then the ISE must not share the information. Please refer to Chapter 5 on page 40 for further information.

If the attempt to prevent or lessen the threat by sharing information is unsuccessful, the use or disclosure of the information will not have contravened the Guidelines as long as there was a reasonable belief that using or disclosing the information without consent was necessary to prevent or lessen the serious threat.

How to identify a serious threat


To determine if a threat is serious, ISEs should use their professional judgement and consider the following:

- evidence based family violence risk factors (and high risk factors) impacting on the likelihood and severity of family violence, in line with the Framework <http://www.thelookout.org.au/sites/default/files/Family-Violence-Risk-Assessment-and-Risk-Management-Framework-and-Practice-Guides-1-3.pdf> (in particular the factors associated with an increased risk of being killed or almost killed are set out below)
- the victim survivor’s reported level of fear
- cumulative harm to children and young people.

<table>
<thead>
<tr>
<th>Red flags – factors associated with increased risk of victim survivor being killed or almost killed</th>
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</thead>
<tbody>
<tr>
<td>Pregnancy/ new birth</td>
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<tr>
<td>Use of weapon in most recent event</td>
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<td>Access to weapons</td>
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<tr>
<td>Has ever tried to choke the victim survivor</td>
</tr>
<tr>
<td>Has ever harmed or threatened to harm or kill child victim survivors</td>
</tr>
<tr>
<td>Has ever harmed or threatened to harm or kill pets or other animals</td>
</tr>
<tr>
<td>Has ever threatened or tried to commit suicide</td>
</tr>
<tr>
<td>Escalation – increase in severity and/or frequency of violence</td>
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<tr>
<td>Stalking of the victim survivor</td>
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<tr>
<td>Sexual assault of the victim survivor</td>
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<tr>
<td>Drug and/or alcohol misuse/abuse</td>
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<tr>
<td>Obsession/ jealous behaviour towards the victim survivor</td>
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<tr>
<td>Controlling behaviours</td>
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<tr>
<td>Unemployment</td>
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<tr>
<td>Recent separation</td>
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The results of the Framework <http://www.thelookout.org.au/sites/default/files/Family-Violence-Risk-Assessment-and-Risk-Management-Framework-and-Practice-Guides-1-3.pdf> risk assessment, including the 'risk factors' present should be considered alongside other sources of information, including the victim survivor’s assessment of their level of fear and professional judgement, to assist in determining the level and seriousness of the risk.
Victim survivor’s reported level of fear

A victim survivor’s reported level of fear is a critical and reliable indicator of the level of risk.


Consideration should be given to each child victim survivor’s reported level of fear where this is available. The Framework <http://www.thelookout.org.au/sites/default/files/Family-Violence-Risk-Assessment-and-Risk-Management-Framework-and-Practice-Guides-1-3.pdf> contains specific information to support workers in gathering information from children.

Cumulative harm


What steps need to be taken if considering whether to share a victim survivor’s information without consent?

When sharing information without consent, an ISE must make a professional judgement balancing the following considerations:

- whether, when the information was collected, that the individual was made aware of the purposes for which the information was collected (under existing privacy legislation information can be used or disclosed for the primary purpose it was collected; it can be used or disclosed for a related secondary purpose if the person would reasonably expect that it would also be used for that purpose)
- whether the ISE has the legal authority to disclose the information under Part 5A or another Act.

When making a decision about whether to share information without consent, a worker at an ISE should:

- discuss their assessment with their manager or other colleagues
- refer to their professional protocols, service standards, policies and these guidelines
- discuss with the person (if appropriate, safe and reasonable to do so)
- consider their own safety and the implications for their agency
- note and record the decision.

If an ISE decides to share information without consent (for example, on the basis that this is necessary to lessen or prevent serious threat):

- decide on the amount of information to share, how and with whom
- share the information, but only information that is relevant for the other agency to perform their role or function
- record the decision, with whom the information was shared, how and why
- note whether/when the victim survivor was informed that the information was shared and, if they have not been informed, the reasons why not (for example, victim survivor was not informed because it would increase risk)
- information must always be transferred securely and confidentially
• the recipient must be able to guarantee they have secure systems for storage and retrieval of the information, consistent with their obligations under the PDPA.

What records should be kept when victim survivor information is shared without their consent?

An ISE that has serious concerns for a victim survivor’s life, health, safety or welfare and makes a decision to share their information without consent must:

• make a written record that clearly articulates rationale for sharing (referring to the serious threat and how the threat would be lessened or prevented by the sharing of the information)
• make a written record of whether the victim survivor was notified of the decision:
  – if the victim survivor was informed of the decision, a summary of what information was provided to the victim survivor or
  – if the victim survivor was not informed of the decision, a summary of reasons why it was decided not to inform the victim survivor
• attach a copy of the risk assessment to the victim survivor’s file (as per the protocol of the organisation).
• store these written records in the relevant case management system.

Do victim survivors need to be notified that their information has been collected?

Yes, all notification requirements in the PDP Act and HR Act continue to apply to the collection of victim survivor information, whether collected directly or indirectly, unless a notification would increase a victim survivor’s level of risk.

This means that at or before the time of collection (or as soon as practicable after), the ISE who collects information about a victim survivor – either directly or indirectly – should take reasonable steps to ensure that the victim survivor is aware of the following:

• the identity of the ISE and how to contact it
• the fact that the victim survivor is able to gain access to the information about them that has been collected
• the purposes for which the information is collected
• the types of individuals or organisations with which information might be shared
• the potential outcomes of sharing that information.

Where the victim survivor does not speak English or has a communication support need, it is the responsibility of the ISE to ensure that the victim survivor has been informed in a manner that they understand.

Example

Example of when it may not be reasonable to notify a victim survivor includes where an ISE considers that making them aware of collection might escalate risk and pose a serious threat to someone’s life, health, safety or welfare.

Do victim survivors have rights to access and correct information held about them?

A victim survivor of family violence maintains the right to access any information held about them, including shared information, under Victorian privacy laws. Victim survivors may seek to have this information corrected if it is inaccurate. Perpetrators do not have the same right of access to information. For more information on access and correction, please refer to Chapter 13 on page 91.
Third party information

A third party is any person who is not a victim survivor or perpetrator in the family violence situation (defined in the legislation as linked persons). Third parties include previous partners of either party, friends, acquaintances, neighbours or associates of a victim survivor or perpetrator.

Is consent required to share information about a third party?

Yes, consent of a third party is required, unless the ISE reasonably believes that the sharing is necessary to lessen or prevent a serious threat to a person’s life, health, safety or welfare. For more guidance, please refer to Chapter 7 on page 49.

Similar considerations should be taken into account as above to determine whether the serious threat requirement has been met.

For sharing information about a third party to assess or manage risk to a child victim survivor, please see Chapter 8 on page 58.

Information can be shared about a third party in a de-identifiable way without the third party’s consent. This includes not just omitting the third party’s name, but also leaving out details that could reasonably lead to the identification of the third party (for example, the third party’s relationship to the victim survivor or perpetrator).

**Remember**

A person’s privacy should be displaced only to the extent that is necessary to assess and manage family violence risks. This means if it is not necessary to share a person’s information in an identifiable way, that information should be shared in a de-identified way that maintains that person’s anonymity.

Do third parties need to be notified that their information has been collected?

Yes, all notification requirements in the PDP Act and HR Act continue to apply to the collection of third party information, whether collected directly or indirectly, unless this would increase risk.

This means that at or before the time of collection (or as soon as practicable after), the ISE who collects information about a third party – either directly or indirectly – should take reasonable steps to ensure that the third party is aware of the following:

- the identity of the ISE and how to contact it
- the fact that the victim survivor is able to gain access to their information (if it is relevant for managing a risk of family violence)
- the purposes for which the information is collected
- the types of individuals or organisations with which information might be shared
- the potential outcomes of sharing that information.

**Example**

Example of when it may not be reasonable to notify a third party includes where an ISE considers making them aware of collection might escalate risk and pose a serious threat to someone’s life, health, safety or wellbeing.

Do third parties have rights to access and correct information held about them?

A third party maintains the right to access any information held about them, including shared information, under Victorian privacy laws. Third parties may seek to have this information corrected if it is inaccurate. Perpetrators do not have the same right of access to information. For more information on access and correction, please refer to Chapter 13 on page 91.
Chapter 8: Assessing and managing risks for a child victim survivor of family violence

This Chapter outlines the requirements for sharing information to assess or manage risk to a child victim survivor of family violence (a person who under the age 18 years or over which includes infants and adolescents).

Key points

- Children experiencing family violence should be recognised as victim survivors in their own right. Their safety and wellbeing should be paramount and their distinct needs should be recognised when planning and delivering responses to family violence.
- In relation to children, behaviour by a person that causes a child to hear or witness, or be otherwise exposed to the effects of behaviour that constitutes family violence, can also constitute family violence. Experiencing or witnessing multiple incidents of family violence is harmful.
- A child’s right to safety overrides any individual’s right to privacy.
- Consent prior to sharing any person’s information is not required to assess or manage risk to a child victim survivor.
- However, trust between a child victim survivor, non-offending parents and service providers is paramount.
- Perpetrators often adversely impact on the relationship between a child and non-offending parent by directly undermining that relationship.
- Where appropriate, safe and reasonable to do so, an ISE should seek the views of the child, the non-offending parent, or a relevant third party.
- Promotion of the agency of the child and other family members at risk of family violence by ensuring their views are taken into account (having regard to the appropriateness of doing so and the child’s age and maturity) is a guiding principle.
- An ISE should consider the child’s best interest, recognising age and stage of the child, their culture and gender.
- ISEs must notify the child victim survivor, the non-offending parent, or the relevant third party if their information has been shared.

How does Part 5A interact with the Child Protection system?

<table>
<thead>
<tr>
<th>Remember</th>
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<tbody>
<tr>
<td>An ISE’s existing mandatory reporting obligations to Child Protection continue to apply.</td>
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<tr>
<td>Nothing in Part 5A impacts existing information sharing already permitted under the Children, Youth and Families Act 2005 (CYFA).</td>
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<tr>
<td>Part 5A may be used to share information between ISEs (including Child Protection and Child FIRST, when prescribed).</td>
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The CYFA sets out possible grounds for statutory intervention that could be applicable for children who are in need of protection in a family violence context. These grounds include:

- actual or likely physical injury (s 162(c))
- actual or likely sexual abuse (s 162(d))
- actual or likely emotional or psychological harm (s 162(e)).
In addition to the principles set out in Part 5A, ISEs who are also family services, Child Protection, placement services and the Courts may have obligations under the CYFA to have regard to the Best Interests Principles and the Decision-making Principles in that Act.

Some ISEs will also be bound by the Child Protection Best Interests Framework, which provides a common basis for professionals to work together with local communities and other services to meet the needs of vulnerable children and their families, by encouraging a consistent focus on safety, stability and development of children.

In terms of the interaction between Part 5A and the Child Protection system, it is important for ISEs to note that:

- their existing obligations in relation to mandatory reporting to Child Protection will continue to apply
- nothing in Part 5A impacts existing information sharing already permitted under the CYFA.

**Is consent required to share information to assess or manage risk to a child victim survivor?**

The legal requirements of Part 5A are that consent is not required from any person prior to sharing information that is relevant to assessing or managing a risk of family violence to a child (defined as a person under 18 years). This means anyone’s information (including the child and their non-offending parent, the perpetrator or any third party) can be shared without consent if that information is relevant to assessing or managing a risk of family violence to a child.

The ability to share information without consent when working with a child victim survivor gives explicit recognition to the precedence of a child’s right to be safe from family violence over any individual’s rights to privacy. It also enables earlier intervention where child victim survivors are involved to form an aggregate picture of risk without requiring that a threat to a child to become serious before relevant information can be shared without consent.

Building and maintaining trust between children, non-offending parents and service providers is crucial to being able to provide effective support. An important way of achieving this is through open and transparent communication. This means making it clear to individuals that the new information sharing laws permit relevant information to be shared about any person, without seeking consent, for the purpose of assessing or managing family violence risk to a child. The agency of the child victim survivor or non-offending parent should be promoted where possible. This means that, where appropriate, safe and reasonable, the views of the child victim survivor or non-offending parent will be taken into account and inform the risk assessment, the risk management plan and information sharing decisions.

**Guiding principles when sharing information to assess or manage risk to a child victim survivor**

When sharing information to assess or manage risks to a child victim survivor, ISEs should share in accordance with the principles set out in the legislation – namely, ISEs should:

- promote the agency of the child and other family members at risk of family violence by ensuring their views are taken into account (having regard to the appropriateness of doing so and the child’s age and maturity)
- if the sharing includes the confidential information of other family members at risk of family violence, take all reasonable steps to ensure the information is shared in a way that:
  - plans for the safety of those family members at risk of being subjected to family violence (see advice on safety planning below)
  - recognises the desirability of preserving and promoting positive relationships between those family members and the child
• consider that each of the dimensions of the child’s experience needs to be viewed through the lens of the age and stage of the child, their culture and their gender. The child’s best interests need to be considered holistically and in a culturally competent way at every point of contact with the service system.

