

# FAMILY VIOLENCE INFORMATION SHARING GUIDELINES

Guidance for  
Information Sharing Entities





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In this document, 'Aboriginal' refers to both Aboriginal and Torres Strait Islander people.

The Victorian Government proudly acknowledges Victorian Aboriginal people as the first peoples and Traditional Owners and custodians of the land and water on which we rely. We acknowledge and respect that Aboriginal communities are steeped in traditions and customs built on an incredibly disciplined social and cultural order. The social and cultural order has sustained up to 50,000 years of existence. We acknowledge the ongoing leadership role of the Aboriginal community in addressing, and preventing family violence and join with our First Peoples to eliminate family violence from all communities.

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# EXECUTIVE SUMMARY

Part 5A of the *Family Violence Protection Act 2008* (FVPA) establishes the Family Violence Information Sharing Scheme (the Scheme). The Scheme authorises the sharing of information to assess or manage risk of family violence.

The Scheme aims to create a cultural shift in information sharing practice to support effective assessment and management of family violence risk.

Through enabling the timely sharing of relevant information, the Scheme will support information sharing entities (ISEs) to keep perpetrators in view and promote the safety of victim survivors of family violence.

ISEs are prescribed through Regulations and will be authorised to share information with other ISEs. These ISEs will include specialist family violence services, child and family services, child protection, sexual assault services, corrections, victims' services, Magistrates Court and Children's Court, the police, mental health services, housing and homelessness services, alcohol and other drug services and Maternal and Child Health.


Only information that is relevant to assessing or managing risk of family violence is authorised to be shared between ISEs. Some exceptions apply and are discussed in further detail in these Guidelines.

Relevant information about a person (adult or child) who is a victim survivor, alleged perpetrator or perpetrator, or a third party can be shared. There is no requirement to obtain consent from an alleged perpetrator and perpetrator, allowing ISEs access to vital, risk-relevant information. This shifts the focus from victim survivor's being responsible for their own safety to the accountability of the service system in managing victim safety and holding perpetrators to account.

Relevant information about adult victim survivors and third parties can only be shared with their consent, except when there is a serious threat, or the information is relevant to assessing or managing risk to a child victim survivor.


Information about any relevant person can be shared without consent to assess or manage risk to a child victim survivor. However the views of the child and parent who is not a perpetrator should be sought and taken into account where it is appropriate, safe and reasonable to do so. This places primacy on a child's safety over any individual's privacy.

ISEs can share information under the Scheme for two purposes — a family violence assessment purpose and a family violence protection purpose. The assessment purpose allows a greater breadth of information to be sought in order to establish if family violence risk is present.



Nothing in the Scheme is intended to prevent an ISE from collecting, using or disclosing information where it is already allowed under another Act.

These Guidelines specify that it is expected that those persons authorised by an ISE to request or share information under Part 5A should be trained in and refer to the Family Violence Multi Agency Risk Assessment and Management Framework (the [MARAM Framework](#)) or tools or programs aligned to it, or other recognised family violence risk assessment frameworks.



These Guidelines have been revised since they were originally published. Updates in this version include reference to the new Child Information Sharing Scheme and inclusion of additional prescribed ISEs.

# INTRODUCTION

The Royal Commission into Family Violence (the Royal Commission) found that effective and appropriate sharing of information is crucial in keeping victim survivors safe and holding perpetrators to account. The Royal Commission also identified a number of barriers that exist in Victoria that prevent effective information sharing and the potentially catastrophic consequences of not sharing information. The Victorian Government has adopted the Royal Commission's recommendation and is implementing a new family violence specific information sharing scheme in Victoria.

The Family Violence Information Sharing Scheme (the Scheme) is created through the new Part 5A of the *Family Violence Protection Act 2008* (FVPA). The Scheme aims to create a cultural shift in information sharing practice through change to the authorising environment. The aim of this shift is to support effective and enhanced assessment and management of family violence risk through information sharing between prescribed entities.

These Family Violence Information Sharing Guidelines (Guidelines) explain how to share information under Part 5A of the FVPA. ISEs may share information in accordance with Part 5A about family violence perpetrators and alleged perpetrators, adult and child victim survivors and third parties that is relevant to assessing and managing family violence risk. ISEs must comply with these Guidelines when sharing information.

There are two main purposes for the Scheme's broadening of the authorised information sharing environment:

- to ensure the safety and protection of those experiencing family violence;
- and to hold perpetrators to account.

A new Child Information Sharing scheme (CIS scheme) established by the *Child Wellbeing and Safety Act 2005* commences on 27 September 2018. ISEs must also consider whether information held by the ISE should be shared to promote the broader wellbeing or safety of a child under the CIS scheme. Chapter 4 of the [Child Information Sharing Guidelines](#) provides further information on sharing information to promote child wellbeing and safety in the context of family violence.

In the context of family violence, information sharing entities must use the [MARAM Framework](#) to guide:

- information sharing under the Family Violence Information Sharing Scheme to identify, assess and manage family violence risk to children and adults; and
- information sharing under the Child Information Sharing Scheme to promote the wellbeing or safety of children more broadly, supported by relevant best interests and developmental frameworks.

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

- **Safety first** — ISEs should give precedence to ensuring a victim survivor is safe from family violence when considering a perpetrator’s privacy
- **Proportionality** — ISEs should only share relevant information to the extent that is necessary to assess and manage family violence risk
- **Collaboration** — ISEs should coordinate services for the purpose of risk assessment and risk management in a manner that respects the functions and expertise of each prescribed entity
- **Agency** — 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.

The Royal Commission recognised that the causes of family violence are complex, and include gender inequality and community attitudes towards women. In Victoria, family violence is the most pervasive form of violence perpetrated against women. While both men and women can be perpetrators or victim survivors of family violence, overwhelmingly the majority of perpetrators are men and victim survivors are women and children. Contributing factors may include financial pressures, alcohol and drug abuse, mental illness and social and economic exclusion.

Further, for Aboriginal people family violence is compounded by discrimination and trauma associated with historical and ongoing injustices. Practitioners who are authorised to share under Part 5A must be aware that unconscious bias and prejudice often factor into professional judgements and therefore work to ensure all decisions made in relation to Part 5A are non-discriminatory. See [Chapter 7](#) on page 84 for more information.

## Who is covered by the Guidelines

These Guidelines have been issued under Part 5A of the FVPA.

All entities prescribed as ISEs in the Family Violence Protection (Information Sharing and Risk Management) Regulations 2018 (the Regulations) must comply with these Guidelines when requesting or sharing information under Part 5A of the FVPA. Courts and tribunals’ participation in the Scheme is voluntary.

ISEs are organisations and services that provide services and support to victim survivors and perpetrators in response to family violence, including both specialist and universal services.

Further information on ISEs can be found in [Chapter 2](#) on page 36.

### Remember

It is expected that persons authorised to request or share information under Part 5A should be trained in and refer to the [MARAM Framework](#) or policies, tools or programs aligned to it, or other recognised family violence risk assessment frameworks.

## What is the legal status of these Guidelines?

These Guidelines, which are issued by the responsible Minister under Part 5A of the FVPA, are legally binding and apply to all ISEs. Participation by courts and tribunals in the Scheme is voluntary.

ISEs must adopt the provisions and standards set out in these Guidelines to share information under Part 5A.

ISEs are responsible for ensuring that their internal policies and practices are consistent with Part 5A and these Guidelines prior to prescription under the Scheme. The Guidelines will be revised periodically and services must ensure that they comply with the most current version.

Failure to comply with the Guidelines may be taken into consideration when issuing state contracts and in privacy complaints.

Further, this may be taken into account in legal processes such as the review of any administrative decisions made under the FVPA and privacy complaints.

## How to use these Guidelines

These Guidelines provide direction to ISEs on how to apply Part 5A.

They also include guidance for ISEs on internal policies, systems and practices to ensure that information is shared appropriately and responsibly.

The Guidelines are in addition to ISEs' existing obligations, including under the *Children, Youth and Families Act 2005* (Vic), *Privacy and Data Protection Act 2014* (Vic), the *Health Records Act 2001* (Vic) and the *Privacy Act 1988* (Cth), as applicable.

The Guidelines will be complemented by additional tools and guidance for practitioners within particular workforces.

## Terminology used in these Guidelines

In line with the Royal Commission, this document refers to **victim survivor** and **perpetrator** in recognition that these are the terms most widely used in the community. The term victim survivor refers to both **adults and children**.

Some ISEs or professionals may identify with or use different terms as language depends on context, including the age of the person being spoken with or about, the service setting and who is present.

For adolescents, the term **adolescent who uses violence** is used. This reflects that this is a form of family violence requiring distinct responses, given the age of the young person and their concurrent safety and developmental needs, as well as common co-occurrence of past or current experience of family violence by the adolescent from other family members

It is recognised that in practice, professionals and services will use the language that works for their service users in place of terms such as perpetrator and victim survivor. Recognised variations from this language include:

- Different parts of the system may use specific terms. For example, Courts and Victoria Police use terms such as applicant or Affected Family Member (AFM), and respondent
- Aboriginal people and communities that may prefer to use the term 'people who use violence'
- An older person who is experiencing family violence is often described as experiencing 'elder abuse'
- During behaviour change activity, it is common to use **person using (or choosing) to use violence**.

# DEFINITIONS AND ACRONYMS

<b>Alleged perpetrator</b>	A person who is 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 (see <a href="#">Chapter 3</a> on page 42 for more information on alleged perpetrators).
<b>ACCO</b>	Aboriginal community-controlled organisations. Aboriginal community-controlled organisations are incorporated, not-for-profit organisations that are created and controlled by Aboriginal people.
<b>APPs</b>	The Australian Privacy Principles as set out in Schedule 1 of the <i>Privacy Act 1988</i> (Cth).
<b>CIP</b>	Central Information Point.
<b>CIS scheme</b>	Child Information Sharing scheme established under Part 6A of the <i>Child Wellbeing and Safety Act 2005</i> .
<b>Child</b>	As defined in Section 4 of the FVPA, a child means a person who is under the age of 18 years.
<b>CYFA</b>	<i>Children, Youth and Families Act 2005</i> (Vic).
<b>Collection notice</b>	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.
<b>Commonwealth Privacy Act</b>	<i>Privacy Act 1988</i> (Cth).
<b>Confidential information</b>	Health information, personal information (including sensitive information), unique identifiers or identifiers.
<b>Consent</b>	Permission for something to happen, or agreement to do something, after being provided all relevant information. Consent may be express or implied.
<b>Excluded information</b>	As defined in Section 144C of the FVPA. The list of excluded information is included in these Guidelines.