**What is a safety plan?**

Safety planning is the process of identifying and documenting the steps required to optimise a state of safety for all victim survivors in a family. It can refer to any aspect of physical, social, emotional, financial and psychological safety, but it typically involves planning to avoid serious injury, to escape violence (crisis management), and to ensure the safety of children.

At a minimum, the safety plan should:

- consider any relevant information to safety planning for a child victim survivor
- list the contact numbers for a family violence organisation
- list emergency contact numbers
- identify a safe place for the victim survivor if they are in danger, and how to get there
- identify a friend, family member or neighbour who can assist in an emergency, and how to contact them
- identify a way for the victim survivor to get access to money in an emergency
- identify a place to store valuables and important documents so that the victim survivor can access them when needed.

For further information, please see:


**Case Study – Preserving and promoting positive relationships between the child and the non-offending parent**

Helen has a disability and is reliant on her partner Bill for her day-to-day care. Bill has been emotionally, verbally and financially abusive to Helen for many years. Helen’s 9 year old daughter Matilda has been exposed to Bill’s verbal violence towards Helen in the home.

Helen is working closely and proactively with a specialist family violence service, Child Protection and a NDIS funded staff to plan her separation from Bill. Helen, in consultation with her support services decided as an interim measure and as part of the risk management and safety plan, that Matilda would stay with her maternal grandmother for one week of the upcoming school holiday period (which she does every year). This will enable Helen to safely leave the relationship with Bill, access in-home disability supports and move into new accommodation. At the outset, the ISE had explained to Helen that if they needed to share information to assess a risk of family violence to Matilda, that consent would not be required from Matilda or Helen but that her views will be taken into account when sharing information. When sharing information to assess and manage risk to Matilda, the ISEs also develop a risk management and safety plan with Helen, in particular, to ensure her and Matilda’s safety when she leaves the relationship with Bill given the increased risk of family violence associated with ending a relationship.

Given the closeness of the relationship between Helen and Matilda, the risk management and safety plan seeks to minimise the disruption of the parenting arrangements while allowing Helen the time to ensure the supports are available to care for Matilda in a safe and secure environment. The ISEs continue to work together with Helen to collaboratively assess and manage risk for both Helen and
Case Study – Preserving and promoting positive relationships between the child and the non-offending parent

Matilda and plan for their safety including linking them in with therapeutic support given their long-standing exposure of family violence.

Remember

The safety of the child is the number one priority – if an ISE considers it would be inappropriate, unsafe or otherwise not in the best interests of the child to seek their views, Part 5A permits any person’s information to be shared to assess or manage risk of family violence for the child.

When would it be appropriate to seek a child’s views prior to sharing information?

When sharing information in response to a valid request, an ISE must share this information if it is relevant to assessing and managing a risk to the child and it is not excluded information (i.e. this information must be shared irrespective of consent).

However, when appropriate, safe and reasonable to do so, an ISE should consider seeking the views of a child prior to sharing their information under Part 5A.

Situations where it may be appropriate to seek the child’s views include where the child has sufficient capacity, maturity, understanding and intelligence to enable them to fully understand what is proposed. In making this determination, ISEs should consider such things as the age, level of maturity and comprehension of the proposed action to be taken and the likely consequences.

When ISEs are working with younger children it may be difficult to determine whether a child has the capacity to communicate their views. ISEs should have regard to whether a child can:

- understand the facts involved
- understand the main choices
- weigh up the consequences of the choices
- understand how the consequences affect them
- communicate their decision.

The ISE could ask the child to explain in their own words:

- what the request is and why it has been made
- what the child thinks will happen if their information is or is not shared
- why they hold these views.

The clarity and consistency of the answers the child gives to these questions will assist an ISE to determine whether or not the child has the capacity to be actively involved in this discussion.

In determining whether it is appropriate, safe and reasonable to seek the views of a child, it is important to assess the extent of the perpetrators use of power and coercive control over the family. Family violence is an attack on the relationship between the child and the non-offending parent and can often lead to estrangement of the relationship and conflicting feelings for the child. Perpetrators adversely impact on the relationship between a child and a non-offending parent by:

- often directly undermining the relationship between the child and the non-offending parent
- causing the non-offending parent distress that can affect their functioning, making them physically or psychologically unavailable to parent
- attacking the non-offending parent’s confidence in their capacity or effectiveness as a parent
- undermining the non-offending parent’s actual and felt relationships with their children
• repeatedly denigrating a non-offending parents character and worth as a person – to the non-offending parent and/or their children.

This behaviour can lead children to have divided loyalties to the perpetrator and the non-offending parent. Children may be scared and not want their information to be shared in case it would get the perpetrator in trouble, or, if they are fearful of the perpetrator, they may be concerned about heightening the risk to themselves or other family members. ISEs should be mindful of these dynamics when determining whether it is appropriate, safe and reasonable to take into account the children’s views. Asking a child’s views may also elicit information that informs the risk assessment to the child or other affected family members.

ISEs should document whether or not they have assessed that a child has the capacity to understand the impact of sharing their information and how the ISE came to that assessment.

ISEs could also consult with the non-offending parent about information sharing in regard to child safety, where it is appropriate, safe and reasonable to do so, remembering, however, that a child’s safety will always take priority.

**Case Study – Obtaining a child’s views prior to sharing their information**

Danni and her 15 year old son Campbell have recently moved out of their home that they shared with Danni’s partner Doug due to Doug’s escalating physical violence towards Campbell. Doug has been violent towards Campbell since Campbell told him that he was gay. At the most recent incident where police attended their home, both Danni and Campbell have been referred to a specialist family violence service. During the course of preparing a safety plan with Campbell, the family violence service identifies a relevant mental health service that would assist Campbell in dealing with the impact of the violence on his mental wellbeing. Campbell agrees to make contact with this service.

The family violence service determines that Campbell has sufficient maturity (see above) to understand the implications of information sharing. Accordingly, the support worker has a discussion with Campbell about how his experience of family violence may be something he could address through counselling with the mental health service. The worker allows Campbell the space to consider the relevance of sharing his information with the mental health service and whether this is something he believes will be beneficial. Campbell says he supports his information being shared with the mental health service, which will not only assist with his counselling but also means that Campbell will not need to re-tell his story.

Note that Part 5A permits ISEs to share any person’s information without consent to assess and manage risk for a child or adolescent victim survivor. However, Campbell’s views should be taken into consideration where possible as it relates to risk assessment or risk management. This includes obtaining his views on the content of information to be shared and with whom. If Campbell did not want his information to be shared, the ISE would need to exercise their professional judgement about whether Campbell's information should still be shared balancing a range of considerations discussed in this chapter, prioritising Campbell’s safety above all else.

**If the child doesn’t have capacity to provide their views, when would it be appropriate to seek the views of the non-offending parent prior to sharing information?**

When sharing information in response to a valid request, an ISE must share this information if it is relevant to assessing and managing a risk to the child and it is not excluded information (i.e. this information must be shared irrespective of the views of the child).
However, if a child doesn’t have capacity to share their views, in appropriate circumstances, an ISE should consider seeking the views of a non-offending parent prior to sharing a child’s information under Part 5A in order to maintain transparent and open communication.

Situations where it may be appropriate to seek the views of the non-offending parent of the child include where:

- the child does not have sufficient maturity and understanding (i.e. capacity) to provide their own views
- seeking the views may inform risk assessment and management
- the ISE believes it is appropriate, safe and reasonable in the circumstances to seek the views of a non-offending parent (see case studies in the next section for examples of where it may not be appropriate to seek the views of a non-offending parent).

**Case Study – Seeking a non-offending parent’s views about sharing a child’s information**

Myra and her 6 year old daughter Elle have recently moved into a women’s refuge. Elle is not coping well with her new living arrangements and has been experiencing nightmares and other symptoms of post-traumatic stress due to the violence she has experienced. The refuge worker discusses with Myra about a counselling service available at the local family violence service that could assist Elle and Myra. The worker determines that Elle does not have sufficient maturity to understand the implications of sharing her information with another service. The worker therefore talks to Myra about Elle’s information being shared with the new service. The worker explains the nature of the service and how receiving Elle’s information would assist in Elle’s engagement with the service.

Myra agrees that it would benefit Elle to have her information shared with the counselling service. This avoids Elle being further traumatised by having to retell their story.

Although, Part 5A permits this information to be shared without consent from Myra or Elle, in these circumstances, it is preferable that the worker ensures they have an open discussion and obtain Myra’s views about being referred to the service as Elle is unlikely to be able to engage independently with the service without Myra’s involvement and co-operation.

**Remember**

When sharing information about a non-offending parent to assess and manage risks to a child victim survivor, an ISE should always share in a way that avoids victim blaming and focuses on holding the perpetrator to account.

**When would it be appropriate to share information without seeking the views of a child, a non-offending parent or any other relevant third party prior to sharing their information?**

Situations where it may be appropriate to share information without seeking the views of the child victim survivor or non-offending parent or any relevant third party include where:

- the ISE reasonably believes that sharing confidential information is necessary to lessen or prevent a serious threat to an individual’s life, health, safety or welfare (see Chapter 7 on page 49)
- it is unreasonable, impractical or unsafe to seek the views of the child, non-offending parent or third party (see examples below)
- the non-offending parent is underestimating the risk to the child (see examples below)
• it would otherwise not be in the best interests of the child to seek their views (see examples below).

How to determine where seeking the views of a child or any other person is not in the best interests of a child?

It may not be in the best interests of a child to seek from the views of a child victim survivor, a non-offending parent or any other relevant third party prior to sharing their information where seeking those views would lead to an adverse outcome for the child in terms of their overall physical or psychological safety or wellbeing.

Case Study – Unreasonable to seek the views of the child or their parent

Jenny is a maternal and child health nurse who has conducted two home visits to Phillip and Andrea’s home after the birth of their second baby. Jenny observes during the course of both visits that the couple’s four year old daughter Dahlia has bruising about which neither parent provides an adequate explanation. Jenny does not have an opportunity to speak to either parent without the other being present. Under the existing mandatory reporting regime, Jenny notifies Child Protection of her concerns.

When maternal and child health nurses are prescribed under Part 5A, Jenny will also be able to share information about the child with a Support and Safety Hub for the purpose of risk assessment. Given the circumstances, in this case Jenny may not decide to seek the views of Dahlia, Phillip or Andrea before sharing information, with the Hub. The Hub will also be able to work closely with Child Protection to develop a coordinated approach to ensure the safety of the children; including ensuring a full medical examination and a risk and needs assessment of both children.

Case Study – Impractical to seek the child’s views

Some examples of when it may be impractical to seek the views of the child victim survivor or the non-offending parent include where:

• the child or non-offending parent is incapacitated (for example, in a coma)
• the whereabouts and phone number of a child or non-offending parent is unknown
• repeated attempts have been made to contact the child or the non-offending parent to no avail
• the perpetrator is always present and does not let the child or non-offending parent have any communications in private (for example, accompanying them to all appointments, listening to phone conversations, monitoring social media use).

Case Study – Unsafe to act on the views of the child

8 year old Stuart discloses to his teacher that his father Bruce hits him and his mother Maria. It is apparent that Stuart has bruises on his arms and torso. Stuart pleads with the school to not tell anyone of the abuse as he is worried that his father Bruce will be angry if he finds out. Stuart says his mother Maria is very scared of Bruce and has told him not to tell anyone of the abuse. In this situation, it would potentially heighten the risk of family violence to contact Maria given the risk of Bruce finding out about Stuart’s disclosure. For this reason, it is determined that information should be shared without contacting Maria and despite Stuart’s view that no one should be informed of the abuse.³

Under the existing mandatory reporting obligations, the teacher makes a report to Child Protection.

³ This case study assumes that schools and teachers have been prescribed as Information Sharing Entities under Part 5A. Schools will not be prescribed in the initial tranche but are likely to be prescribed in the future.
**Case Study – Unsafe to act on the views of the child**

The school also contacts Police to inform them of Stuart’s disclosure of physical abuse. Utilising the provisions of Part 5A, Police advise the school that there is a current intervention order in place against Bruce naming Maria and Stuart as protected persons which allows Bruce to reside in the family home, but prohibits Bruce from committing family violence. Police attend the family home to arrest Bruce for assault and breach of the intervention order. As part of the safety plan, the Police make an application to vary the intervention order to prohibit Bruce from attending the family home or having contact with Maria or Stuart. Child Protection and the Police speak with Maria and develop a safety plan for both Maria and Stuart, which includes sharing information and making a referral to a local specialist family violence service. Under Part 5A, the Police advise the school of the action taken and the new terms of the intervention order should Bruce attempt to attend the school to have contact with Stuart.

**Case Study – Parent underestimating risk to the child victim survivor**

Shana has recently separated from her partner Tim. Shana and Tim have two children aged 6 and 9. Tim has recently lost his job and has started drinking heavily. He has been repeatedly calling Shana’s phone and hanging up and has sent threatening and abusive messages to one of Shana’s friends with whom he believes Shana has formed a new relationship. During their relationship Tim was possessive, controlling and verbally abusive and this behaviour is continuing. Shana does not believe this has impacts on the children, as Tim has never been physically violent towards her or the children. Recently Tim has told Shana that if she won’t return to the relationship he won’t allow her to keep ‘his’ children. Shana seeks the support of a specialist family violence service. Shana’s case worker Jess is concerned that Tim’s possessive behaviour and attitude to the children may pose a risk to the children. Shana is adamant that Tim is a ‘great dad’ and that her difficulties with Tim are not relevant to the children.

Jess also meets with the children to ascertain their feelings and experiences towards with their father as part of developing a risk assessment for Shana and for her children. Jess determines that it is not appropriate to seek the views of the children towards sharing their information. However, Jess explains the results of this assessment to Shana and explains to Shana that she would like to share information in relation to the children with the principal of the children’s school (if prescribed under Part 5A) so they are aware of the situation should Tim attempt to attend the school. Shana does not agree that information should be shared with the school, based on her belief that her children are not at any risk.

Jess explains to Shana that for children, witnessing or hearing abuse constitutes family violence and the children continue to be at risk of harm. As permitted under Part 5A, Jess informs Shana that she will be sharing information about the risk she has identified with the school principal, despite Shana’s belief that this is not necessary. Shana says while she doesn’t think that Tim poses a risk the children, she understands Jess is concerned and the need to contact the school. Jess and Shana then create a safety plan for Shana and the children should Tim attempt to have contact. As part of the safety plan, Shana agrees that she will contact Police immediately should Tim attempt to have contact with the children. If Tim does attempt to have contact, an intervention order can be sought in order to protect Shana and the children. Given an appropriate safety plan has been put in place, Jess doesn’t believe that a report to Child Protection is warranted. Jess will continue to update the risk assessment for Shana and the children and will make a report to Child Protection if the circumstances change or there is a significant concern about the wellbeing of the children.
Case Study – Parent underestimating risk to the child victim survivor

A women’s refuge has recently accepted a new family, Prue and her two sons, Jett aged 11 and Hayden aged 8. One week ago Prue left the relationship with her husband Ibrahim after repeated escalating incidents of physical abuse against Prue and the children.

A report to Child Protection was made as a result of the most recent family violence incident by Police who attended the home. Child Protection assisted Prue to secure refuge accommodation. Fatima is the specialist family violence worker who is assisting Prue at the refuge. Fatima has received information from Child Protection that since separating from Ibrahim, Prue has been withdrawing from Ice while in crisis accommodation. Child Protection also shared that Prue disclosed that her only access to Ice is from Ibrahim, as he supplied her with the drugs. Prue has told Fatima that she is committed to stop using Ice. Fatima and Child Protection work together with Prue to access drug and alcohol services, family services and other supports to help build her capacity to make safe decisions for her and the children. Prue agrees to provide random drug screens to Child Protection.

Prue’s first few days in refuge prove difficult, with Prue returning to the accommodation after curfew and leaving her children at the property unattended. The two boys, Jett and Hayden, have been engaging well with workers but are hesitant to speak about Prue. It becomes clear that the boys are being left at the refuge unattended while Prue is out. When Fatima raises this with Prue she becomes agitated and hostile.

Fatima starts to suspect that Prue is using Ice again, based on her behaviour and physical appearance. Prue becomes aggressive when asked if she is using Ice, she denies use and says she is prepared to complete a drug screen as proof. Fatima shares this information with Child Protection.

After checking the cameras outside the refuge, Fatima discovers that Prue was returned to the refuge by a man driving a blue sedan and makes a note of the number plate. Fatima speaks with Prue about the person who returned her to the refuge, and expresses concern for Prue’s safety. Prue becomes extremely agitated, packs up her belongings and says she is leaving the refuge. Both children are crying during this incident.

Fatima attempts to talk with Prue and explain that her and the boys’ safety is paramount and this should be the priority. Fatima calmly explains that although Prue has the option to leave at any time, given the circumstances Fatima will need to immediately inform Child Protection and Police because of her concerns for the immediate safety for Prue and the children. Prue is angry about this and storms out of the refuge leaving the children behind. Child Protection arrives shortly after the incident and takes the children into care until Prue can be located and to allow further assessments to take place.

Under Part 5A, Fatima contacts the local police and seeks information on the registered owner of the blue sedan. Given that this information is relevant to managing risk to the children, Police confirm that the number plate is registered to Ibrahim and also that there is a current intervention order against Ibrahim stating that he have no contact with Prue or the children. Under Part 5A and as part of the risk management strategy, police inform Fatima and Child Protection that they will be attending Ibrahim’s home to interview him in relation to the alleged breach of the intervention order.

Fatima did attempt to talk with Prue in this circumstance, but Prue was agitated and her views could not be taken into account at that time due to concerns for the safety of the children. Given the situation and the level of risk to the children, it would not be appropriate in this circumstance to seek the views of the children prior to sharing information to assess and manage their risk, particularly given that the children were significantly upset.
Case Study – Not in the child’s best interests to seek their views

13 year old Emily and her mother Jane have suffered years of physical and emotional abuse from Jane’s partner, Frank. With the support of a specialist family violence service, Jane has ended the relationship with Frank and is currently residing with Emily at her mother’s home (at an address unknown to Frank). Both Emily and Jane are extremely concerned about information being shared due to fear that Frank will find out where they are residing. Jane was recently hospitalised as an involuntarily patient as a result of mental health issues caused from the years of abuse. Emily has also been exhibiting self-harming behaviours and suicidal ideation and is linked with a youth mental health service. The specialist family violence service wants to confer a case conference for the support services working with the family. The specialist family violence worker assesses that it is in the best interests of Emily to share information at this conference despite Emily and Jane’s view that their information should not be shared.

This is because both Jane and Emily’s are currently accessing mental health support and there are significant concerns that any additional stressors will result in further hospitalisation for Jane (which is not in the best interests of Emily) or further exacerbate Emily’s mental health condition. Given it is not in the best interests of the Emily to do so, their views are considered, but not followed in this instance.

Do ISEs need to notify children, non-offending parents or third parties that their information has been collected?

Yes. With the exception of perpetrators and alleged perpetrators, all notification requirements in the PDP Act and HR Act continue to apply to the collection of personal and health information, whether collected directly or indirectly, unless this notification would increase the risk of family violence.

This means that at or before the time of collection (or as soon as practicable after), the ISE who collects information about a person – either directly or indirectly – should take reasonable steps to ensure that the person is aware of the following:

• the identity of the ISE and how to contact it
• the fact that the person is able to gain access to their information
• the purposes for which the information is collected
• the types of individuals or organisations with which information might be shared
• the potential outcomes of sharing that information.

This notification should include an explanation of the information sharing obligations under Part 5A, in particular that information may be shared by the ISE without their consent in order to assess or manage family violence risk to a child (see model conversation below).

Although Part 5A does not require consent for sharing information to assess or manage risk to a child victim survivor, the ISE should inform the child or parent of this decision, as long as this does not place the child or parent at further risk. Keeping the client informed is part of best practice case management and helps to maximise client engagement. The child or parent must be supported with safety planning and other necessary services, whether they have consented to information sharing or not.

Further information on engaging children, young people and adults is contained in:

Model conversation with individuals regarding consent where you are assessing or managing family violence risks to a child victim survivor

‘I would like to let you know that the law has recently changed to allow certain organisations to share information to better assess and manage risk of family violence for both adults and children. I want you to know that by law I may be required to share information about you, your child, the perpetrator or any relevant third party without consent with other prescribed services to enable us to better assess and manage risks to your child. Consent to share information is not required under the new laws because the safety of you and your child is paramount. While I am not required to obtain your consent, I want to make sure that you understand how you and your child’s information might be shared and listen to any concerns that you may have. I will make sure to take your views into account as much as possible’.

Framing the conversation in this way is important so it does not mislead someone into thinking that their consent will be determinative of whether their information or their child’s information is shared.

What happens when adolescents are involved either as victim survivors or using violence towards their families?

The way in which an adolescent responds to past traumatic events may parallel adult responses, including avoidance of reminders of traumatic events, flashbacks, sleep disturbance (including nightmares and fears of falling asleep), depression, anxiety and belligerence. These responses lead to problems such as chronic irritability, anger, anxiety and an inability to manage aggression, problems with relationships, conduct disorder and substance abuse. Many developmental and psychological diagnoses, such as attention deficit hyperactivity disorder and conduct disorder, may also be related to a history of trauma; including exposure and experience of family violence.

ISEs must have regard to the effect of past traumatic events when working with adolescents who are victim survivors or using violence themselves.

Part 5A permits information sharing in respect to adolescents in the following ways:

- adolescents that are at risk of being subjected to family violence by:
  - a family member or relative
  - an intimate partner
- adolescents that are at risk of using violence against (see Chapter 11 on page 84 for further discussion):
  - a family member or relative
As children are defined as a person under the age of 18, where an adolescent is at risk of being subjected to family violence or is at risk of committing family violence, Part 5A permits information to be shared about that adolescent without consent. However, their views should be considered where appropriate, safe and reasonable to do so.

See Chapter 11 on page 84 for further discussion on adolescents that are at risk of committing family violence.

Adolescents that are at risk of being subjected to family violence

ISEs should be mindful that adolescents may have strong views on when and how their information should be shared. The principles set out in Part 5A state that when sharing information to assess and manage a risk of family violence for an adolescent, ISEs should:

“promote the agency of the child .... at risk of family violence by ensuring their wishes are taken into account having regard to the appropriateness of doing so and the child’s age and maturity”.

Therefore, if appropriate, safe and reasonable, ISEs should at the outset of engagement with an adolescent promote the agency of the adolescent by seeking their views on when and how their information should be shared.

Situations where it may be appropriate to seek the views of the adolescent include where they have sufficient capacity, maturity, understanding and intelligence to enable him or her to fully understand what is proposed. In making this determination, ISEs should consider such things as age, maturity and comprehension of the proposed action to be taken.

In considering whether an adolescent’s views should be ascertained, consider whether the adolescent is able to do all of the following:

- understand the facts involved
- understand the main choices
- weigh up the consequences of the choices
- understand how the consequences affect them
- communicate their decision.

To assist ISEs to determine whether an adolescent has the capacity to provide their views, the ISE should ask the adolescent to explain in his/her own words:

- what the request is and why it has been made
- what the young person thinks will happen if their information is or is not shared
- why he/she holds these views.

The clarity and consistency of the answers the adolescent gives to these questions will assist an ISE to determine if the young person has the capacity to consider and provide their own views.

Seeking the views of an adolescent may assist in assessing and managing risk to the adolescent. In some circumstances, the level of risk will be such that an ISE believes that information should be shared despite the views of the adolescent that the information not be shared. If this is to occur, the ISE should explain how they have taken the views of the adolescent into account, and the reasons they believe that the information must be shared to either assess or manage risk to the adolescent.
Case Study – Seeking the views of an adolescent in a violent intimate relationship

Amy (just turned 17 years) is in an intimate relationship with Carl (22 years), her partner of ten months. Amy and Carl have recently had a baby and Amy has stopped attending school. Amy and Carl have been living together for 3 months. During an appointment with the maternal and child health nurse (MCHN), Amy discloses that Carl is very controlling of her movements and has been attempting to restrict her contact with her friends and family. She also discloses that since she became pregnant, Carl has also been physically abusive towards her including attempting to strangle her on one occasion.

As both choking and pregnancy/new birth are identified high level risk factors of family violence, the MCHN therefore makes a report to Child Protection under the existing mandatory reporting obligations. The MCHN has advised Amy that a report has been made to Child Protection given her concerns for Amy and her baby’s safety. If prescribed under Part 5A, the MCHN determines it is important to share information including the Framework assessment with a specialist family violence service and Victoria Police to manage the risk posed to Amy and her baby. The MCHN considers the appropriateness of seeking Amy’s views prior to sharing the information. The MCHM believes that Amy has the maturity to understand the implications of her and her baby’s information being shared and therefore she speaks with Amy about information she wishes to share. Amy is concerned about the escalating violence and the risk of harm to her baby and wants her information to be shared as proposed by the MCHN. This view helps inform the risk assessment and risk management responses considered.

Under Part 5A, the MCHN contacts the local specialist family violence service and Victoria Police to share the information provided by Amy. The family violence service and Child Protection meet with Amy to develop a risk management and safety plan for Amy and her baby and assists her to make arrangements to live with her grandmother. The family violence service also applies for a flexible support package on Amy’s behalf to purchase items for the baby for her grandmother’s house. The Police make an application for an intervention order against Carl naming Amy and her baby as protected persons. In consultation with Amy, Child Protection makes a referral to Child FIRST to support her parenting, provide practical support and assistance to support her and her baby. Amy continues to engage with the MCHN service, who work closely with Child FIRST and the other support services involved with the family.