<b>Family violence</b>	<p>As defined in Section 5 of the FVPA to mean any behaviour towards a family member (which includes a domestic or intimate partner) that is physically, sexually, emotionally, psychologically or 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.</p> <p>In relation to children, family violence is also defined as behaviour by any person that causes a child to hear or witness or otherwise be exposed to the effects of the above behaviour.</p> <p>This definition includes violence within a broader family context, such as extended families, kinship networks and communities and other family-like relationships; for example, the relationship between a person with a disability and their carer if that relationship has over time come to approximate the type of relationship that would exist between family members.</p>
<b>Family violence assessment purpose</b>	As defined in Section 144A of 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.
<b>Family violence protection purpose</b>	As defined in Section 144A of 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).
<b>FOI Act</b>	<i>Freedom of Information Act 1982 (Vic).</i>
<b>FVIO</b>	Family Violence Intervention Order.
<b>FVPA</b>	<i>Family Violence Protection Act 2008 (Vic).</i>
<b>Guidelines</b>	The <i>Family Violence Information Sharing Guidelines</i> made under Part 5A of the FVPA.
<b>Handling</b>	As defined in Section 3 of the <i>Privacy and Data Protection Act 2014 (Vic).</i>
<b>HCC</b>	The Health Complaints Commissioner appointed under Section 111 of the <i>Health Complaints Act 2016 (Vic)</i> , to whom complaints can be made under Part 6 of the <i>Health Records Act 2001 (Vic)</i> .



<b>Health information</b>	As defined in Section 3(1) of the <i>Health Records Act 2001</i> (Vic) means: personal information (that is not exempt health information) that is information or an opinion about the physical, mental or psychological health (at any time) of an individual, a disability (at any time) of an individual, an individual's expressed wishes about the future provision of health services, a health service provided or to be provided to an individual; other personal information collected to provide, or in providing, a health service, other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances; other personal information that is genetic information about an individual in a form which is or could be predictive of the health (at any time) of the individual or of any of their descendants.
<b>HPPs</b>	The Health Privacy Principles set out in Schedule 1 to the <i>Health Records Act 2001</i> (Vic).
<b>Identifier</b>	As defined in Section 3(1) of the <i>Health Records Act 2001</i> (Vic), identifier means an identifier (which is usually, but need not be, a number and does not include an identifier that consists only of the individual's name) that is assigned to in conjunction with or in relation to the individual's health information by an organisation for the purpose of uniquely identifying that individual, whether or not it is subsequently used otherwise than in conjunction with or in relation to health information; or adopted, used or disclosed in conjunction with or in relation to the individual's health information by an organisation for the purpose of uniquely identifying that individual.
<b>IPPs</b>	The Information Privacy Principles set out in Schedule 1 to the <i>Privacy and Data Protection Act 2014</i> (Vic).
<b>ISE</b>	As defined in Section 144D of the FVPA to mean a person or body prescribed, or a class of person or body prescribed, to be an information sharing entity.
<b>MARAM Framework</b>	Family Violence Multi Agency Risk Assessment and Management Framework.
<b>Parent</b>	As defined in Section 4 of the FVPA to mean a person who has responsibility for the long-term welfare of the child and has, in relation to the child, all the parental powers, rights and duties that are vested by law or custom in the guardianship of a child and a person with whom the child normally or regularly resides.

<b>Perpetrator</b>	Has the same meaning as a 'person of concern' as defined in Section 144B of the FVPA. A person will therefore be a perpetrator if 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 MARAM Framework-aligned or recognised family violence risk assessment.
<b>Personal information</b>	As defined in Section 3 of the <i>Privacy and Data Protection Act 2014</i> (Vic), personal information means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which the <i>Health Records Act 2001</i> (Vic) applies.
<b>Reasonable belief</b>	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. <sup>1</sup>
<b>Regulations</b>	Family Violence Protection (Information Sharing) Regulations 2018 (Vic).
<b>Risk assessment entity</b>	An information sharing entity also prescribed to be a risk assessment entity (RAE). RAEs can request and receive information from any ISE for a family violence assessment or protection purpose, in response to, or from voluntary sharing by, another ISE.
<b>Royal Commission</b>	Victorian Royal Commission into Family Violence.
<b>Share</b>	Unless indicated otherwise, this term is used to refer to collecting, using and disclosing information.
<b>Sensitive information</b>	As defined in the <i>Information Privacy Principles of the Privacy and Data Protection Act 2014</i> (Vic) to mean personal information that is information or an opinion about an individual's racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record.
<b>Serious Threat</b>	Established through identifying indicators of family violence risk and undertaking risk assessment using a family violence MARAM Framework-based risk assessment

<sup>1</sup> See *George v Rockett* (1990) 170 CLR 104.

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**Third party**

Has the same meaning as a 'linked person' as defined in Section 144A of the FVPA, to mean 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).

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**Unique identifier**

As defined in the Information Privacy Principles to mean an identifier (usually a number) assigned by an organisation to an individual uniquely to identify that individual for the purposes of the operations of the organisation but does not include an identifier that consists only of the individual's name or an identifier within the meaning of the *Health Records Act 2001 (Vic)*.

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**Victim Survivor**

Has the same meaning as a 'primary person' as defined in Section 144E of the FVPA. A person will be a victim survivor if an information sharing entity reasonably believes there is risk that the person may be subjected to family violence. For clarity, the term victim survivor refers to both adult and child victim survivors.

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# CHAPTER 1

## Family Violence Information Sharing Scheme

This Chapter gives a broad overview of Part 5A of the FVPA, and how the Scheme set out under that Part works. [Figure 1:](#) on page 23 provides a one page overview of the key elements of the Scheme.



## Who does Part 5A apply to?

All ISEs must comply with Part 5A.

[Chapter 2](#) on page 36 has more detail on entities currently prescribed as ISEs.

## When can information be shared under Part 5A?

Under Part 5A, ISEs may request or share with other ISEs information about a person that is relevant to assessing or managing a family violence risk. The information may relate to a victim survivor (adult or child), alleged perpetrator/perpetrator or third party. Requests can be made in writing or verbally, although some services have preferences for operational reasons around how requests should be provided and how to make requests.

Where an ISE receives a request, it **must** share that information, either verbally or in writing, provided that the information meets the requirements of the Scheme. The onus is on the ISE sharing information to ensure that they are disclosing information about a person in accordance with the law. There is no restriction on an ISE making a request.

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

There are **two purposes** for which ISEs can share information with each other under Part 5A:

- to establish and assess risk (Family violence assessment purpose)
- to manage the risk, including through ongoing risk assessment (Family violence protection purpose).

All ISEs will be able to share information for a family violence **protection** purpose. ISEs that are also prescribed as risk assessment entities (RAEs) will also be able to share for a family violence **assessment** purpose (see [Chapter 2](#) on page 36 for more detail).

### Remember

Part 5A authorises and requires ISEs to request, collect, use and disclose relevant information to inform the assessment and management of family violence risk. It is important to note that initial and ongoing risk assessment, between a worker and a person who is a victim survivor or perpetrator of family violence, should continue to occur outside of the Scheme at any time where workers identify indicators of family violence risk even where information sharing is not occurring. This can occur regardless of an ISE's prescribed functions under Part 5A.

## Family violence assessment purpose

Information can be shared for a family violence assessment purpose. The primary focus is on establishing whether a risk of family violence is present, assessing the level of risk the alleged perpetrator or perpetrator poses to the victim survivor, and correctly identifying the parties as the perpetrator or victim survivor.

## Family violence protection purpose

Information can be shared for a family violence protection purpose, which 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. As risk is dynamic and can change over time, information can be shared for the purposes of ongoing risk assessment to monitor risk and escalation, as a key component of risk management. For example, any ISE, such as an alcohol and other drug service can request and share information from other ISEs to inform ongoing risk assessment that can assist to update risk management and safety plans with the victim survivor. This will be particularly important for victim survivors who are not directly engaged with specialist family violence services in an ongoing way, but may be engaged to respond at points of crisis or escalation and to provide other relevant support, as required.

### 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
- Refer to Appendix [A](#) on page 137 and [B](#) on page 138 for checklists that provide guidance on considerations that ISEs must take into account when making or responding to a request for information under the Scheme.

### Remember

ISEs should make sure that an organisation they are sharing information with is 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 before sharing information (e.g. by asking them to send an email from their official work account or by calling their switchboard at their organisation).

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

Any personal, health and sensitive information (including opinions), as well as identifiers and unique identifiers, that are **relevant** to assessing and/or managing family violence risk is permitted to be shared between ISEs provided that:

- the information is not excluded (see below)
- sharing the information does not contravene another law (see [Chapter 11](#) on page 116)
- applicable consent requirements have been met (see [Chapters 4](#) on page 54, [5](#) on page 64 and [9](#) on page 100).

Only information that is **relevant** to assessing or managing a risk of family violence can be shared under the Scheme. In determining what information is relevant, practitioners should use their professional judgement and refer to the MARAM [Framework](#).

Risk should be understood as both risk of harm to the victim survivor from past and present family violence incidents, and future risk of family violence occurring.

Information collected prior to the commencement of the Scheme, including historical information, can be shared provided that the information is relevant and any relevant consent thresholds have been met. Updated consent may be required if the consent originally provided was limited: for example, where consent was given for the information to be shared with an ISE's specific organisation only.

Information that has been obtained from a secondary source can be shared. However, ISEs are encouraged to seek information from the source that is likely to have the latest and most up-to-date information where possible.

### Remember

It is expected that persons authorised to request or share information under Part 5A should be trained in and refer to the MARAM [Framework](#) or tools or programs aligned to it, or other recognised family violence risk assessment frameworks.

Throughout these Guidelines, reference to the MARAM Framework also includes tools or programs aligned to it, or other recognised family violence risk assessment frameworks.

ISEs should refer to the MARAM [Framework](#) when exercising professional judgement on whether a particular circumstance is relevant to assessing and managing risk and consider, where possible, obtaining information from the primary source, in order to have the most up to date and relevant information.

### Remember

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



**Figure 1:**  
Overview of the Scheme



**CASE STUDY****Information not covered by the Scheme (not relevant to a family violence assessment or protection purpose)**

Li is a victim survivor of family violence who is attending counselling with Jemma at a local specialist family violence service.

At the same time, Li has also been working with an integrated family services case worker, Alan, to build her parenting skills, promote a positive attachment with her children, and learn 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 seeking information about why Li is in counselling and what other services Li is accessing. Alan wants to support Li with the parenting of her children and believes this collaboration will help.

While it is true that Alan and Jemma could better support Li by working together, Alan is not assessing or managing Li's risk of family violence. Therefore, sharing information in this situation does not meet a family violence assessment or protection purpose.

Alan and Jemma must rely on other legislative permissions to share, such as the CIS Scheme or general privacy law, and their organisational policies in respect to sharing Li's personal and health information, not Part 5A.

However, if Jemma were to request information from Alan to manage Li's risk of family violence, or if Alan was seeking information in order to manage family violence risk to the children, relevant information might be able to be shared under Part 5A.

**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 the 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 Victims of Crime Helpline 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, Christopher asked Samuel 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', things have only 'got out of hand once or twice in the heat of the moment' and that Samuel has nowhere to live. Mike discusses his fears for Christopher's safety and tells Christopher that he will contact the police station that issued the initial L17 to seek information about Samuel's risk and to complete a comprehensive family violence risk assessment for Christopher to assess his level of risk.

The police have information that shows Samuel has recently been attending Christopher's previous workplace and harassing his former boss, Dan, in an attempt to locate Christopher. Dan has told police that he's not comfortable telling Christopher about the incidents and instead got a Personal Safety Intervention Order against Samuel.

Unless Dan consents to disclosing his information, the police should share this information in a de-identifiable way that protects Dan's anonymity. For example, the police officer could tell Mike that, 'An Intervention Order (IVO) has recently been placed against Samuel who has been attempting to locate Christopher'. The Police officer disclosing this information should avoid mentioning that the IVO protects Dan or that it occurred at his previous workplace (as this could inadvertently identify Dan).

Under Part 5A, Mike is also permitted to share this information with Christopher for a family violence protection purpose (i.e. to manage risk).

### Sharing information for a family violence assessment purpose

RAEs are a sub-set of ISEs that can request and disclose information to establish and assess family violence risk. All ISEs are permitted to share information with RAEs for a family violence assessment purpose.

Information may be shared between ISEs and RAEs for an assessment purpose by:

- an ISE sharing information with a RAE **voluntarily**
- a RAE **making a request** for information from an ISE

- an ISE **responding to a request** for information from a RAE
- between RAEs themselves, either voluntarily or making or responding to a request.

If a RAE makes a request for information from an ISE for a family violence assessment purpose, the responding ISE **must** share relevant information.

ISEs will still have access to the information needed to assess risk (including for ongoing risk assessment) in line with their responsibilities under MARAM.

## Remember

Before sharing information with a RAE for an **assessment purpose**, an ISE does **not** need to hold a reasonable belief that the disclosure is necessary for a family violence assessment. This is distinct from sharing information for a **protection purpose** as outlined below.

## Who can information be shared about?

Information can be shared with RAEs about the following persons if it is relevant to establishing and assessing risk of family violence:

- a perpetrator
- an alleged perpetrator (please refer to [Chapter 3](#) on page 42 for guidance on alleged perpetrators)
- a victim survivor (adult or child)
- a third party.

RAEs are able to **request** information from ISEs about **alleged** perpetrators, in addition to information about perpetrators, victim survivors and third party's for a family violence assessment purpose.

## Remember

RAEs are a subset of ISEs. Only RAEs can request and receive information for a family violence assessment purpose. All ISEs can request or share information for a protection purpose (which includes ongoing risk assessment).



## CASE STUDY

### Obligation to share information upon receiving a request for a family violence assessment purpose

Sally works at The Orange Door, for a service that is prescribed as a RAE. Sally receives a phone call from Anh. Prior to commencing the conversation with Anh, Sally explains that her information may be shared with other services in some circumstances, particularly in relation to risk of harm. Anh tells Sally that her partner, Tim, is violent and controlling but that she does not want her information to be shared. 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. Anh then called back to say that she will come to the service later in the afternoon and that she is safe as Tim is away for work until tomorrow.

Sally is keen to establish and understand the level of family violence risk posed by Tim to assess Anh's risk. Sally is permitted under Part 5A to request information about Tim, as an alleged perpetrator, from other ISEs such as the police to establish and assess family violence risk. However, until Sally has Anh's consent, Sally should not share Anh's information with other ISEs under Part 5A.

Sally and any responding ISE should identify the information that can be obtained without identifying Anh that is relevant to assessing whether Tim poses a risk of committing family violence. The responding ISE must share relevant information they have about Tim (for example, current or previous family violence intervention orders) that could assist Sally to 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
- any applicable consent requirements have been met (in this case, Anh's consent is required as the victim survivor, and Tim's consent is not required as he is identified as the alleged perpetrator).

Please refer to [Chapter 3](#) on page 42 for guidance on what to do if the perpetrator or victim survivor may have been misidentified.

### Sharing information for a family violence protection purpose

All ISEs can request and share information with any other ISE for a family violence **protection purpose** (i.e. to manage the risk of a person committing family violence or being subjected to family violence, including ongoing risk assessment and management).

Information can be shared (related to all levels of risk) about:

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

Sharing information about **alleged** perpetrators is **not permitted** for a protection purpose. See [Chapter 3](#) on page 42 for guidance on alleged perpetrators.

Any ISE is permitted to share relevant information with another ISE on a voluntary basis (i.e. without a request) for a family violence protection purpose provided that it is not excluded, sharing would not contravene another law and consent requirements have been met.

If an ISE makes a request for information from another ISE for a family violence protection purpose, the responding ISE **must** share relevant information, provided that it meets the reasonable belief test and provided that it is not excluded, and that sharing would not contravene another law and consent requirements have been met.

## Reasonable belief

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A responding ISE must hold a reasonable belief that the disclosure of the relevant information is necessary for a family violence protection purpose. This is a safeguard to prevent unnecessary or irrelevant information from being shared. Whether a belief is reasonable will depend on the circumstances but will generally require the existence of facts beyond a mere suspicion. ISEs should refer to the MARAM Framework for advice about information that is used to assess and manage the safety of victim survivors and keep perpetrators accountable and may form part of an ISEs decision-making that they hold a reasonable belief.

### Remember

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

### Voluntary information sharing for a family violence assessment purpose

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Ben is currently in prison serving a three-year sentence for aggravated burglary. Raj, a prison officer, has overheard Ben repeatedly mention the fact that the first thing he intends to do upon his release is 'hunt down' his ex-wife, Linda, and 'make her pay' for leaving him and starting a relationship with his cousin while he has been in prison.

Raj speaks with Carly who is the officer delegated by Corrections Victoria with responsibility for sharing information under Part 5A. Carly looks up Ben's file and finds out that he has a previous family violence intervention order taken out against him by his ex-wife Linda. Under Part 5A, Carly would be permitted to share information about Ben, including his impending release date from prison with another ISE (for example, a mental health service that Ben may be engaged with post-release or a specialist family violence service or a service Linda is engaged with for support that is an ISE) to enable them to manage the risk posed by Ben to Linda.

Under Part 5A, this information could also be provided to Linda directly for a family violence protection purpose. Ideally this information should be shared with Linda by those who are skilled in conveying this information to her and assisting her to plan for her safety (i.e. her support service).

Linda is on the Victims Register so that she can be informed about Ben's release date. But it is also important that Linda and her support service are aware of the recent threats Ben has been making towards her, in order to assess and manage her level of risk and safety plan appropriately. If Linda is not linked with a family violence service already, she may also need to be referred to a specialist family violence service for ongoing risk assessment and management.

In addition, the prison should consider ways to manage Ben's risk of committing family violence and holding him to account for his behaviour, including by requesting information about Ben to enable appropriate services to be offered to him in prison.



## CASE STUDY

### Obligation to share information upon receiving a request for a family violence protection purpose

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Jane, a case manager at a specialist family violence service, has undertaken a family violence risk assessment and assessed that Peta is at risk of family violence from her partner Sergio. Part 5A was explained to Peta and her consent was obtained, as part of Jane's usual case management intake process.

Peta provides Jane with the details of the men's behaviour change program that Sergio is attending. Jane calls the men's behaviour change program 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 a responding ISE, to provide information about Sergio for a family violence protection purpose, Ray can only share information that is **relevant** to that purpose and 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, as Sergio is the perpetrator, consent 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 to manage Peta’s risk of family violence. Ray has already informed all members of the group that information may be shared regarding family violence risk. 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 while affected by substances, engaged in aggressive behaviour such as threats 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 because sexual assault or abuse has not been identified as a present family violence risk indicator. Ray may also put Jane in contact with the relevant partner contact worker, if available.

## Can ISEs share information obtained under Part 5A under other laws?

ISEs can use information obtained under the Scheme as permitted under another law. ISEs should consider the possible impact on risk to the victim survivor of sharing information under other laws, (including exceptions to

sharing under those laws) noting that certain exemptions to notification and consent specified in [Chapter 11](#) on page 116 may not apply.

## Can ISEs share information with victim survivors of family violence?

Sharing relevant perpetrator information with victim survivors can potentially increase their safety.

An ISE is permitted to share perpetrator information with an adult victim survivor to assist them to manage their safety or that of their children (see [Chapter 5](#) on page 64).

If a child is a victim survivor, information can be shared with them or their parent who is not a perpetrator. Whether information is shared directly with the child or the parent (who is not a perpetrator) will be dependent on the maturity and development of the child and considering the type of information to be shared. If information regarding family violence is shared directly with a child, this is ideally done by or



with advice and assistance from a professional who has relevant expertise and skills in working with children in such circumstances.

While there is no obligation or mandatory duty to share perpetrator information, it is important for an ISE to assess the appropriateness of sharing perpetrator information with a victim survivor and whether it is necessary to assist their own safety planning.

There are some circumstances where it may not be appropriate or relevant to share perpetrator information. When deciding whether to share perpetrator information with a victim survivor (or parent that is not a perpetrator), 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

- whether in sharing the information with the victim survivor, a perpetrator is likely to find out that their information has been shared, increasing the risk to the victim survivor. If a decision is made to still share the information with the victim survivor having regard to all associated risks, a safety plan should be prepared with the victim survivor to ensure their safety
- the type of information that is appropriate to share with child victim survivors considering their age, capacity/functioning and developmental stage, when this information should be shared and the best means of communicating this information in a way the child will understand.

When providing information to a victim survivor, ISEs should inform them that they are only permitted to use the information to manage their safety or their child's safety. A victim survivor should not use the information for any other purposes. For information on offences and complaints see [Chapter 12](#) on page 130.

## Exceptions to information sharing

ISEs are not permitted to share excluded information. 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).