Although, Part 5A permits the information above to be shared without first obtaining Amy’s views, in these circumstances because Amy has sufficient maturity and is understanding the risks to both her and her baby, it would be appropriate for the ISE to have an open discussion with Amy prior and seek her views prior to sharing information concerning Amy and the baby.
Chapter 9: Sharing information about individuals from Aboriginal and Torres Strait Islander backgrounds

It is recognised that in an Aboriginal context, contributing factors to family violence include intergenerational grief and trauma resulting from the ongoing impact of the history of colonisation, dispossession of land and culture and the wrongful removal of children from their parents.

It is also recognised that Aboriginal definitions of family violence are broader and more encompassing than those used elsewhere. The Indigenous Family Violence Ten Year Plan, *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities* (2008 - 2018) acknowledges that in an Aboriginal community context, family violence includes a wide range of physical, emotional, sexual, social, spiritual, cultural and economic abuses that can occur within families, extended families, kinship networks and communities.

**Key points**

- There are specific guiding principles for sharing information about Aboriginal and Torres Strait Islander people, which provide that information should be shared in a manner that promotes the right to self-determination, is culturally sensitive and considers the person's familial and community connections.
- Family violence is not part of Aboriginal culture.
- Aboriginal people have historical grounds for fear and suspicion of authority, which has implications for consent and privacy.
- Cultural consultation by ISEs (e.g. with Aboriginal Community Controlled Organisations (ACCOs)) is important, where appropriate.
- Perpetrators of family violence toward Aboriginal or Torres Strait Islander victim survivors may not themselves be Aboriginal or Torres Strait Islander.

**Family violence experienced by Aboriginal or Torres Strait Islander people living in Victoria**

Women from Aboriginal and Torres Strait Islander backgrounds experience significantly higher levels of family violence than non-Aboriginal women, with significant underreporting of family violence in Aboriginal communities. Aboriginal women are 25 times more likely to be killed or injured as a result of family violence. 88 per cent of Aboriginal children in out-of-home care have experienced family violence. For Child Protection reports relating to Aboriginal children, family violence concerns were indicated in 53.2 per cent of reports, and 74.4 per cent of substantiated reports. It is likely the available data does not reflect the actual frequency of family violence due to the under reporting of family violence in Aboriginal communities. Those that commit family violence against Aboriginal women come from all backgrounds.

**Approach to information sharing in Aboriginal communities**

For Aboriginal and Torres Strait Islander people living in Victoria, the high prevalence of family violence is attributed to a number of factors, many of which relate to the impacts of colonisation and historical experiences of systemic and structural discrimination and inequalities. These might include:

- the effects of institutional racism and child removal and assimilation policies
• intergenerational grief and trauma
• racism, discrimination and vilification
• economic exclusion and entrenched poverty
• the loss of traditional male roles, female roles and associated status
• dispossession of land and traditional culture through colonisation
• breakdown of community kinship systems and Aboriginal lore
• alcohol and drug abuse.

ISEs working with victim survivors and perpetrators from Aboriginal and Torres Strait Islander backgrounds should consider these factors when sharing information and informing clients that their information will be shared with certain service providers. In particular, ISEs should be mindful of the impact that sharing an Aboriginal or Torres Strait Islander client’s information without consent or appropriate communication about the sharing of that information may have on the relationship of trust with the service provider. ISEs should therefore consider tailoring their collection notices to the particular needs of Aboriginal and Torres Strait Islander clients.

Approaches to sharing information about Aboriginal and Torres Strait Islander people therefore needs to be based on:
• evidence of cultural competency and an understanding of the particular issues facing Aboriginal and Torres Strait Islander people, including lateral violence
• providing a holistic and trauma-informed service
• acknowledging the courage the person has shown in seeking assistance
• taking into account any extended clan or family arrangements that might be relevant
• incorporating appropriate consultations with Aboriginal Community Controlled Organisations (ACCOs).

In particular, ISEs should be mindful that Aboriginal and Torres Strait Islander people may be concerned about sharing their information with government agencies, and may fear government agency interventions in their lives. ISEs should also be mindful that some Aboriginal and Torres Strait Islander people may be concerned about engaging with services when they perceive that information could be shared with others in their community, particularly when that information relates to traumatic issues such as past removal or child abuse.

ISEs will often be seen as associated with the state, including the welfare and Child Protection systems. Historically welfare legislation, policy and practice have created great distrust between Aboriginal and Torres Strait Islander people and the government. It is therefore particularly important that ISEs consider the experiences of people from Aboriginal or Torres Strait Islander backgrounds. Some peoples’ understanding of privacy in this context may be influenced by past and current interactions with the state, including high rates of child removal and incarceration. These experiences may therefore mean that some Aboriginal or Torres Strait Islander people are fearful of giving consent to share their information or of engaging with services that may share their information, particularly when children are involved.

Importantly, Aboriginal and Torres Strait Islander victim survivors must always be offered the opportunity to choose the service they wish to engage with, whether that be an Aboriginal-specific or other family violence service. In the context of information sharing under Part 5A, the right of Aboriginal and Torres Strait Islander clients to make such decisions is enshrined in the principles under section 144J. This means that Aboriginal or Torres Strait Islander victim survivors should be consulted about how their information should be shared and their wishes as to which services their information should be shared with. Their choices about information sharing must be respected as much as possible.
When sharing information about a person from an Aboriginal or Torres Strait Islander background

When sharing information or seeking consent from victim survivors to share information about a person who identifies as Aboriginal or Torres Strait Islander, regard should be had to:

- providing the victim survivor with the option of an Aboriginal-specific service or if they prefer to be linked with a trusted third party such as a cultural advisor, mentor or other trusted professional
- clearly explaining how information will be used and for what purpose and ensuring that message is culturally sensitive and addresses the particular concerns that a person from an Aboriginal or Torres Strait Islander background might hold (e.g. fear of child removal)
- communicating how sensitive information will be protected from privacy breaches (e.g. how a service will protect a person’s confidentiality when the staff at a service provider may be known to the victim survivor and/or perpetrator)
- ensuring that only the information that is relevant for an assessment or protection purpose is shared and that sensitive information is redacted if it is not relevant for that purpose (e.g. an Aboriginal or Torres Strait Islander person may be particularly wary about the sharing of certain information such as their past history of removal as a child. Aboriginal and Torres Strait Islander clients should be reassured that this information will not be shared where it is not relevant to assessing or managing risk of family violence)
- providing interpreters if their preferred language is not English to ensure that consent to share information is informed and that the reason for sharing the information is clearly understood.

Guiding principles when sharing information about a person from an Aboriginal or Torres Strait Islander background

In recognition of the particular concerns that may be held by Aboriginal and Torres Strait Islander clients engaging in the family violence system, ISEs should use the principles set out in section 144J of the Act for guidance when sharing information. ISEs should collect, use or disclose the confidential information of a person who identifies as Aboriginal or Torres Strait Islander in a manner that promotes the right to self-determination, is culturally sensitive and considers the person’s familial and community connections.

To demonstrate their compliance with the principles, all ISEs should:

- ask (at point of intake) whether their clients, including children, regardless of appearance, identify as Aboriginal or Torres Strait Islander
- determine whether Aboriginal or Torres Strait Islander clients (including children) would prefer to receive a service from a general or Aboriginal-specific service and seek their client’s views on what services their information should be shared with
- recognise the discrimination experienced by Aboriginal and Torres Strait Islander people and the impact of unjust government policies and practices
- demonstrate respect and consideration for Aboriginal and Torres Strait Islander people and culture
- work collaboratively with Aboriginal organisations and agencies to support the client in a culturally respectful manner.

The safety and security of victim survivors of violence remain the number one priority.
The following scenarios illustrate how ISEs can apply these principles in practice:

### Case Study – concerns about confidentiality

Jimmy is an elderly man who identifies as Aboriginal. Jimmy is engaged with the local Aboriginal Community Controlled health service. He mentions to the service that his nephew Clint has been pressuring Jimmy for money every fortnight and becomes aggressive when Jimmy says no. Jimmy has concerns about his privacy and safety in the context of seeking assistance for family violence.

Actions that could be taken to reassure Jimmy include:

- gathering information on Jimmy and Clint’s extended family to determine where Jimmy might best be able to receive assistance or who in the organisation would be best placed to support Jimmy
- assigning a worker to the case who does not have a connection to the perpetrator or victim survivor if possible
- providing Jimmy’s support worker with assistance to maintain confidentiality
- offering referral to another service (including a universal service, if appropriate) if a conflict of interest cannot be mitigated within the service
- providing assurance to Jimmy about the policies and procedures in the organisation that relate to privacy along with the safeguards under Part 5A – namely, that an ISE is only permitted to share victim survivor information with consent and never with a perpetrator. Use of information that is inconsistent with what is permitted under Part 5A (including sharing victim survivor information with a perpetrator) will attract penalties.

### Case Study – sharing sensitive information

A specialist family violence service is providing men’s behavioural change services to Albert, who identifies as Aboriginal, to assist him change his behaviour toward his partner, Agnes, who has indicated that she might end the relationship. Albert and Agnes are caregivers to Albert’s granddaughter. Albert is also being assisted in relation to mental health issues resulting from trauma associated with his removal as a child and his subsequent abuse in state care. Albert is managing his mental health with medication and counselling. Another ISE has requested information from the program about Albert’s mental health issues in order to assess Agnes’ risk of family violence.

Upon Albert’s engagement with the family violence service, the possibility that his information may be shared under Part 5A with other ISEs should be discussed. Albert should be informed at the outset that if requested the ISE will be obliged to share information relevant to assessing or managing a risk of family violence. Albert should be informed about whom that information may be shared with and how that information may be used. Albert should be assured that his information will only be shared when relevant to assessing or managing the risk of family violence and that the information that might be shared could include his attendance and engagement with the service, which could demonstrate a reduction in risk posed. When disclosing information, the responding entity will need to carefully consider what information (if any) is relevant to share in relation to Albert’s history of removal and abuse. Any information about this history that is not relevant to assessing or managing the risk to Agnes should be redacted from any files before sharing. Albert could also be reassured that this engagement in help seeking and willingness to change his behaviour will also assist in relation to maintaining custody or contact with his grandchild.
Case Study – Sharing information about adult victim survivors to assess and manage risk to children

Deborah identifies as Torres Strait Islander. Deborah is experiencing ongoing verbal abuse from her non-Aboriginal partner, Greg. They live with their two children who are exposed to the verbal abuse by Greg towards Deborah.

Deborah has historically declined to engage with support services due to fears that her children will be removed if she seeks help. However, after a particularly upsetting incident, Deborah is seeking the assistance of an ACCO to leave the relationship and to find alternative housing for herself and the children. The children have also been referred to counselling.

Part 5A permits information about Deborah and the children to be shared without her consent in order to assess or manage the risk to the children. This should be addressed with Deborah when she first engages with the service. Deborah is happy to share this information with other services that she is connected to, but she clearly states that she does not want her information shared with Child Protection.

Part 5A states that the safety of the children from family violence should take priority over an individual’s right to privacy. ISEs will be obliged to share relevant information upon the request of another ISE without consent if it is necessary to assess and manage a risk of family violence for a child. It is therefore important that ISEs do not create a misleading impression that Deborah’s information will not be shared if she does not consent. Additionally, consideration of a Child Protection notification would be expected as the children have been witness to family violence.

Instead, Deborah’s family violence support worker can have a discussion with Deborah to seek her views on sharing the information and indicate that while her wishes will be taken into account and that her concerns are understood, there are also other factors that must be considered when deciding what information is relevant to share. This discussion can be used to explain why the information will be shared and the purpose for which the information is being used. If the ISE doesn’t believe that there are significant concerns for the children given Deborah’s engagement with services, it could be explained to Deborah that at this point it is not necessary to make a report or share information with Child Protection but that if requested by them to provide information, then the ISE are obliged to do so. However, the ISE could also commit to contextualising the information to better assure the safety of her and her children and explain how Child Protection might positively view her ongoing engagement with support services.
Chapter 10: Sharing information about persons from diverse communities

Sometimes an ISE will need to share information about a person that is particularly sensitive due to their background and circumstances.

It is important that service providers working with people from diverse communities should consider cultural and other sensitivities and experiences when sharing information, and recognise the additional barriers they might face.

ISEs must always work in a culturally safe and appropriate manner, particularly given that if a client has an adverse experience at a support service, it may deter other members from the same community accessing the service. Experiences of discrimination and stigma when accessing the service system in the past might also make victim survivors feel reluctant to give consent.

Key points:

- There are specific guiding principles for sharing information about people from diverse communities.
- ISEs must have regard for a person's cultural, sexual and gender identity and religious faith.
- Some communities’ understanding of privacy may be influenced by cultural traditions and beliefs.
- Experiences of discrimination, oppression and trauma may make victim survivors fearful of, or unwilling to, give consent to share their information.
- Language and other barriers to understanding can be a significant impediment to engaging with victim survivors when explaining the complex issues of consent and sharing information for assessing and managing family violence.

The Victorian population is growing, and our diversity is increasing as people express multiple forms of identity and belonging. Diverse groups are not homogenous but are unique and diverse in their own right. Family violence is not part of any culture or unique to any specific community. Due to individual and structural power imbalances that often manifest as discrimination and stigma, adults and children in these groups are at increased risk of experiencing family violence, being repeat victims; and face additional barriers to service access and disclosure. These groups include:

- diverse cultural, linguistic and faith communities, including people from migrant and refugee backgrounds
- people with disabilities
- people from lesbian, gay, bisexual, trans and gender diverse and intersex (LGBTI) communities
- people experiencing mental health issues
- older people
- people working in the sex industry
- women in or exiting prison or forensic institutions
- people living in rural, regional and remote communities
- male victim survivors.


Issues that might be a particular concern when sharing information about people from diverse communities include:
• fears that they and their stories will not be understood or will be misrepresented to authorities due to language and cultural barriers
• fears about the removal of children (e.g. victim survivors with disabilities or mental health issues or from an immigrant or refugee background may be particularly vulnerable to these concerns)
• fears about the impact on a person’s status or safety in their family or community (e.g. information about a person’s work as a sex worker, their gender identity or sexual orientation or knowledge that they are seeking a divorce or making a report against their partner could cause stigmatisations within particular communities)
• for people from smaller linguistic communities, there may be concerns about privacy when accessing an interpreter service
• for people from small rural communities, there may be concerns about privacy and the impact on victim survivor confidentiality and safety when accessing local services
• fears about the impact on the residency status of victim survivors living in Australia on temporary or provisional visas, partner or student visas or fears about deportation for sex workers from a migrant background
• fears about sharing certain information with police (e.g. victim survivors engaging in unrelated illegal activities may be concerned about becoming known to police or some members of certain migrant and refugee communities may fear authorities due to past experiences in their countries of origin and racial or other discrimination experienced in Australian society)
• some members of culturally and linguistically diverse communities have heightened respect and/or fear for authority figures (i.e. they don’t want to offend or get into trouble) and may see the worker as an authority figure. If they are asked for consent in these circumstances, they may default to saying yes (deference for what worker wants to do) without necessarily understanding the issues
• ageist attitudes that undermine the agency and experiences of older people engaged in the family violence system
• older people may be dependent on the perpetrator and have concerns about the consequences to them of reporting family violence
• male victim survivors may fear not being taken seriously or that their experiences will not be considered a priority.

What to consider when sharing information about a person from a diverse community

To address these concerns, when sharing information or seeking consent from victim survivors to share information about a person from one of these communities, ISEs could have regard to:

• enquiring about the client’s particular concerns around information sharing
• clearly explaining the ISE’s obligations at the outset as well as how information will be used, with who that information may be shared and for what purpose and addresses the particular concerns that the person might hold as a member of their community. This would particularly apply to clients with limited English skills or cognitive impairments
• communicating how sensitive information will be protected from privacy breaches. This would be particularly relevant for people from small rural, regional or remote communities, and smaller multicultural communities
• ensuring that only the information that is relevant for an assessment or protection purpose is shared and that sensitive information is redacted if it is not relevant for that purpose. Such information might include a person’s gender identity or sexuality
• ensuring that assumptions are not made that victim survivors will be comfortable with having their information shared with close family members. For example, members of the LGBTI community may fear being outed to family members
• providing professional interpreters to people if their preferred language is not English to ensure that consent to share information is informed and that the reason for sharing the information is clearly understood. The interpreter used should never be a child, friend or other family member of the client and the confidentiality of the interpreting service should be explained. Interstate telephone interpreters can be accessed if the language and/or dialect is particularly uncommon and the members of the client’s extended network are employed by interpreter services in Victoria – See DHHS’ Language Services Policy and Guidelines for further information about interpreter services.

• for those clients that decline the assistance of an interpreter, ask the victim survivor to repeat the information to ensure they understand what has been said. Those from culturally and linguistically diverse communities that struggle with English may decline the assistance of an interpreter so as not to cause unnecessary trouble for the support service or because of concerns for their privacy. Ensure the client understands it is not a burden to organise an interpreter service. Information sheets in different languages could assist with this.

• asking the victim survivor if they would like to seek the support of a trusted person to ensure the reason for information sharing is understood.

• determining whether clients (including children) from a culturally and linguistically diverse background would prefer to receive a service from a general or culturally-specific service and seeking client’s views on what services their information should be shared with and taking these views into account as much as possible.

• providing culturally appropriate support such as a bicultural worker to assist with understanding the cultural context of a client’s concerns about sharing the information and to assist when engaging with the client about information sharing.

• providing appropriate support to people with disabilities who have reduced decision-making capacity to ensure that consent to share is informed and that the reason for sharing the information is clearly understood.

• considering whether a person with disabilities might benefit from adjusted support, such as a longer session or scheduling at a time that is supportive of their needs to discuss information sharing to allow appropriate time for effective communication on this issue.

• providing specialist advice and support to victim survivors who are fearful of the impact of seeking support due to potential implications for their residency status.

Guiding principles when sharing information about people from diverse communities

ISEs should use the principles set out in section 144J of the Act for guidance and have regard to and be respectful of a person’s cultural, sexual and gender identity and religious faith when sharing information.

The following scenarios illustrate how ISEs can apply these principles in practice:

**Case Study – Cultural, linguistic and faith communities**

Ahmed and Alia are a father and adult daughter who have moved to Australia as part of Australia’s Humanitarian Program. Ahmed was tortured when detained by authorities in his country of origin and was injured in detention. He now has disabilities which require a significant degree of care. Ahmed relies on Alia to provide this care and to manage his finances as Ahmed has only limited ability to speak and understand English.

Alia is struggling with a dependence on prescription medicine prescribed to help her cope with post-traumatic stress disorder. Alia has been using her access to Ahmed’s account to pay for her drugs. Alia often verbally abuses Ahmed. Ahmed confides in a Victims Assistance and Counselling Program (an ISE) about his circumstances, but does not want this information shared as due to his past
Case Study – Cultural, linguistic and faith communities

experiences he does not trust authorities.

When the ISE engages with Ahmed about whether he consents for his information to be shared with another ISE to assess and manage his risk of family violence, the ISE should be sensitive to Ahmed’s background, including his experiences of torture and abuse. Given his past experiences, the ISE should ensure that Ahmed’s consent is freely given and that he does not feel coerced due to a fear of authorities. Support should be provided to Ahmed, such as an interpreter, to ensure that Ahmed’s concerns are properly understood and to explain how his information would be used if he gives consent to share that information. The ISE should also offer Ahmed culturally appropriate support and carefully explain how his information would be used and with whom it would be shared.

Case Study – Cultural, linguistic and faith communities (migration)

Mariana is in Australia on a bridging visa. She has been living with her Australian-born partner, Ian, for six months. Ian is verbally abusive and controlling toward Mariana. Mariana has limited English.

Mariana is being assisted by a culturally and linguistically diverse family violence service that has organised for an interpreter to be present at her first appointment. Mariana has stated that although she wants to leave the relationship with Ian, she will not do so through fear that she will lose her visa and be deported. Ian hides all correspondence from the Immigration Department so Mariana is unaware of her current visa status. Ian has said if Mariana ever leaves him, she will be deported immediately. Mariana has stated that she doesn’t want her information shared with anyone due to her fear of deportation.

It is important that the ISE firstly assists to confirm Mariana’s visa status and the impact should she separate from Ian given this seems to be a major (and possibly unfounded depending on the type of visa) fear of engaging with services and leaving the relationship.

When seeking consent from Mariana to share her information, an ISE should provide Mariana with specialist advice about how help seeking might impact on her residency status in order to ensure that she has given fully informed consent and in order to provide her with the assurances she needs in order to engage with services. The ISE should consider reassuring her that sharing her information is not intended to impact on her residency status but is about keeping her safe. It could be explained to Mariana that her information could be shared in a de-identified manner when seeking advice on her case. The ISE should also consider Mariana’s cultural background to ensure she has the right supports (e.g. interpreter, case worker, specialist legal advice) who can help her understand why and how the information will be used.

Case Study – Sexual orientation

Jonathon is a professional working in the communications team with an IT company. He has been in a same sex relationship with Paolo for two years. Paolo is not open about his sexuality with his family as he fears that they may reject him.

Jonathon has been abusing Paolo in this relationship for the last two years. Jonathon engages in tactics of abuse that include: verbal put downs of Paolo, frequent outbursts of anger where he shouts at Paolo while standing ‘in his face.’ These behaviours have on occasion escalated to Jonathon physically assaulting Paolo.

Jonathon continues to escalate his violence toward Paolo. On one occasion, Paolo responds to defend himself. On this occasion, the neighbours called the police. When the police attended, both men were spoken to in a manner that suggested the police had not connected the fact they were
Case Study – Sexual orientation

dealing with a couple in a same sex relationship family violence situation. Paolo was wrongly identified as the perpetrator and his information was shared without his consent.

Any ISE providing support to Paolo must seek his consent to share his information with appropriate family violence services. Paolo does not consent to sharing his information as he is distressed by his prior experience of being incorrectly identified as the perpetrator and is concerned that other services may discriminate against him based on his sexual identity. Paolo does not consider that he can rely on other support services to believe that he is the victim survivor of family violence. This created a great deal of distress for Paolo, he felt he was invisible to the police and the experience supported Paolo’s existing fears; that he could not rely on asking for help outside of the relationship. Paolo believed he was unlikely to be believed as a victim survivor of intimate partner violence by other support services. Paolo is also concerned that this information may become known to his family if his information is shared more broadly.

However, recently Jonathon's violent behaviour has escalated. If an ISE is concerned that there is a serious threat to Paolo’s safety, they may share his information without his consent in order to lessen or prevent this serious threat. This may require the ISE to reveal Paolo’s sexuality in order to provide the context of the threat posed to him and the identity of the perpetrator.

When working with Paolo, an ISE should keep in mind that overt discrimination against same-sex relationships places him at risk of stigma, familial and systemic discrimination. Paolo should be offered the assistance of an LGBTI specific service or case manager or advocate. Efforts should also be made to assist Paolo with the effects of his previous misidentification as a perpetrator in order to give him confidence that he will not be further stigmatised as a result. This could take the form of assisting Paolo to correct his records.

Even if the threat is considered to be serious (which means his information is permitted to be shared without consent), given Paolo’s past negative experiences with the family violence system, an ISE should make an effort to obtain Paolo’s consent before sharing his information and to explain: the reasons why this information needs to be shared, with who the information might be shared and the privacy protections that are in place to protect his privacy.

If Paolo continues to refuse consent and his information is shared without consent in order to lessen or prevent a serious threat to him, then any ISE working with Paolo should have put in place a plan about how the impact this decision might have on Paolo would be managed and appropriate supports put in place. Paolo should be kept informed about what information was shared, with whom and for what purpose as well as how that information will be handled, including data security measures.

Case Study – Gender identity

Sarah-Jane is a 14 year old trans girl living with her mother, father and younger sister. Sarah-Jane has questioned her gender identity (assigned cis male at birth) from a young age, growing her hair long and refusing to wear anything but skirts and dresses at home after school hours. Approximately two years ago, she began a social transition to live as a girl.

While Sarah-Jane’s father Bob has been generally supportive of her wishes to live first as a non-gender conforming boy and now as a girl, her mother Cathy has had a difficult time accepting this change. For years, Cathy has ridiculed her child for not dressing and behaving like a ‘real boy’. Since Sarah-Jane began transitioning, things have gotten worse. Cathy refuses to use Sarah-Jane’s chosen name and preferred gender pronouns of ‘she’ and ‘her’ and has refused to allow her to go out in public in girl’s clothes. Cathy’s behaviour towards Sarah-Jane alternates between perpetrating significant verbal abuse and ignoring her. Cathy has threatened to throw her out of home if Sarah-Jane continues to seek medical treatment to transition. Cathy and Bob’s different views regarding Sarah-Jane’s
Case Study – Gender identity

transition is causing relationship difficulties between them, which is also impacting upon Sarah-Jane. Sarah-Jane has become increasingly independent and resists Cathy’s abuse with acts of defiance towards Cathy. Cathy is losing control over Sarah-Jane, and on one occasion Cathy has physically struck Sarah-Jane. Bob is worried that Cathy is escalating her physically abusive behaviour. He is concerned for Sarah-Jane’s safety and wellbeing and about how things might end.

As Sarah-Jane is under 18 years, consent is not required to share her or the family’s information if it is relevant to assessing and managing the risk of family violence. However, any ISE working with the family should seek Sarah-Jane’s and/or Bob’s views about sharing their information with appropriate, LGBTI or specialist family violence or family counselling services. It is important to explain the reasons why this information might need to be shared, with whom the information might be shared and the privacy protections that are in place to protect his family’s privacy. The ISE should highlight that this information will only be shared to the extent that it is relevant to assessing or managing the risk of family violence. Giving Sarah-Jane and Bob a better picture of the risk faced may allow them to make more informed decisions around sharing information. It is also important to consider whether Cathy can be linked with family services to reduce the risk of further family violence incidents occurring and an appropriate LGBTI counselling service so she works through the impact her behaviour is having on her daughter and to assist her to better support her daughter as she transitions.