ISEs are also not permitted to share information that is restricted from being shared under other laws. For more guidance on restrictions on information sharing in other laws that continue to apply under the Scheme, refer to [Chapter 11](#) on page 116.

## Excluded information

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Information is excluded from the Scheme and should not be shared under Part 5A if, given the facts known to the worker, sharing 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 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)
- prejudice 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 cited as evidence in a closed session of the court)
- disclose the contents of a document or a communication that 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 (e.g. where certain information is known only to a particular person, their identity as a confidential source could be ascertained if that information was shared)
- contravene a court order or law that 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
- contravene a court order or law that 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).

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

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Any refusal to share information on the basis that the information is excluded under Part 5A must be provided in writing, with reasons stated.

Where there are circumstances that it would be inappropriate to provide details of the specific ground for the exclusion (e.g. where it would prejudice a criminal investigation), it is sufficient to refuse on the grounds that the information is excluded.

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

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

### Alleged perpetrators and perpetrators

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Consent is not required from an alleged perpetrator (for an **assessment purpose**) or a perpetrator (for an **assessment** or a **protection purpose**), including adolescents who use family violence, when sharing information under Part 5A to assess or manage risk of family violence to a child or adult victim survivor.

### Adult victim survivors

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When sharing information for an assessment or protection purpose to assess or manage risk of family violence to an adult victim survivor:

- consent is required from the adult victim survivor to share their information, unless sharing is necessary to lessen or prevent a **serious threat** to an individual's life, health, safety or welfare
- the adult victim survivor's consent will not be required if a child's safety is also at risk under Part 5A
- information about **perpetrators** of family violence, and **adolescents** who use violence, can be shared without their consent.

### Child victim survivors

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In the case of a child victim survivor, consent is not required to share relevant information for an assessment or protection purpose in relation to a child about any person, including the child, a parent who may also be a victim survivor or any relevant third party.

ISEs are encouraged to take all reasonable steps to seek and obtain the views of the child and/or any parent that is not a perpetrator and to take those views into account where it is safe, appropriate and reasonable to do so. For more guidance, please refer to [Chapter 5](#) on page 64.

### Adult and child third parties

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Relevant information about both adult and child third parties 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 there is some other exception under privacy law that allows sharing without consent.

[Chapter 4](#) on page 54 provides more detail.

## Protection for workers

If an ISE that shares information acted in good faith and with reasonable care, they will not be held liable in relation to the use or disclosure of information (see [Chapter 12](#) on page 130).

If information is shared inappropriately, 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.

## Safeguards to protect privacy

Breaches of privacy can cause harm to the person whose privacy has been breached and may have serious implications for a victim survivor's safety. For example, information that discloses a victim survivor's location can put them at risk from the perpetrator.

ISEs are encouraged to ensure that they have appropriate processes in place to safeguard against privacy breaches. This includes taking steps to ensure that perpetrators cannot access information about a victim survivor or that those workers requesting information or working with a client do not have a conflict of interest (e.g. that the worker does not have a personal or familial relationship with a victim survivor or perpetrator).

A conflict of interest might arise in any part of the service system, but is likely to be of particular concern for people from small or interconnected communities such as rural and regional Victorians, Aboriginal people, people from LGBTI communities and people from culturally and linguistically diverse or faith communities. Please refer to the case study below for advice on avoiding conflicts of interest.



## CASE STUDY

### Maintaining confidentiality and avoiding conflicts of interest

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Jimmy is an older person in rural Victoria who has sought assistance from an ISE because his nephew Clint has been pressuring Jimmy for money every fortnight. Clint becomes aggressive when Jimmy says no. Jimmy has concerns about his privacy and safety in the context of seeking assistance for family violence because he comes from a small community where everybody knows each other.

Actions that could be taken to reassure Jimmy include:

- gathering information on Jimmy and Clint's extended network 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, which might include developing a safety plan for the support worker
- offering referral to another 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 (unless sharing is necessary to lessen or prevent a **serious threat** to an individual's life, health, safety or welfare or to assess or manage family violence risk to a child) and never with a perpetrator. Use of information that is inconsistent with what is permitted under Part 5A or another law (including sharing victim survivor information with a perpetrator) will attract penalties.



# CHAPTER 2

## Information Sharing Entities

This Chapter outlines the role of ISEs. It explains how ISEs can request and share information with another ISE and with non-prescribed entities, including Commonwealth and interstate organisations.

## KEY POINTS

- Some ISEs are also prescribed as risk assessment entities (RAEs)
- ISEs can share information proactively with a RAE or in response to a request from a RAE, for a family violence **assessment** purpose
- ISEs can share proactively or in response to a request from any ISE, for a family violence **protection** purpose
- ISEs can share perpetrator information with a victim survivor (or a parent of a child victim survivor) for a family violence **protection** purpose
- ISEs can continue to share information with non-prescribed entities (including interstate entities) under existing Victorian and Commonwealth privacy laws (see [Chapter 11](#) on page 116).

## Who are prescribed information sharing entities under Part 5A?

The Regulations prescribe ISEs. All ISEs can request and share information for a family violence protection purpose. A subset of ISEs are also RAEs and may request information for a family violence assessment purpose. Further ISEs may be prescribed in future.

ISEs are prescribed to the extent that they provide the specified service. For example, an ISE that provides both a family violence service and a health service should only share information from the family violence service as health services are not currently prescribed.

If a perpetrator discloses information to the family violence service, then that information could be shared. However if the perpetrator discloses information to the health service only, that information cannot be shared under Part 5A.

For a list of ISEs under the Child Information Sharing Scheme, see the Child Information Sharing Ministerial Guidelines. ISEs prescribed under the Child Information Sharing Scheme are broadly similar to those prescribed under the Family Violence Information Sharing Scheme.

**Table 1:**  
List of prescribed ISEs

ISEs that are also RAEs	
<ul style="list-style-type: none"> <li>▪ State-funded specialist family violence services (including refuges, Men’s Behaviour Change Programs, family violence counselling and therapeutic programs)</li> <li>▪ Risk Assessment and Management Panel (RAMP) members (including those services that would not otherwise be prescribed but only when participating in a RAMP)</li> <li>▪ State-funded sexual assault services</li> </ul>	<ul style="list-style-type: none"> <li>▪ Child Protection</li> <li>▪ Child FIRST services (excluding broader family services)</li> <li>▪ Victims Support Agency (including Victim Assistance Programs and Victims of Crime Helpline)</li> <li>▪ Victoria Police</li> <li>▪ The Orange Door services.</li> </ul>
ISEs	
<ul style="list-style-type: none"> <li>▪ Magistrates’ Court of Victoria officials</li> <li>▪ Children’s Court of Victoria officials</li> <li>▪ Corrections Victoria and Corrections-funded services</li> <li>▪ Adult Parole Board</li> <li>▪ Youth Justice (including the Secretariat to the Youth Parole Board) and Youth Justice funded services</li> <li>▪ Multi-Agency Panels to Prevent Youth Offending</li> <li>▪ Justice Health and funded services</li> <li>▪ State-funded sexually abusive behaviour treatment services</li> <li>▪ State-funded perpetrator intervention trials</li> <li>▪ Registered community-based child and family services</li> </ul>	<ul style="list-style-type: none"> <li>▪ Maternal and Child Health</li> <li>▪ Registered out of home care services</li> <li>▪ DHHS Housing</li> <li>▪ State-funded homelessness accommodation or homelessness support services providing access point, outreach or accommodation services</li> <li>▪ Designated mental health services</li> <li>▪ State-funded alcohol and other drug services</li> <li>▪ Tenancy Advice and Advocacy Program</li> <li>▪ State-funded financial counselling services</li> <li>▪ Commission for Children and Young People</li> <li>▪ Disability Services Commissioner.</li> </ul>



**Figure 2:**

Comparison between the family violence assessment and protection purposes

	Family violence assessment purpose		Family violence protection purpose
Assessing risk and establishing whether risk does in fact exist	<ul style="list-style-type: none"> <li>- Information Sharing Entities (ISEs) can voluntarily share information with Risk Assessment Entities (RAEs)</li> <li>- RAEs can request information from ISEs</li> </ul>	<b>Scope</b>	<ul style="list-style-type: none"> <li>- ISEs can voluntarily share information with other ISEs</li> <li>- ISEs can request information from other ISEs</li> </ul>
	RAEs can request, collect, use and disclose information for a family violence <b>assessment</b> purpose (establishing and assessing risk)	<b>Purpose</b>	ISEs can request, collect, use and disclose information for a family violence <b>protection</b> purpose (managing risk) once risk has been established
	A perpetrator, an alleged perpetrator, a victim survivor including adults and children, a third party	<b>Can share information about</b>	A perpetrator, a victim survivor including adults and children, a third party
	If an RAE makes a request to any ISE, the responding entity <b>must share</b> relevant information, provided: <ul style="list-style-type: none"> <li>- the information is not excluded</li> <li>- applicable consent requirements have been met</li> </ul>	<b>Obligatory Sharing</b>	If an ISE makes a request to another ISE, the responding entity <b>must share</b> relevant information, provided: <ul style="list-style-type: none"> <li>- 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</li> <li>- the information is not excluded</li> <li>- applicable consent requirements have been met</li> </ul>
	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: <ul style="list-style-type: none"> <li>- the information is not excluded</li> <li>- applicable consent requirements have been met</li> </ul>	<b>Voluntary Sharing</b>	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: <ul style="list-style-type: none"> <li>- the information is not excluded</li> <li>- applicable consent requirements have been met</li> </ul>

Managing risk after initial risk has been established and assessed (including ongoing risk assessment)

## Who can ISEs share information with under Part 5A?

ISEs can share information with:

- RAEs for a family violence **assessment** purpose
- ISEs for a family violence **protection** (which includes ongoing assessment of risk of family violence) purpose
- a victim survivor or their parent (who is not identified as an alleged perpetrator or a perpetrator) if they reasonably believe that the information will assist them to manage their safety or that of their child/ren. The only information that can be shared with victim survivors/their parent who is not a perpetrator is information about the perpetrator relevant to managing of risk of family violence. The victim survivor can only use this information for the purpose of managing their (or their child's) risk of experiencing family violence.

Under Part 5A, ISEs are not permitted to share any information with an alleged perpetrator or a perpetrator **for any purpose**. In order to avoid information being inadvertently shared with the perpetrator, all ISEs should establish:

- policies and procedures to ensure that the requester's identity is verified
- conflict of interest disclosures so that a person working in an ISE who knows the victim or perpetrator cannot access that person's information to share for a purpose not permitted under Part 5A.

[Chapter 3](#) on page 42 outlines the protocols to be followed when it is unclear who is the victim survivor and who is the perpetrator.

## Requesting or sharing information with non-prescribed entities in Victoria

ISEs may wish to share information with, or request information from, entities in Victoria that are not prescribed as ISEs in order to assess and manage the risk to a victim survivor of family violence.

If an entity is not prescribed under Part 5A, Part 5A cannot be relied on. Instead, any information sharing must occur under other applicable laws, such as existing privacy laws. Information can be shared under these laws in a number of circumstances, including with consent or without consent if an organisation reasonably believes it is necessary to lessen or prevent a **serious threat** to an individual's life, health, safety or welfare. [Guidance](#) has been issued on sharing to lessen or prevent a

serious threat by the Office of the Victorian Information Commissioner and the Health Complaints Commissioner.

### Remember

Victoria's privacy laws allow organisations 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.

## Sharing with Commonwealth or interstate organisations

Part 5A does not prescribe any Commonwealth agencies or wholly interstate organisations to be ISEs. Therefore, ISEs are not able to share information with those organisations under Part 5A. However, ISEs may share information with interstate or Commonwealth entities where it is permitted under other laws, including Victorian and Commonwealth privacy laws.

Similarly, where ISEs request information from interstate organisations or Commonwealth agencies, Part 5A will not be relevant. Any information shared by those entities will need to be in accordance with the laws of their own jurisdiction. An ISE cannot request information from a Commonwealth or interstate organisation using Part 5A.

See page 121 for information about the interaction with the Commonwealth Privacy Act.

# CHAPTER 3

## Sharing information about perpetrators and alleged perpetrators of family violence

This Chapter provides guidance on how to share information about an alleged perpetrator or perpetrator of family violence in order to assess or manage risk of family violence.

This Chapter also provides guidance for ISEs on:

- how to identify victim survivors and perpetrators in family violence matters where the identity of the perpetrator is uncertain
- how to respond when it has become apparent that a perpetrator or victim survivor has been misidentified.

## KEY POINTS

- ISEs may share information about alleged perpetrators with RAEs; about perpetrators with any ISEs, and; with victim survivors to enable them to manage their safety
- ISEs do not require the consent of an alleged perpetrator or perpetrator when sharing their information under the Scheme
- An ISE is not obliged to inform an alleged perpetrator or perpetrator if they have collected information about them under the Scheme
- ISEs may refuse perpetrators access to their personal or health information if they believe it would increase the family violence risk
- 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 the Scheme
- ISEs should refer to the MARAM [Framework](#) for guidance on identification of the perpetrator and victim survivor
- An ISE who believes a person has been incorrectly identified must attempt to correct the misidentification and apply the consent provisions of the Scheme.

## Distinction between an alleged perpetrator and a perpetrator

It is important to distinguish between alleged perpetrators and perpetrators. Information about alleged perpetrators can only be shared with RAEs for a family violence **assessment purpose**, whereas information about perpetrators may be shared with RAEs for a family violence **assessment purpose** and any ISEs for a family violence **protection purpose** (including ongoing risk assessment).

### Alleged perpetrator

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Where there is not sufficient information for an ISE to form a reasonable belief that a person poses a risk of family violence, information may still be shared under the Scheme with RAEs for a family violence **assessment purpose** if the person is an 'alleged perpetrator', to determine if they are a perpetrator.

A person is an 'alleged perpetrator' in a number of circumstances including (but not limited to):

- where a victim survivor has physical injuries but does not disclose the injuries are a result of family violence
- where a victim survivor discloses family violence but does not identify the perpetrator
- where the police apply for an FVIO on behalf of a victim survivor, even in circumstances where the victim survivor wishes to revoke the order stating that there is no family violence
- where an ISE suspects that its client is perpetrating family violence but the client denies the use of violence

- where a person is acting in a controlling and aggressive manner towards a family member
- where certain MARAM Framework risk factors may have been identified, but more information is needed
- where children express fear of one or both of their parents, without providing further information.

The primary factor distinguishing an 'alleged perpetrator' from a 'perpetrator' is the ISE's reasonable belief that the person poses a risk of family violence. That belief may be formed immediately following disclosure from a victim survivor, or once more information about the risk has been obtained.

ISEs should refer to the MARAM [Framework](#) to assess whether there is a risk that a person may commit family violence.

## Perpetrator

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A person is a perpetrator if an ISE reasonably believes that there is a risk that the person may commit family violence. This will have been identified through undertaking a MARAM Framework-based family violence risk assessment. This is the same meaning as a 'person of concern' in Part 5A of the FVPA.

There are a number of circumstances that may lead an ISE to form a reasonable belief that a person is a perpetrator. These include, but are not limited to:

- where the victim survivor has identified the person and disclosed family violence. The victim survivor's story must be given significant weight. In the vast majority of situations, this should be enough for an ISE to form a reasonable belief that a person is a perpetrator. This can be more complex in circumstances where there are cross allegations of family violence
- where a MARAM Framework-based assessment has identified that the person poses a risk of family violence
- where the victim survivor has previously involved a service provider and has historically disclosed family violence in relation to the person
- where there is an intervention order that lists the person as a respondent, including where cross orders exist, after the identity of the perpetrator is confirmed
- where there is a history of documented family violence by the person
- where police attended an incident of family violence and identified the person as a primary aggressor (ISEs should be mindful of misidentification of primary aggressors)
- where there are criminal charges against a person as a result of family violence.

### Remember

Throughout these Guidelines, reference to the MARAM Framework also includes tools or programs aligned to it, or other recognised family violence risk assessment frameworks.

ISEs should refer to the MARAM Framework when exercising professional judgement on whether a particular circumstance is relevant to assessing and managing risk.

### Remember

If an ISE believes the alleged perpetrator or perpetrator has been misidentified, there are certain steps an ISE should take which are outlined later in this Chapter. Where there is uncertainty about which of the parties is the perpetrator then information can be shared for an assessment purpose until sufficient information is available to determine, based on the known risks, the identities of the parties/party (perpetrator and victim survivor) — and then to assess the level or seriousness of risk present at that point in time. In addition to establishing the presence and seriousness of family violence risk sharing information for an assessment purpose assists to establish the identities of the parties (perpetrator and victim survivor) and gain a full picture of risk.

**CASE STUDY****Requesting information about an alleged perpetrator**

Tara presents at a hospital emergency room following a sexual assault. She does not want to report the assault to police, but wants to receive specialist counselling and support. A worker from the Centre Against Sexual Assault (CASA) attends the emergency room and meets with Tara.

Tara does not disclose who sexually assaulted her to the CASA worker. Tara advises that she would like to receive counselling. Based on some of Tara's statements, the CASA worker suspects that Tara's partner may be the person who sexually assaulted her. The CASA worker asks Tara if her partner, Shane, is the person who sexually assaulted her. Tara says she does not want to talk about it and says she loves Shane. Tara confirms she plans to return home to the house she shares with Shane once she is discharged from hospital.

The CASA worker explains the new laws about information sharing to Tara, including limited confidentiality and when she may share her information. When discussing information sharing the worker explains that due to concerns for her safety she would like to seek information that will assist with assessing and managing Tara's risk. Tara provides consent, stating she understands the limited confidentiality.

While Tara is with hospital staff, the CASA worker seeks information from the police about the alleged perpetrator, Shane, including if there is any record of family violence perpetrated by Shane. The police confirm they previously attended the couple's property because of family violence. They have previously completed police family violence risk assessments in relation to family violence incidents (known as L17s), with the most recent L17 having occurred 18 months ago. The police confirm they referred Tara to her local family violence service as a result of the L17.

The CASA worker contacts this family violence service to determine if Tara is a current client. The family violence service explains Tara has not been involved in their service for some time, but Shane was identified as the perpetrator at the time of their involvement. The service advised they assisted Tara to obtain a family violence intervention order 18 months ago. The order has now expired. The family violence service shares the application and circumstances surrounding the final family violence intervention order with the CASA worker.

The application for the family violence intervention order states that Shane sexually assaulted Tara and this was one of the factors that led her to seeking a family violence intervention order. The CASA worker discusses this with Tara, acknowledging she is aware of the past family violence.

**Collecting information about perpetrators**

When an ISE collects information **directly** from an alleged perpetrator or perpetrator, they should be informed of how their information may be used or disclosed under Part 5A of the FVPA.

This should occur at or before their engagement with the ISE.

If it is not practicable to inform the perpetrator at the outset of their engagement, they should

be informed as soon as practicable after. (See: Information Privacy Principle (IPP) 1.3 or, in the case of health information, Health Privacy Principle (HPP) 1.4). For existing clients, ISEs should explain the changes in the legislation and how this may impact them. Refer to [Chapter 7](#) on page 84 and [Chapter 8](#) on page 90 for considerations in regards to sharing information about people from Aboriginal and diverse communities.



Where information has been collected **indirectly** about a perpetrator or an alleged perpetrator (for example, from the victim survivor or from another ISE), ISEs are **not obliged** to notify the perpetrator or alleged perpetrator that information about them has been collected by them. Refer to [Chapter 11](#) on page 116 for more detail.

## Sharing information about a perpetrator or alleged perpetrator

Consent is not required for ISEs to share information about a person who is alleged to pose a risk of family violence (alleged perpetrator) or a perpetrator of family violence.

This is because the new laws prioritise victim survivor safety over perpetrator privacy. The laws also promote a timely whole of system response to holding perpetrators to account.

Before sharing the information, ISEs must establish that the information is **relevant** to assessing and/or managing family violence risk and that it is not excluded (see [Chapter 1](#) on page 18).

For guidance on sharing information about adolescents who use violence, please refer to [Chapter 6](#) on page 78.

## Determining whether a person is a perpetrator or victim survivor

In some circumstances, an ISE may have difficulty in determining who is a victim survivor of family violence and who is perpetrating family violence. For example, each adult in a relationship might claim that their partner is the perpetrator.

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 Part 5A of the FVPA).

### Remember

Family violence involves a pattern of power and control. Both parties may have been labelled perpetrators in different situations, but for risk management and safety, the primary/ or predominant aggressor needs to be identified prior to sharing information.

A MARAM [Framework](#)-based risk assessment should be used to decide whether there is a risk that a person may commit family violence. The MARAM Framework should be used to identify a perpetrator of violence towards both an adult and child victim survivor.

In determining who is the perpetrator and who is the victim survivor for the purposes of the Scheme, ISEs should consider:

- 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 could have been 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)
- whether there are any children involved and how they have been impacted by the violence
- other forms of family violence abuse as set out in [Chapter 8](#) on page 90.