Case Study – Health status

Sarah has recently been seeking supports via a family violence service provider, as she has been emotionally and psychologically abused by Costas, her partner of four years. They have three children aged 3, 8 and 10 years old. Sarah has been HIV positive for five years and is now working part time in a community service organisation. Sarah is not open about her HIV status; the only person who knows is Costas.

Costas engages in manipulative behaviours, constantly making Sarah feel uncertain about her emotional stability and making her doubt her capacity and ability to make sound decisions. Costas has threatened to tell Sarah’s family about her HIV status if she does not comply with Costas’ expectations.

Sarah is aware that she is not required to disclose her HIV status for any reason other than health related matters. She is worried if her HIV status becomes public knowledge; it will negatively impact upon her children, it may negatively impact upon her working relationships and her relationships with her broader family. Sarah is worried if her HIV status is public there is potential for her to experience workplace discrimination and stigma, having to disclose to her children and broader family about how she contracted the virus would be emotionally distressing.

Sarah’s HIV status is central to Costas’ control over Sarah in their relationship and therefore is relevant to her experience of family violence. Any ISE engaging with Sarah should engage with Sarah and obtain her consent to sharing this information with appropriate services. In this situation ISEs should seek a secondary consult with a HIV specialist service. Sarah should be offered the assistance of a case manager or advocate to navigate the sharing of her information. Overt discrimination against people living with HIV continues and places them at risk of increased stigma and familial and systemic discrimination. It is important that ISEs carefully explain the reasons why this information might need to be shared, with whom the information might be shared and the protections that are in place to protect her privacy. The ISE should highlight that this information will only be shared to the extent it is relevant to assessing or managing the risk of family violence perpetrated by Costa against Sarah and will not impact upon any decisions she might make regarding sharing that information further in the family violence system (e.g. in court). Under Part 5A, ISEs are permitted to share information with Sarah to
**Case Study – Health status**

assist her manage her safety and that of her children. Giving Sarah a better picture of the risk faced may allow Sarah to make more informed decisions around the sharing of her information.

If Sarah continues to refuse to consent to sharing information then an ISE may be obliged to do so in order to assess or manage the risk to of family violence posed to the children. Sarah should be aware of this possibility, as the ISE should have engaged with Sarah at the outset by seeking her views about sharing information, and informing her of the circumstances in which information may be required to be shared without consent. The ISE should plan in advance for the impact this might have on Sarah and put appropriate supports in place.

**Case Study – Disability**

Chelsea is 28 years old, living at home with her mother and father. Chelsea suffers from a mild intellectual disability and her parents are her carers. Chelsea calls a counselling phone service provided by a specialist family violence organisation and informs the worker that her parents are emotionally and financially abusive. They take her Centrelink payments on the premise that ‘she cannot manage her own money’. The often put her down and control her movements.

Chelsea has been able to safely call the counselling service while her parents are shopping. During their conversation, the phone counsellor discovers that Chelsea has previously contacted the service and many other support services. Chelsea is desperate to leave the family home and the phone counsellor is concerned that she is at risk of harm, as the abuse in the home is escalating. The phone counsellor discusses a number of support services for Chelsea and discusses the need to involve these services to ensure she can live independently, or put in appropriate supports. Chelsea does not want information on her disability being shared with other services. Chelsea is adamant she can take care of herself.

The ISE should seek Chelsea’s consent prior to sharing her information with other services that may be involved with Chelsea in order to assess or manage her safety. In seeking consent, the ISE should provide Chelsea with appropriate support to enable her to freely give consent. This might include the support of a disability support worker.

However, this is complicated by the control exercised by Chelsea’s parents, who refuse to allow her to leave the house and Chelsea’s refusal to engage with disability support services. In this circumstance, if the ISE considers that it is necessary to prevent or lessen a serious threat then information on her disability may have to be disclosed as it further increases her risk of violence. If Chelsea’s information is shared without her consent, the ISE should plan how the impact this decision on Chelsea would be managed and put appropriate supports in place. Chelsea should be kept informed about what information was shared, with whom and for what purpose as well as how that information will be handled. The ISE should ensure that this is communicated in a way that Chelsea will understand.
**Case Study – Older people**

Cosima lives with her son George and his family and relies on him for her care, including the management of her finances. Cosima reports that George is aggressive and that he is sometimes rough, verbally abusive and is taking all her pension to go toward his expenses as he is unemployed. Cosima has dementia, which affects her cognitive abilities. However, she still has the capacity to make decisions with appropriate support.

Cosima does not want her information shared or to receive help as she wishes to continue to live with George. She is concerned that sharing information may have consequences for her relationship with George and result in her having to go to an aged care facility and lose access to her grandchildren.

An ISE working with Cosima should consider engaging with her on the issue of sharing her information by ensuring that a ‘trusted person’ is present, such as a family member, a professional in a related specialty service such as an aged care service or a disability support worker. Consideration should be given to whether a supportive attorney could be appointed to assist Cosima with her decision-making. This may give Cosima greater confidence to make decisions and assist with communication and ensuring Cosima’s understanding of the situation.

**Case Study – People working in the sex industry**

Karla is a sex worker at a registered brothel who is experiencing violence from her partner, Bogdan. They have one child, Jamie, together. Karla has tried to leave the relationship due to Bogdan’s use of violence but he has threatened that he will tell everyone about her work if she leaves, including Child Protection. Karla does not want her family to know that she is a sex worker and fears she may lose custody of her child if Child Protection is notified. Karla has been accessing a specialist family violence service (an ISE) and has informed the ISE that she does not consent to this information being shared. However, a Child FIRST ISE working on behalf of Jamie requests information about Karla for a family violence risk assessment of Jamie. The information may therefore be shared without Karla’s consent because it is relevant given the threats Bogdan has made to disclose that Karla works as a sex worker and this is a barrier to her leaving the relationship which poses a risk to Jamie.

If an ISE shares this information without Karla’s consent, the ISE should notify Karla and provide support to her to explain why this information was shared and to assure her of the confidentiality with which the information will be treated and any impact that this information will have in relation to the custody of her child.
Chapter 11: Sharing information about young people who are at risk of committing family violence

The Royal Commission found that there is a lack of awareness and understanding of family violence committed by adolescents can lead to inappropriate responses. The Royal Commission found that adolescent violence in the home has unique characteristics and requires different responses to other forms of family violence, in particular approaches that are therapeutic and diversionary. A therapeutic approach is more likely to improve identification of individual risk factors, such as previous exposure to family violence, trauma, mental health, disability and other factors that have been linked to this form of family violence.4

Early therapeutic intervention for adolescents who are at risk of committing family violence is vital in particular the role of schools, paediatric services and mental health services in identifying risk and making referrals to therapeutic services. For Aboriginal and Torres Strait Islander young people, this includes cultural and community connections and Aboriginal healing approaches.

Key points:

• Violence in the home committed by adolescents requires a different response to family violence by adults.
• Therapeutic and diversionary responses to adolescents committing family violence are recommended.
• An ISE does not need to obtain the consent of the young person who uses violence to share their information for a risk assessment or a risk management purpose.
• However, ISEs should ensure that the sharing of information about adolescents who use violence is done in a way that supports the therapeutic needs of the young person, as well as the safety of the victim survivor.
• Information sharing should be done in a way that avoids stigmatising the young person, particularly where the young person is or has been a victim survivor of family violence from another family member.

An understanding of adolescent development is critical to effective work with young people. The common developmental phases and key ‘tasks’ of the adolescent period include physical, cognitive, sexual, identity, moral and social and emotional development.

The way in which an adolescent responds to past traumatic experiences may parallel adult responses, including avoidance of reminders of traumatic events, flashbacks, sleep disturbance (including nightmares and fears of falling asleep), depression, anxiety and belligerence. These responses lead to problems such as chronic irritability, anger, anxiety and an inability to manage aggression, problems with relationships, conduct disorder and substance abuse. Many developmental and psychological diagnoses, such as attention deficit hyperactivity disorder and conduct disorder, may also be related to a history of traumatic experiences; including exposure and experience of being subjected to family violence.

Many biological and psychosocial changes occur in a relatively short period of time in the adolescent years. These changes happen at different rates, meaning that adolescents are physically able to engage in behaviours before they may be able to fully comprehend the meaning or consequences of such behaviours. This mismatch of biological and psychosocial transitions also occurs at a time when society and culture are having a significant impact on young people’s lifestyles, attitudes and expectations.

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However, the common and longstanding myth regarding adolescence as a difficult and problematic period is not consistent with current research. In every situation, it is important to focus on the individual strengths and resilience of most adolescents, while not minimising indicators of distress and trauma.

The Royal Commission proposed the following principles to guide responses to adolescents who use violence in the family:

- There is a need to raise awareness about adolescent violence in the community, along with easy to find information about the options and services available.
- Adolescent violence in the home should be recognised as different from adult-perpetrated family violence.
- Involvement with the criminal justice system should be a last resort and therapeutic responses should be adopted.
- Responses should be flexible and tailored to the particular circumstances of each family.
- There is a need for an immediate response so that young people understand the consequences of their actions and family members can be protected.
- Removal of the young person from the home should be avoided as much as possible.
- Improvements to the justice system need to be made so that greater use can be made of diversionary and restorative options when the family wants this.\(^5\)

**Case Study – Sharing information about a young person who is committing family violence**

Debbie lives with her children Jordan (16 years old), Jasmine (8 years old) and Bentley (3 years). The children’s father Emilio committed verbal and physical violence against Debbie, Jordan and Jasmine for many years. When Bentley was born, Debbie left the relationship with Emilio and moved back to Victoria. For the last 12 months, Debbie has noticed that Jordan has been emulating Emilio’s past aggressive, possessive and controlling behaviour against Debbie and the other children. This has recently resulted in Jordan physically assaulting Debbie and Jasmine on numerous occasions. The latest incident resulted in a neighbour calling the Police. As a result, Police take out an intervention order against Jordan naming Debbie, Jasmine and Bentley as protected persons which allows Jordan to reside in the family home but prohibits him from committing any form of family violence.

Debbie wants to seek therapeutic treatment for Jordan as she is particularly concerned about the escalating violence and the risk that Jordan poses to his younger siblings Jasmine and Bentley. Debbie is isolated with limited family support and is desperate to keep the family together with Jordan in the family home. Debbie makes contact with a specialist family violence service for assistance and support in how to manage Jordan’s increasingly violent behaviour. The specialist service seeks Debbie’s consent to share information about the family with a local therapeutic treatment provider to assist in a referral for Jordan. Jordan agrees to attend the service. A referral to Child FIRST is also made to support the family, in particular, the younger children that have been exposed to Jordan’s behaviour.

Even though in these circumstances the ISE determined it was appropriate to seek consent from Debbie, given that a risk is posed to Jasmine and Bentley, it is important to note that under Part 5A, information about any person (including Debbie, Jordan, Emilio, Jasmine and Bentley) can be shared without consent if it is relevant to assessing and managing risk for Jasmine and Bentley.

If the circumstances were different and Jordan did not have any other siblings, information about Jordan (as a person posing a risk of committing family violence) could still be shared without consent. However, as information would be shared in order to manage the risk of family violence to an adult victim survivor, any information about Debbie (as the adult victim survivor) and Emilio (being a third

\(^5\) Royal Commission into Family Violence (2016) *Report and Recommendations* chap 23 p 166
Case Study – Sharing information about a young person who is committing family violence

party because he no longer poses a risk of committing family violence given that he has no contact with the family) could only be shared if they consented unless it was determined that there was a serious threat.

What are the consent requirements when sharing information in respect of a young person who is both a victim survivor of family violence and who is at risk of committing family violence?

Where a young person is at risk of being subjected to family violence and is at risk of committing family violence, Part 5A permits information to be shared about that young person without consent.

If sharing information for the purpose of assessing and managing risk of a young person being subjected to family violence, whilst consent is not required under Part 5A, ISEs should consider the matters outlined in Chapter 8 on page 58, in particular, when it may be appropriate to seek the views of the young person or the non-offending parent.

If sharing information for the purpose of assessing and managing risk of a young person committing family violence, ISEs are not required to obtain consent from the young person prior to sharing their information (see Chapter 7 on page 49). It is however important that ISEs share information in a way that does not stigmatise or further isolate the young person. If the young person becomes further stigmatised or isolated, it can lead not only to adverse outcomes for that young person but can also increase the risk of further family violence. Information should be shared in a way that supports the therapeutic needs of the young person.

What are the consent requirements where a young person is at risk of committing family violence against a family member who is a child?

Where a young person is at risk of committing family violence against a family member who is a child, Part 5A permits information to be shared about the following people without consent:

- the child victim survivor
- the young person who is at risk of committing family violence
- any other relevant third party (including a non-offending parent) if their information is relevant to assessing and managing the risk to the child victim survivor.

What are the consent requirements where a young person is at risk of committing family violence against an adult family member?

Where a young person is at risk of committing family violence against a family member who is an adult, Part 5A permits information to be shared about:

- the adult victim survivor with their consent unless there is a serious threat (see further discussion at Chapter 7 on page 49)
- the young person who is at risk of committing family violence without consent
- any other relevant third party with their consent unless there is a serious threat (see further discussion at Chapter 7 on page 49).

Family violence information sharing guidelines
Young persons that are engaging in sexually abusive behaviours against a family member

In cases of young people with sexually abusive behaviours, the families themselves may contact an ISE seeking assistance. Where this occurs, it is important that the ISE acknowledges that the family has initiated contact and to engage with them respectfully and without blame. Some families may only require a referral to a specialist therapeutic treatment provider, while others may warrant reports to Police in instances where a crime may have been committed. However, it may be that the sexually abusive behaviours manifest as a consequence of family problems or because the young person is experiencing abuse and/or neglect. Equally, it should be noted that young people from nurturing and protective families can develop sexually abusive behaviours and this may be an indicator of extra-familial sexual abuse experiences or other issues that the young person has not yet been able to disclose.  

Although there are no agreed causal factors in regards to young people that engage in sexually abusive behaviours against family members, there are four dominant risk factors which are:

- being a witness to, or being directly exposed to family violence
- chronic, long-term neglect (cumulative harm)
- inappropriately witnessing sexual activity
- being a victim survivor of sexual abuse.

Research illustrates that young people that seek therapeutic treatment for sexually abusive behaviours have low rates of recidivism. It is therefore vital that these behaviours are identified early and therapeutic treatment is sought.

Part 5A authorises ISEs to share information in circumstances where a young person is engaging in, or is at risk of engaging in, sexually abusive behaviours against a family member.

Further resources

Further information on engaging with young people who use violence is contained in:


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6 Department of Human Services (2012) Adolescents with sexually abusive behaviours and their families – Best interests case practice model specialist practice resource, p 6

7 Department of Human Services (2012) Adolescents with sexually abusive behaviours and their families – Best interests case practice model specialist practice resource, p 12

8 Department of Human Services (2012) Adolescents with sexually abusive behaviours and their families – Best interests case practice model specialist practice resource, p 14
Chapter 12: Record keeping and information management

This Chapter provides information on how ISEs should record and manage information.

**What information needs to be recorded?**

Where an ISE discloses confidential information about a victim survivor, perpetrator, alleged perpetrator or third party, ISEs must make a record of:

- who requested the information, what was requested and the date of the request (if the disclosure was made in response to a request)
- what information was disclosed and the date it was disclosed
- a copy of the information shared or, if shared verbally, a record of the information shared
- who the information was disclosed to.

**Additional requirements when sharing adult victim survivor information and third party information**

Where an ISE is sharing information about an adult victim survivor or third party and consent is required, the ISE must also keep a written record of such consent (either by the victim survivor or third party if in writing or recorded by the ISE if given verbally).

If an ISE is sharing information about an adult victim survivor or third party without their consent, the ISE must record:

- the reason why consent was not obtained
- whether the victim survivor or third party were informed that their information would be shared without their consent
- if information was shared without informing the victim survivor or third party, the reason why.

ISEs must also keep a written record of any risk assessment or safety plan that is developed for the victim survivor.

**Additional requirements when sharing information about a child victim survivor**

Where an ISE is sharing information about a child victim survivor, the ISE must also record whether or not it sought and obtained the views of the child or any parent of the child who is not a perpetrator.

If an ISE is sharing information contrary to the views of the child or the parent of the child who is not a perpetrator, the ISE must record:

- the reason why information was shared contrary to these views
- whether the child or parent were informed that information would be disclosed contrary to their views
- if information was shared without informing the child or parent, the reason why.

ISEs must also keep a written record of any risk assessment or safety plan that is developed for a child victim survivor, and include whether a safety plan is in place for any other members of the child’s family who are at risk of family violence.
How does law enforcement information need to be handled?

Part 5A does not replace or override existing laws and standards in relation to protective data security and law enforcement data security. ISEs must continue to comply with any applicable requirements that already apply to that organisation.

In particular, any ISE that is an agency or body to which Part 4 of the PDP Act applies (e.g. a Victorian government department or special body) must continue to comply with any applicable Protective Data Security Standards issued by the Office of the Victorian Information Commissioner. Those agencies or bodies should ensure that any significant changes in their operating environment or security risks as a result of information sharing under Part 5A are taken into account in reviewing any Protective Data Security Plan prepared under section 89 of the PDP Act.

Any ISE that is a contracted service provider of a Victorian government department or agency should ensure that it also complies with any applicable Protective Data Security Standards issued by the Office of the Victorian Information Commissioner, having regard to any Protective Data Security Plan prepared by the department and any applicable departmental policies or requirements relating to data security.

Victoria Police and the Crime Statistics Agency should continue to comply with any Law Enforcement Data Security Standards (including the Crime Statistics Data Security Standards) issued by the Office of the Victorian Information Commissioner under Part 5 of the PDP Act.


How should information be protected?

ISEs are responsible for the protection of confidential information, including client files and any other records containing confidential information. ISEs must implement reasonable safeguards against loss or unauthorised access, use, modification or disclosure, and ensure that information is managed securely to avoid the risk of intentional or unintentional privacy breaches.

For more information on protecting information see the former Commissioner for Privacy and Data Protection (2017) Guidelines to protecting the security of personal information: ‘Reasonable steps’ under Information Privacy Principle 4.1.

How should information be retained?

In Victoria records must be kept and disposed of in accordance with the retention and disposal authorities set by the Public Records Office Victoria. Current records authorities can be seen at Public Record Office Victoria website <http://prov.vic.gov.au>.

How should information be destroyed?

ISEs must destroy or permanently de-identify confidential information collected that is no longer required for its original purposes. This practice is subject to any other legal and record keeping requirements that ISEs are required to follow by their agency.9

Destruction of records must be irreversible. This means there is no reasonable risk of recovering or restoring the information.

ISEs must securely destroy hardcopy records such as paper files by shredding or using a secure disposal facility. It is not enough to put files into recycling bins. Similarly, all digital records stored in shared drives, databases or emails must also be destroyed. Destruction of digital records is different to the destruction of hardcopy records. Pressing ‘delete’ does not necessarily mean that the records are completely gone; while the link used to access them may be removed, they may still exist in a data store.

or on a server. The destruction of records must be such that there is no reasonable risk of the information being recovered.
Chapter 13: Access to and correction of information

This Chapter outlines the procedures ISEs should follow in relation to requests to access and correct information held by an ISE.

Victim survivor and third party information

Under Victorian privacy law, people have a right to access and correct their personal and health information held by an organisation, including where they have been misidentified as a perpetrator of family violence, provided they have supporting information. Victim survivors and third parties will continue to have this right under Part 5A. However, information held by the CIP is exempt – no victim survivor or third party will be able to access this information.

Generally, ISEs should ensure that in providing a person access to information about themselves (or to another who they have authority to represent) that there is no unreasonable impact on the privacy of other individuals. ISEs should therefore be careful to review their files and redact any information that relates to another person, including the perpetrator.

When information has been collected, used or disclosed under Part 5A, ISEs should be particularly careful about the potential impact on the safety of the victim survivor. If an ISE forms the belief that a victim survivor is being coerced by a perpetrator to access the information requested or that a third party is acting with the perpetrator, the ISE must take all reasonable steps to ensure that information about the perpetrator is not also accidentally disclosed with their information. This will require ISEs to review their files and redact information that relates to the perpetrator.

Whether access to information is provided or not, ISEs must take reasonable steps to correct any information that has been established to not be accurate, complete or up to date.

Perpetrator information

Under Victorian privacy law, perpetrators generally have a right to access their personal and health information held by an ISE. However, ISEs have the right to refuse a perpetrator’s (or alleged perpetrator’s) access to information if the ISE reasonably believes that giving access would increase risk to the victim survivor from family violence. This ensures victim survivors will not be unduly exposed to increased risk from perpetrators accessing information shared under Part 5A. Perpetrators also cannot access their child victim’s information if this information would increase the level of risk to a victim survivor or child.

Perpetrator information held by the CIP is not able to be accessed at all. This is because the CIP is only a conduit for information held by other ISEs that will be better placed to determine whether or not granting access to information for a particular individual could increase the risk of harm to an adult victim survivor.

Whether access to information is provided or not, ISEs must take reasonable steps, in accordance with their existing obligations under privacy legislation, to correct any information that has been established to not be accurate, complete or up to date.

Any release of information should be documented in the ISE’s records.

Correcting Information

If an ISE becomes aware that their recorded information about any person is incorrect, that ISE must take reasonable steps to correct that information. This applies whether information is recorded about a victim, perpetrator or third party.
Access to information under freedom of information law

Every person has the right to seek access to documents held by government ISEs. However, an ISE is able to refuse access to a document when doing so would increase the risk to a victim survivor’s safety from family violence.

In notifying a person of its decision under the FOI Act, the relevant agency or Minister is not required to confirm or deny the existence of any document if doing so would increase the risk to a victim survivor’s safety from family violence.

Documents in the possession of the CIP are exempt from FOI, to the extent that they would disclose personal or health information (or a unique identifier) about a victim survivor, a perpetrator or a relevant third party.
Chapter 14: Offences, complaints and good faith defence

This Chapter outlines the possible consequences for sharing information inappropriately and the processes for dealing with complaints that may arise from information sharing under Part 5A.

This Chapter also sets out the protection from liability that is available to individuals who share in good faith and with reasonable care.

Key points:

- Individuals will be protected if they acted in good faith and with reasonable care. Therefore, if a person acts in good faith and with reasonable care when sharing information under Part 5A, they will not:
  - be held liable for any criminal, civil or disciplinary action for providing the information
  - have breached any code of professional ethics or to have departed from any accepted standards of professional conduct.
- This protection from liability applies only to individuals and does not protect organisations.
- Complaints may be made directly to an ISE or through existing complaints mechanisms under privacy laws.

Offences

Offences apply where information is shared in ways that are not permitted by Part 5A or another law. For example, there are offences under Part 5A for sharing information for purposes other than to assess and manage family violence risks where the use or disclosure of information is unauthorised or is intentional or reckless.

- Penalties for the offence of unauthorised use or disclosure include a fine of 60 penalty units for a person or 300 penalty units for a body corporate.
- Penalties for intentional or reckless unauthorised use or disclosure include imprisonment of up to 5 years and/or a fine of 600 penalty units for an individual or a fine of 3000 penalty units for a body corporate.

Offences and complaints provisions will not apply to victim survivors who have been provided with information by ISEs under Part 5A for a family violence protection purpose. However, victim survivors will still be subject to offences under other laws as well as actions for defamation.

Other offences that will apply include any applicable Commonwealth offences and those in relation to secrecy and confidentially provisions that continue to apply (refer to Chapter 2 on page 21).

ISEs are not prevented from using or disclosing information as required or authorised by another law, including information that is obtained under Part 5A. For example, Victoria Police will not be prevented from using information shared under Part 5A for relevant law enforcement purposes, including the prosecution of offences.

Individuals will be protected if they acted in good faith and with reasonable care. Therefore, if a person acts in good faith and with reasonable care when sharing information under Part 5A, they will not be held:

- liable for any criminal, civil or disciplinary action for providing the information
- to have breached any code of professional ethics or to have departed from any accepted standards of professional conduct.
This protection from liability applies only to individuals and does not protect organisations.

### Case Studies – demonstrating good faith and reasonable care

**Emre** works for an ISE. He is friends with Anna who has alleged that her partner Gary has perpetrated family violence against her. Emre uses his position as an employee of an ISE to request information about Gary (although his ISE is not working with Anna). He finds out that Gary was convicted of child sex offences 20 years ago and decides to share this information with Anna, even though the information would not be relevant to managing her safety, as neither Anna or Gary have children and the offences are historical.

Emre accessed and shared this information deliberately and without regard to the requirements for sharing information under Part 5A. In these circumstances, Emre may be charged with an offence and is likely to have difficulty in demonstrating that he acted in good faith and with reasonable care.

**Adut** is the family violence case worker for Sadja and her three children. Sadja recently left Aziz because of this violent behaviour. Aziz continues to have contact with the children with Sadja’s agreement. At the same time, Adut is informed that an interim personal safety intervention order has been taken out against Aziz by another person in relation to allegations of violent threats toward that person.

Adut shares this information with Sadja to assist her to manage the safety of their children. In deciding to share this information, Adut carefully considered the requirements of Part 5A and shared the information in a de-identified way with regard to the person who applied for the intervention order. Adut makes it clear to Sadja that she cannot on-share this information unless it will assist her to manage the safety of her or her children. Despite this, Sadja makes a Facebook post about the allegations against Aziz, damaging his reputation. Later, it is established that the allegations were incorrect.