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

- the person has previously been identified as the victim survivor of family violence
- both parties claim to be the victim survivor.

## Remember

In some instances, a person may be identified and assessed as a perpetrator for an incident of family violence, and also a victim survivor in that, or past incident/s. Thereby they may be identified and assessed as both a victim survivor and a perpetrator. In these circumstances the consent requirements and sharing of information should reflect the purpose for which information is being shared.

For example, an adolescent may experience family violence from a parent while using family violence against another parent or sibling (see case study in [Chapter 6](#) on page 78). In such cases, the purpose of the information sharing request must be clear and must clearly set out whether it relates to them as a victim survivor or as a perpetrator.

## 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 they believe has been incorrectly identified as a perpetrator or a victim survivor.

When this happens, an ISE should raise their concerns with the requesting ISE, citing any relevant considerations from the [MARAM Framework](#), and supporting the requesting ISE to correct their records. Where possible, ISEs should work together and use their professional judgement to determine the identity of each party. ISEs should have policies and procedures in place to assist with resolving differences of professional opinion and disputes with other services about identifying the perpetrator and victim survivor.

The ISE may only have information provided from the person they have assessed as the victim survivor, where there is no other information known about the violence and the alleged perpetrator/perpetrator has never come into contact with police, specialist or mainstream services. Victim survivors are often the best source of information about perpetrator behaviour. Where an ISE only has information from the victim survivor, their disclosures should be given significant weight even in the absence of verification from other ISEs.

If there continues to be conflicting assessment between ISEs about who the perpetrator or victim survivor is, ISEs should only share information about that person in accordance with their assessment of each person's identity and apply the relevant consent thresholds.

For example, where an ISE has requested information about a person it has assessed to be a perpetrator, and the responding ISE has assessed that person to be a victim survivor, the responding ISE can only share that person's information in accordance with the general rules for sharing a victim survivor's information. It should inform the requesting ISE that they have assessed the person to be the victim survivor and will only share the information with the consent of the person. Unless consent is provided, the responding ISE would not be authorised to share the person's information. This is the case regardless of the fact that the requesting ISE has assessed the person to be a perpetrator.

### Remember

A perpetrator may be able to convince services that they are the victim survivor, having used their methods of power and control over the victim to put themselves in an advantageous position with ISEs. ISEs should be cautious in sharing information in response to a request when there is any suspicion the perpetrator has been misidentified.

**CASE  
STUDY**

## Determining the perpetrator and victim survivor

Police attend an incident where Dan answers the door. Dan has some scratches. He claims that his partner, Nui Nui, has perpetrated family violence against him. Dan denies that he has used violence against her.

Police submit an L17 naming Dan as the victim survivor and it is passed on to the Victim Support Agency.

The Victim Support Agency (as a RAE) is permitted under Part 5A of the FVPA to request information for a family violence assessment purpose in order to undertake a comprehensive risk assessment for Dan. One of its Helpline staff members contacts Dan, explains the information sharing protocols, and requests permission to seek information about the risk that Nui Nui poses to him for a risk assessment. Dan provides consent. As Nui Nui has been identified as the perpetrator of violence, her consent to share information is not required.

The Helpline staff member then requests information from The Orange Door about Nui Nui. A specialist family violence practitioner from The Orange Door has been working with Nui Nui for some time. From information provided by Nui Nui, The Orange Door has assessed Nui Nui as the victim survivor of family violence from Dan. The Orange Door assesses that Nui Nui had been defending herself.

The Orange Door should have a discussion with the Helpline to understand the nature of their request. They are permitted to discuss the types of information being sought and the requesting ISE (the Helpline) may disclose any information that would assist the responding entity (The Orange Door) to identify the relevant information to disclose. 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.

As Nui Nui is assessed to be the victim survivor by The Orange Door, her information must only be provided by The Orange Door with her consent, provided that: it is relevant; is not excluded information, or there is a serious threat. If Nui Nui refuses to consent to her information being shared, The Orange Door should reject the request for information on that basis. As The Orange Door has identified Dan as the perpetrator, any information about Dan can be shared by The Orange Door without his consent. The Orange Door must provide its refusal to share the requested information in writing and request that the Helpline correct its records.

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

Where an ISE establishes that it has incorrectly identified a person as a perpetrator, it must stop sharing information about that person without seeking consent.

The ISE must make a written record of why information sharing has been stopped, and keep this record on file. Correction of records should only occur when there is enough information to create a full picture of risk, and when the ISE believes the perpetrator has been misidentified, based on a MARAM Framework risk assessment.

The fact that one ISE is informed by another ISE that the perpetrator has been misidentified may not necessarily lead to the correction of both records. Both ISEs must be satisfied on the basis of the MARAM Framework risk assessment that the correction is accurate and therefore required. Disclosure of identification should occur between agencies to come to a shared understanding if possible.

Care should also be taken to reduce opportunities for perpetrators to convince ISEs they were misidentified and access information as a victim survivor.

Individuals will not be held liable for incorrectly sharing information where it has been done in good faith and with reasonable care (see [Chapter 12](#) on page 130).

If a person has been incorrectly identified as a perpetrator, the ISE should make its best effort to correct the information that has already been disclosed, and update relevant records. The correction of records should occur in a timely manner to reduce any likelihood that incorrect information will continue to be shared. Where systems are not equipped to allow for correction of previously entered records, best efforts should be made to flag where corrections are needed and where perpetrators have been misidentified.

Once an ISE knows that incorrect information has been shared with other ISEs, the ISE should inform those ISEs of the error. An ISE may also choose to notify a person that their information was shared without their consent. This gives the individual 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 thresholds for sharing information for that category of persons under Part 5A of the FVPA. For example, if the person has been reassessed as the victim survivor, then the relevant consent thresholds that apply under Part 5A must be met.

## Determining if alleged perpetrator or perpetrator information is relevant

Only relevant information may be shared under Part 5A. Information about **alleged perpetrators** can only be shared without consent if it is relevant for a family violence **assessment purpose**. Information about a

**perpetrator** can be shared without consent if the information is relevant for a family violence **assessment** or **protection purpose** (including ongoing risk assessment).

See [Chapter 1](#) on page 18 for more detail about family violence **assessment** and family violence **protection purposes**.

Practitioners should refer to the MARAM [Framework](#) when determining whether a particular circumstance is relevant to assessing and managing family violence risk, and hence whether information can be shared under Part 5A.



## CASE STUDY

### Determining what information is relevant

John has perpetrated violence against his ex-partner Melissa and their two children. He attends an alcohol and other drug service for alcohol addiction.

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. He goes on to mention that he has been 'hanging around' outside Melissa's workplace to 'see what she is up to'.

Stalking behaviours and substance misuse are evidence-based risk indicators relevant to family violence risk assessment, as described in the MARAM Framework. Using his professional judgement and without seeking John's consent, the alcohol and other drugs service shares the information about John's alcohol consumption and stalking behaviour with relevant prescribed ISEs under Part 5A (e.g. Victoria Police and the family violence service supporting Melissa). The specialist family violence service working with Melissa also informs Melissa directly, as Melissa and her professional support network require this information to manage her ongoing risk. With this information they can update Melissa's safety plan and address possible breaches of any current orders.

The alcohol and other drugs service is not able to share information related to the bullying John has experienced at work. Currently, such information is not relevant to assessing and managing risk to Melissa. Information about workplace bullying would only be relevant if it escalates family violence behaviours. If John were to become unemployed as a result of the workplace bullying, this would be relevant to family violence risk assessment as it is also an evidence-based risk indicator.

### 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. Consent of the perpetrator is not required. Excluded information may not be shared.

Where the victim survivor is a child, 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).

The victim survivor may use this information to manage risk. The victim survivor must not otherwise use or disclose this information for another purpose unless permitted by another law. However, it is not an offence for a victim survivor to disclose this information for another purpose.

Victim survivors should be informed that sharing this information may inadvertently

increase their risk. Where possible, ISEs who share information with victim survivors should also support the victim survivor to use the information to enhance their safety.

Complaints mechanisms can be accessed if information is inappropriately shared (see [Chapter 12](#) on page 130).



#### CASE STUDY

### ISE sharing perpetrator information with a victim survivor

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

The family violence counselling service is able to inform Ling that Mario has been released and the suburb where he is living. Ling is able to use this information to manage her safety. For example, Ling may provide this information to a legal representative for the purpose of managing her and her child's safety. She 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 should not post Mario's address on social media and the counselling service should explain to Ling that using the information in this way could increase her risk.

## Rights to access information

Part 5A specifically allows an ISE to **refuse** an alleged perpetrator's or a perpetrator's request for access to their personal or health information under the PDP Act or the HR Act. This refusal is allowed based on an ISE's reasonable belief that giving the person access would increase the family violence risk to a victim survivor. 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 10](#) on page 108 for more detail on accessing information.



# CHAPTER 4

## **Sharing information about adult victim survivors or third parties to assess and/or manage risks to an adult victim survivor**

This Chapter discusses the collection and sharing of information about an adult victim survivor or relevant third person for the purpose of assessing or managing risk to an adult victim survivor of family violence (a person who is 18 years or over).

The Chapter discusses the rights of victim survivors and third parties to: be notified when their information is collected; the general requirement of consent when sharing their information; when their information may be shared without consent; what records should be kept, and; how they can access their information.



For clarity, the term victim survivor refers to both adult and child victim survivors. This Chapter outlines sharing of information about victim survivors or third parties where there are **no associated children** at risk of family violence. [Chapter 5](#) on page 64 discusses the sharing of information about any person to assess or manage risk to a child victim survivor.

Sharing information about an alleged perpetrator or perpetrator of family violence is covered in [Chapter 3](#) on page 42.

[Figure 1](#): on page 23 provides a quick reference guide.

## KEY POINTS

- Under Part 5A, various consent thresholds apply when information is being shared to assess or manage risk to an adult victim survivor of family violence
- Adult victim survivor: Consent is required to share information about an adult victim survivor, 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 is required to share information that identifies a relevant third party, 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
- See the Model Conversation at Appendix [D](#) on page 142 for an example of how to collect personal information and informed consent from an adult victim survivor.

## Remember

- Consent thresholds **do not** apply to information sharing about any person 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 9](#) on page 100.
- Nothing in Part 5A restricts permissions to share if this is allowed under other laws.

## Definitions

### Victim survivor

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Victim survivor has the same meaning as a **'primary person'** as defined in the FVPA. A person will be a victim survivor (adult or child) if an ISE reasonably believes there is risk that the person may be subjected to family violence.

### Third party

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A third party (or linked person, under the FVPA) is any person whose confidential information is relevant to assessing or managing family violence risk who is not a victim survivor, perpetrator or alleged perpetrator. This could include previous partners of either party, friends, acquaintances, neighbours or associates of a victim survivor, perpetrator or alleged perpetrator.

## Collecting information about victim survivors and third parties

When an ISE collects information about a victim survivor or third party — either directly or indirectly — it is required to comply with existing privacy laws. This may include notifying victim survivors and third parties of the following:

- the identity of the organisation and how to contact it
- the fact that the victim survivor/third party 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
- the process for making complaints to the Victorian Information Commissioner if it is believed information has been shared unlawfully.

These requirements apply whether data is collected directly or indirectly except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

Victim survivors/third parties may not speak English and/or may need support with their communication. It is the responsibility of the ISE to ensure that the victim survivor/third party has been informed in a manner that they understand.

See the Model Conversation at Appendix D on page 142 for an example of how to collect personal information and informed consent from an adult victim survivor.

## Sharing information about an adult victim survivor

ISEs are required to obtain the consent of the adult victim survivor before sharing their information to assess or manage their risk of family violence. However, consent is not required if:

- the adult victim survivor's information is relevant to assessing or managing the risk of family violence to a child
- the ISE reasonably believes that sharing information is necessary to lessen or prevent a **serious threat** to a person's life, health, safety or welfare: see below.

For more guidance on the essential elements of consent, refer to [Chapter 9](#) on page 100.

For guidance on sharing any person's information that is relevant to assessing and managing family violence risk to a child, refer to [Chapter 5](#) on page 64.

For specific considerations when sharing information about an adult Aboriginal victim survivor, refer to [Chapter 7](#) on page 84.

[Chapter 8](#) on page 90 outlines some additional considerations when sharing information of adult victim survivors who are from culturally and linguistically diverse backgrounds, have intellectual or physical disabilities, identify as LGBTI, are older or are from rural, regional and remote areas.

## Sharing information about a third party

ISEs are required to obtain the consent of the third party before sharing their information to assess or manage family violence risk to an adult victim survivor. Consent is not required if:

- the third party's information is relevant to assessing or managing the risk of family violence to a child
- the ISE reasonably believes that sharing the information is necessary to lessen or prevent a **serious threat** to a person's life, health, safety or welfare: see below.

For sharing information about a third party to assess or manage risk to a child victim survivor, see [Chapter 5](#) on page 64.

Information can be shared about a third party in a de-identifiable way without the third party's consent. This would include omission of the third party's name, and any 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.

## The serious threat exception

Under Part 5A, an adult victim survivor or third party'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.

In such instances, it is best practice to involve victim survivors at every step of the process, wherever possible, so that the victim survivor has a clear understanding of, and confidence in, the process. This will also help to reassure adult victim survivors about why and how their information will be used and disclosed.

For example, if it is appropriate, safe and reasonable to do so, ISEs should inform the victim survivor that there is a **serious threat** to their life, health, safety or welfare. ISEs should 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.

### Remember

Victorian privacy laws allow information to be shared without a person's consent in order to lessen or prevent a **serious threat** to a person's life, health or safety.

## Identifying a serious threat

The assessment of whether a threat is serious should be undertaken in line with the MARAM [Framework](#).

To determine if a threat is serious, ISEs should use 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 MARAM [Framework](#) (in particular the factors associated with an increased risk of being killed or almost killed: see below)

- the victim survivor's reported level of fear
- cumulative harm to children and young people.

**Table 2:**

Factors associated with increased risk

### Red flags — factors associated with increased risk of victim survivor being killed or almost killed

Physical assault whilst pregnant/ following new birth

Victim survivor planning to leave or recent separation

Escalation — increase in severity and/or frequency of violence

Perpetrator controlling behaviours towards the victim survivor

Perpetrator has access to weapons

Perpetrator use of weapon in most recent event

Perpetrator has ever tried to strangle or choke the victim survivor

Perpetrator has ever threatened to harm or kill victim survivor

Perpetrator has ever harmed or threatened to harm or kill pets or other animals

Perpetrator has ever threatened or tried to self-harm or commit suicide

Stalking of the victim survivor

Sexual assault of the victim survivor

Perpetrator obsessive/ jealous behaviour towards the victim survivor

Perpetrator unemployment/disengaged from education

Drug and/or alcohol misuse/abuse by the perpetrator

The results of the MARAM [Framework](#) risk assessment, including the 'risk factors' present, should be considered alongside other sources of information, including the victim survivor's estimation 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 estimation of the level of risk.

The MARAM [Framework](#) contains more detailed practical information for workers on exploring a victim survivor's level of fear, noting that in some circumstances, victim survivors at high risk may underestimate their own risk level.

### Cumulative harm

Experiencing or witnessing multiple incidents of family violence may constitute a serious threat, particularly for child victim survivors. Understanding when cumulative harm has reached a sufficient threshold to be considered a serious threat requires skills, practice experience and professional judgement.

Practice guides on assessing the impact of cumulative harm to children, such as the Department of Human Services (2012) [Cumulative harm: Best interests case practice model specialist practice resource](#) can assist family violence practitioners with risk assessment and management practice for child victim survivors.

## Reasonable belief

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What is a 'reasonable belief' will vary depending on the 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

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When displacing the requirement to seek consent from an adult victim survivor or third party, an ISE must have a reasonable belief that it is necessary to share information to lessen or prevent the **serious threat**. In determining whether sharing might be regarded as necessary, consider the following:

- Is the *intention* of sharing the information to lessen or prevent (manage) the serious threat?
- Is the information being shared *relevant* to managing the serious threat?
- Is the recipient in a position to *take action* to use the information to manage the serious threat?

## To lessen or prevent

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The use or disclosure of information that would otherwise require consent to share must allow the ISE using or receiving it to take action that it would not otherwise be able to take: either to attempt to lessen or prevent the **serious threat** entirely or to reduce it.

When making this assessment, ISEs must also consider whether sharing information would increase the threat to the victim survivor or any other persons. If the threat cannot be prevented or lessened, and might actually increase the serious threat, then the ISE must not share the information.

An attempt to prevent or lessen the serious threat by sharing information may be unsuccessful. This does not mean that the use or disclosure of the information contravened Part 5A. Sharing would still have been appropriate if, at the time when the ISE disclosed the information, it held a reasonable belief that doing so would prevent or lessen the serious threat.

## If sharing an adult victim survivor or third party's information without consent

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When deciding whether to share information without consent, an ISE must make a professional judgement balancing the following considerations:

- whether, when the information was collected, the individual was made aware of the purposes for which the information was collected
- whether the ISE has the legal authority to disclose the information under Part 5A or other legislation.

When making a decision about whether to share information without consent, practitioners should:

- consider whether they are authorised by the ISE to make this decision and discuss their assessment with their manager or other colleagues
- refer to their professional protocols, service standards, policies and these guidelines

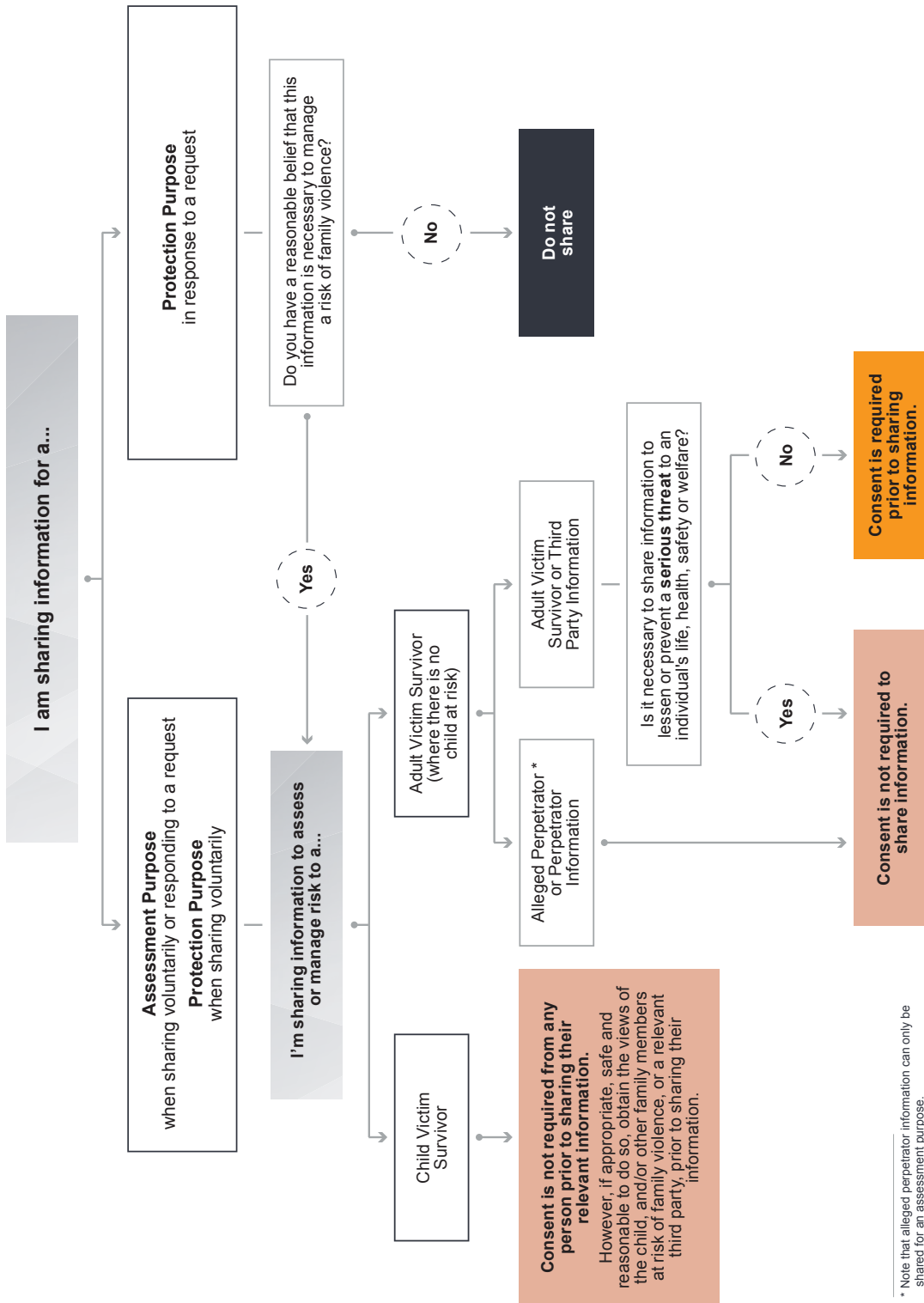
- discuss with the person (if appropriate, safe and reasonable to do so)
- consider their own safety and the implications for their service/organisation
- note and record the decision.