Adut has acted within the requirements of Part 5A. The offences are therefore unlikely to apply. However, even if Adut were to be charged with an offence, she is likely to be able to rely on the good faith defence to protect her from liability.

### Complaints

Complaints procedures will have different requirements depending on whether the ISE is bound by Victorian or Commonwealth privacy laws.

While individuals are protected from liability when sharing information in good faith and with reasonable care, organisations may still be held to account for privacy breaches through complaints made under existing state and Commonwealth privacy laws. ISEs should therefore have policies in place aimed at protecting against unnecessary breaches of privacy.

Complaints may be made to the Office of the Victorian Information Commissioner or the Health Complaints Commissioner (HCC) in relation to any interference with privacy as a result of information sharing under Part 5A. For organisations that are subject to national privacy laws, complaints may also be made to the Office of the Australian Information Commissioner (OAIC). The Commissioners may investigate and issue compliance notices to ISEs for serious or flagrant privacy breaches.

### Complaints to ISEs

In the first instance, complaints about a breach of a person’s privacy should be made directly to the ISE. All ISEs should have procedures in place for dealing with complaints and should make these available.

When receiving a complaint, the ISE should assess the complaint against state or Commonwealth privacy laws (whichever applies).

It is effective practice to inform the complainant of the ISE’s findings and their proposed response within 30 days of the complaint being made.
Making complaints when state privacy laws apply

If an ISE has not responded to a complaint within 30 days or the complainant is not satisfied with the ISE’s response, then a complaint may be made to the Office of the Victorian Information Commissioner (OVIC) or the HCC.

Complaints should be made to:

• OVIC when personal information is being collected, held or used by Victorian government ISEs and other non-government entities that provide services on behalf of the Victorian government or when neither the HR Act or the Commonwealth Privacy Act are applicable
• the HCC when the ISE collects, holds or uses health information.

The OVIC or HCC can investigate the complaint, attempt to resolve the complaint through conciliation processes and issue compliance notices for serious or flagrant privacy breaches arising from disclosures made under Part 5A. Civil penalties may also be sought against organisations for serious breaches.

For further information about complaints to OVIC, please refer to the Commissioner’s website <http://www.ovic.vic.gov.au>.

For further information about complaints to the HCC, please refer to the Commissioner’s website <https://hcc.vic.gov.au>.

Making complaints when Commonwealth privacy law applies

ISEs covered by the Commonwealth Privacy Act (such as when an ISE’s turnover exceeds $3 million per year) are able to share lawfully in accordance with Part 5A but must otherwise continue to meet their obligations under the Commonwealth Act.

Any person whose privacy is unlawfully interfered with under that Act may make a complaint to the Office of the Australian Information Commissioner (OAIC). According to their current practice, the OAIC may agree to consider that complaint if an ISE has not responded to a complaint within 30 days or the complainant is not satisfied with the response to the complaint.

If the OAIC chooses to investigate a complaint and conciliation processes do not successfully resolve the complaint, then the Australian Information Commissioner can issue a determination and, for serious breaches, seek a civil penalty.

For further information about complaints to the OAIC, please refer to the Commissioner’s website <http://www.oaic.gov.au>.

Disclosure of information to investigate complaints

ISEs may be required to disclose information to the Australian Information Commissioner, the Office of the Victorian Information Commissioner or the Health Complaints Commissioner to assist investigation or response to the complaint.

Record keeping

ISEs should keep records of complaints made to them. The recorded information should include:

• date of complaint
• the nature of the complaint and relevant details
• action that was taken by the ISE to resolve the complaint
• action that has been taken to lessen or prevent the risk of further breaches
• the time taken to resolve the complaint
• whether the complaint was resolved by the ISE and what (if any) further action was taken.
Possible outcomes

If a particular ISE has been identified through the complaints process or as part of the evaluation of the operation of Part 5A as sharing information in an irresponsible or inappropriate manner, the regulation making power enables that entity to be removed as an ISE.
Appendix A:
Information sharing process checklist when making a request

When making a request for information under Part 5A, you should make sure:

- That you are prescribed as an ISE and whether your ISE is authorised to share for that purpose.
  - Check the regulations to make sure you are a prescribed ISE and whether you are a risk assessment entity that can share for a family violence assessment purpose.
- The service you are requesting information from is a prescribed ISE.
  - Check the regulations and make sure they are prescribed as an ISE.
  - Ensure you are speaking with someone suitably trained to use Part 5A.
  - If you do not have an existing relationship with the ISE you are requesting information from, you may need to verify who you are (e.g. by sending an email from your entities’ official account).
- Your information request is for a permitted purpose under Part 5A – namely, either for:
  (c) A family violence risk assessment purpose OR
    - If you are not specifically prescribed as a risk assessment entity, you are not permitted to request and receive information for a family violence risk assessment purpose. Information sharing at this stage is about fact finding at the early stages when little might be factually known to inform the risk assessment. The focus of information sharing will be on identifying who the ‘actual’ perpetrator and victim survivor are and establishing level of risk the perpetrator poses to the victim survivor.
  (d) A family violence risk protection purpose
    - Any prescribed information sharing entity (whether risk assessment or protection) is permitted to request and receive information for a family violence risk protection purpose. The focus of information sharing at this stage is about managing the risk of the perpetrator committing family violence or the victim survivor being subjected to family violence, which could include information sharing as part of ongoing risk assessment. The key difference is that the identity of the perpetrator and victim survivor would have already been established at this stage, with an initial risk assessment undertaken.
- You provide sufficient information to the organisation you are requesting information from to help them identify what information they hold that might be relevant and whether they should disclose that information.
  - Don’t engage in a ‘fishing’ expedition. Clearly identify the purpose of your call or email and why you believe they may hold relevant information, being mindful not to over-share information where this is not necessary.
  - Precedence should always be given to a victim survivor’s right to be safe from family violence when discussing relevant information.
- You have documented the service you contacted and worker you spoke with.
- You have documented the information that was disclosed.
☐ You have documented any risk assessment or safety plan that has been made as a result of the information sharing.

☐ You only use the information for a family violence risk assessment or risk management purpose.

☐ If your information request is refused, request this refusal in writing and keep this refusal on file.
Appendix B:  
Information sharing process checklist when responding to a request

When responding to an information request, you should:

- Make sure the person requesting information is from a prescribed ISE.
  - Check the regulations and make sure they are prescribed as an information sharing entity.
  - If you don’t have an existing relationship with the person requesting the information, you should verify that they are who they say (e.g. by asking them to send you an email from their official work account).

- Make sure their request for information is for a permitted purpose under Part 5A – namely:
  (e) If the information is being requested for a family violence risk assessment purpose OR
    - Only specifically prescribed risk assessment entities can request and receive information for a family violence risk assessment purpose. Therefore, confirm that the person requesting information is specifically prescribed as a risk assessment entity.
    - Refer to the Framework to assess what information is relevant and share in line with your professional judgement.
    - Ensure that you share information in a way that does not place victim survivor at further risk of harm.
  (f) If the information is being requested for a family violence protection purpose
    - Any prescribed information sharing entity (whether risk assessment or protection) is permitted to request and receive information for a family violence protection purpose.
    - You must reasonably believe that the disclosure of the relevant information is necessary for a family violence protection purpose. Refer to the Framework to assess what information is relevant and share in line with your professional judgement.
    - Ensure that you share information in a way that does not place victim survivor at further risk of harm.

- Prior to sharing the relevant information, make sure the information is not excluded information or that sharing it would contravene another law:
  - Refer to the legislation and Family Violence Information Sharing Guidelines.
  - Speak to your manager if you are unsure or you want to verify what information should not be shared.

- Prior to sharing the relevant information, make sure you have obtained consent from the relevant person (if required by Part 5A):
  (g) When sharing information to assess or manage risk for an adult victim survivor of family violence, the following consent requirements apply.
    - Perpetrator consent is not required.
    - Consent from an adult victim survivor or third party is required unless you believe sharing the information is necessary to lessen or prevent a serious threat to an individual’s life, health, safety or welfare. Refer to the Framework to inform your assessment of threat or
risk level and exercise your professional judgement. Speak to your manager if you are unsure or you want to verify what information should not be shared.

- It is important that you have an upfront conversation with all clients at the point they engage with services about how their information might be shared under Part 5A, irrespective of consent.

(h) When sharing information to assess or manage risk for a child victim survivor of family violence, consent is not required from any person.

- It is important that you have an upfront conversation with all clients at the point they engage with services about how their information might be shared under Part 5A, irrespective of consent.
- Seek to promote the agency of the child and other family members at risk of family violence by taking into account their wishes where appropriate and plan for the safety of all family members at risk of family violence.
- If safe to do so, notify the child and other family members at risk of family violence that their information has been shared under Part 5A.

**Remember**

If you think that a perpetrator or victim survivor has been misidentified, you should only share information consistent with Part 5A and the applicable consent thresholds. If you believe someone is a victim survivor (and not a perpetrator), you must seek their consent first unless there is serious threat or information is relevant to assessing or managing risk to a child victim survivor.

- Document the entity that requested the information and the worker you spoke with.
- Document the information that was shared and either consent was obtained or the reason for sharing without consent.
- If you refuse to share the information because it was exempt or applicable consent thresholds were not met, set out reasons for refusal in writing and provide this to the requesting ISE.
- Document the method of sharing, and if sent through email, whether encryption was used.

**Remember**

At any stage if you are concerned or uncertain about the information sharing process, speak to your manager for guidance prior to making any decisions.
Appendix C: 
Information sharing consent form (for adult victim survivors only)

Part 5A of the Family Violence Protection Act 2008 provides a clear legislative basis for prescribed information sharing entities to request and share information to assess and manage family violence risks.

Information sharing entities play a role in responding to family violence and include Victoria Police and specialist family violence services.

Why is information sharing important?
Sharing information is important so relevant services can work better to keep perpetrators in view and keep you (and if applicable your children) safe. Information will only be shared where it is necessary to assess and manage the risks of family violence.

Why am I being asked to fill out this consent form?
Because we have concerns for your safety, we would like your consent to share confidential information about you with other information sharing entities for the purpose of assessing your risk, or for the purpose of managing your ongoing safety.

Please note in cases of serious threat or where your information is linked to assessing and/or managing the family violence risk to a child victim survivor, the law permits information to be shared about any person without consent. Where possible and safe to do so, you will be informed about any disclosure of your information to other information sharing entities. Your views and wishes will also be taken into account where possible.

By signing this consent form, you are giving permission for your information to be shared with other information sharing entities for the purposes of assessing and managing family violence risks.

Your information will not be shared with the perpetrator of family violence and it will be held securely by the relevant information sharing entity. You have the right to withdraw your consent at any time.

Name: ……………………………….. DOB: ………………… Address: ………………………………………..

I ………………………………………………. (name) consent to the collection, use and sharing of my personal information under Part 5A of the Family Violence Protection Act 2008. I understand that my information may be shared without consent if there is a serious threat to myself or another individual’s life, health, safety or welfare. I also understand that my information may be shared without consent if it is relevant for assessing or managing risks to a child victim survivor of family violence.

Signature …………………………………………… Date ………………………………..

Name (print) ……………………………………………

Worker Signature …………………………………………… Date ………………………………..

Worker (print) ……………………………………………

Verbal Consent obtained □ ……………………………….. Date ………………………………..
Appendix D: Your Information and Your Safety Fact Sheet

**YOUR INFORMATION**

- Sharing relevant information can be critical to managing your safety.
- Information sharing procedures will be explained to you and your consent will be sought when engaging with relevant services.
- Generally, your information will not be shared without your consent. But if there is a serious threat to your life, health safety or welfare, your information may be shared without your consent to lessen or prevent this serious threat.
- Your information may also be shared without consent if this information is inextricably linked to a child victim survivor of family violence and it is necessary to assess or manage family violence risk to that child.
- If your information is shared without your consent, it will be done so in a manner that promotes your safety and takes into account your views, where appropriate, safe and reasonable.
- When appropriate, you will be notified about your information being shared.
- You maintain the right to access any information held about you. If you think any information held about you is incorrect, you can ask to look at your file and ask for your information to be corrected.
- If you believe your privacy has been unlawfully interfered with as a result of information sharing, you may make a complaint to the Office of the Victorian Information Commissioner or the Health Complaints Commissioner, as applicable.
- Your information is strictly confidential and will only be shared with prescribed services that are bound by law to keep it secure.
- Your information will **NEVER** be shared with the perpetrator of family violence under the scheme.

**INFORMATION SHARED WITH YOU**

- An organisation may share information with you about the perpetrator of family violence to assist you manage your own safety or that of your children.
- You are **NOT** permitted to use the information provided to you for any purpose other than managing your safety.
- Do not share the information you receive with third parties, on social media, or in any other way that is unrelated to managing your safety.
- Information can be shared with members of your safety management network as required, but only as it relates to implementing your relevant safety plans. If information is provided to a third party, you must inform the third party that the information can only be used to manage your safety or that of your children.