If an ISE decides to share information without consent, they should:

- determine the amount of information to share, how and with whom it is shared
- share only information that is relevant for the other service /organisation to perform their role or function.

Victim survivors/third parties may not speak English or may need support with communication. It is the responsibility of the ISE to ensure that the victim survivor/third party has been informed in a manner that they understand.

Information sharing helps keep victim survivors safe and hold perpetrators to account. This is a guide for ISEs on how to share information that is relevant to assessing and managing risk of family violence. ISEs should give precedence to victim survivors' right to safety and are authorised to share perpetrator information without consent.



\* Note that alleged perpetrator information can only be shared for an assessment purpose.

**YOU CANNOT SHARE EXCLUDED INFORMATION**

such as any information that could reasonably be expected to endanger a person's life or result in physical injury, prejudice legal proceedings or a coronial inquest or inquiry, or disclose privileged information. For a complete list of excluded information see the legislation.





# CHAPTER 5

## Sharing information to assess and/or manage risk to a child victim survivor

This Chapter outlines the requirements for sharing information to assess or manage risk to a child victim survivor of family violence. A child is someone who is under the age of 18 years, and includes infants and adolescents.

This Chapter also sets out:

- the interaction of Part 5A with the Child Protection system
- when parties should be notified that their information has been collected
- guiding principles for sharing information to assess or manage risk to children

- when and how to seek the views of children, or a parent who is not a perpetrator if sharing a child's information
- when and how to seek views of adolescents on sharing their information.

## KEY POINTS

- Nothing in Part 5A impacts on the existing Child Protection system. ISEs can continue to share information under applicable *Children, Youth and Families Act 2005* (CYFA) and mandatory reporting obligations. ISEs prescribed under the CIS scheme may also share information under that scheme to promote the wellbeing or safety of a child. Chapter 3 of the [CIS Guidelines](#) provides information on sharing information where the two schemes interact
- Part 5A ensures that a child's safety takes precedence over the privacy of any other individual
- A child is defined as a person under 18 years
- Children experiencing family violence should be recognised as victim survivors in their own right. Their safety and wellbeing should be paramount. Their distinct needs should be recognised when responding to family violence
- Perpetrators often adversely impact on the relationship between a child and the parent who is not a perpetrator by directly undermining that relationship
- Under the FVPA, 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, also constitutes family violence. Experiencing or witnessing one or multiple incidents of family violence is harmful to children
- Under Part 5A consent is not required to share anyone's information to assess or manage risk to a child victim survivor. However, **promoting an open and transparent relationship between service providers, a child victim survivor and a parent who is not a perpetrator (and may also be a victim survivor) is crucial**
- ISEs should look to promote the agency of the child and other family members at risk of family violence by ensuring their views are taken into account. Professional judgement should be used to determine when this is appropriate, safe and reasonable to do so. See the Model Conversation at Appendix [E](#) on page 144 for an example of how to seek the views of child victim survivors and parents who are not perpetrators
- An ISE should always seek to promote the child's wellbeing and safety, recognising the age and stage of the child, their cultural, sexual orientation or gender identity and religious faith
- When assessing and managing risk of family violence for a child victim survivor, an ISE should also plan for the safety of other family members at risk of being subjected to family violence
- ISEs must take reasonable steps to notify the child victim survivor, the parent who is not a perpetrator, and/or the relevant third party if their information has been shared (see Chapters [5](#) on page 64 and [11](#) on page 116).

## The interaction between Part 5A and the CIS scheme

In addition to family violence risk, ISEs assessing and managing family violence risk must also consider the broader wellbeing and safety concerns of children engaged with their service.

ISEs prescribed under both Part 5A and the CIS scheme are able to share information under the CIS scheme to address child wellbeing and safety issues in addition to family violence. For example, as well as assessing and managing family violence risk for a particular child, information should be safely shared, in accordance with the child's family violence safety plan, to promote their wellbeing by accessing appropriate educational support for learning difficulties.

Chapter 3 of the CIS [Guidelines](#) provides guidance on sharing information under the CIS scheme to promote the wellbeing or safety of a child when family violence is present.

## The interaction between Part 5A and the Child Protection system

### Remember

- Nothing in Part 5A of the FVPA affects existing information sharing already permitted under the CYFA
- An ISE's existing mandatory reporting obligations to Child Protection continue to apply
- Part 5A of the FVPA may be used to share information between ISEs (including Child Protection and Child FIRST, when prescribed).

Family violence frequently gives rise to concerns about the safety of children. The CYFA sets out grounds for statutory intervention, many of which may apply to children who are experiencing family violence. These grounds include:

- actual or likely physical injury (s 162(1)(c))
- actual or likely sexual abuse (s 162(1)(d))
- actual or likely emotional or psychological harm (s 162(1)(e)).

In addition to the principles set out in Part 5A, ISEs may have obligations under the CYFA to have regard to the Best Interests Principles and the Decision-making Principles in that Act. These ISEs include those that work within family services, Child Protection, placement services and the courts.

Many ISEs will also be bound by the Child Protection Best Interests Framework. This 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. It encourages a consistent focus on the safety, stability and development of children.

The introduction of the Scheme does not affect these principles, and any decisions made under Part 5A of the FVPA should be made in accordance with those principles and framework, and used in conjunction with the family violence MARAM Framework when assessing and managing risk.

## Collecting information from children, parents who are not perpetrators and third parties

When an ISE collects information about a victim survivor or third party — either directly or indirectly — it is required to comply with existing privacy laws. This may include notifying victim survivors and third parties of the following:

- the identity of the organisation and how to contact it
- the fact that the victim survivor/third party 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
- the process for making complaints if it is believed information has been shared unlawfully.

These requirements apply whether data is collected directly or indirectly except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

The ISE should include an explanation of the information sharing obligations under Part 5A. In particular, the ISE should explain that information may be shared by the ISE without the person's consent to assess or manage family violence risk to a child.

See the Model Conversation at Appendix E on page 144 for an example of how to seek the views of child victim survivors and parents who are not perpetrators.

## Sharing information to assess or manage risk to a child

Part 5A of the FVPA reflects the principle that a child victim survivor's right to safety overrides any individual's right to privacy. Accordingly, any person's information may be shared without consent to assess or manage risk to a child victim survivor.

However, ISEs are encouraged to take all reasonable steps to seek and obtain the views of the child and/or any parent who is not a perpetrator and to take those views into account where it is safe, appropriate and reasonable to do so. Obtaining the views of the child victim survivor and the parent who is not a perpetrator (and will often also be a victim survivor) is an integral part of assessing and managing risk to both the child and other

family members. Their views can help to inform the assessment and management of family violence risk and in doing so mitigate possible adverse outcomes of information sharing.

The ISE should inform the child or parent that information has been shared, except if doing so would place the child victim survivor or their parent who is not a perpetrator 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 agreed to information sharing or not.**

## Guiding principles when sharing any person's information to assess or manage risk to a child victim survivor

When sharing any person's information to assess or manage risk to a child, 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) (Section 144J (3)(a) FVPA)
- take all reasonable steps to ensure the information is shared in a way that:
  - ... plans for the safety of all family members at risk of family violence, and
  - ... recognises the desirability of preserving and promoting positive relationships between those family members and the child (Section 144J (3)(b) FVPA).
- take into consideration the age and stage of the child, and their cultural, sexual and gender identity.

[Chapter 8](#) on page 90 contains further considerations when sharing information about children from diverse communities.

Information about safety planning can be found at:

- The Lookout (2013) [Fact Sheet 3 — Safety Planning](http://www.thelookout.org.au/fact-sheet-3-planning-for-safety) <<http://www.thelookout.org.au/fact-sheet-3-planning-for-safety>>
- 1800RESPECT, [Safety planning checklist](https://www.1800respect.org.au/help-and-support/safety-planning/checklist) <<https://www.1800respect.org.au/help-and-support/safety-planning/checklist>>.

### 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 the views of the parent who is not a perpetrator or the child victim survivor, Part 5A permits any person's information to be shared without consent to assess or manage risk of family violence for the child. However, relevant safety planning for other family members that are not perpetrators must also be done.

## Sharing a child victim survivor's information to assess or manage their risk

### Seeking a child's views before sharing their information

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An ISE must share information in response to a valid request if it is relevant to assessing and managing a risk to the child. This information may be shared without consent.

An ISE should consider supporting the child to contribute to decisions that affect them. This includes seeking the views of a child victim survivor prior to sharing their information under Part 5A, when appropriate, safe and reasonable to do so.

While there may be some challenges associated with obtaining the views of the child (due to their age, maturity level, comprehension) that should not, in itself, be a barrier to seeking a child's views.

### General considerations for ISEs

Practitioners should use their professional judgment and training to determine whether or not the child has the capacity to be actively involved in this discussion.

ISEs should consider:

- the age and capacity of the child,
- their level of maturity,
- their ability to comprehend the proposed action, and
- the likely consequences.

A child sharing their views and being involved in decision-making can often increase their safety. ISEs should also consider which service/practitioner is best placed to seek the views of the child. This consideration should be based on expertise and existing relationships of trust with the child.

### Younger children

When ISEs are working with younger children it may be difficult to determine whether a child has the capacity to communicate their views about their information being shared. ISEs should consider if the child:

- understands the facts involved
- understands the main choices
- is able to weigh up the consequences of the choices
- understands how the consequences affect them
- can communicate their decision.

### Extra supports

Special consideration must be given to:

- the child's ability to communicate through appropriate means. This includes the recognition that some children communicate in non-verbal ways, such as through pictures and movement
- the possibility that some children (including children who do not speak English as a first language and children with disabilities) may need additional supports and/or encouragement to express their views.

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.

## Other considerations

ISEs should also consider:

- whether the primary decisions to be made directly impact the child
- the appropriate weight that should be given to the child's views in the circumstances
- that sometimes information will be shared with an organisation that works under a framework where the parent who is not a perpetrator is the primary client. This is important to consider in cases where the child's views may be inadvertently shared with the parent who is not a perpetrator.

Particular consideration should be given when seeking the views of young people, in particular those approaching the age of 18, who will soon be subject to adult consent requirements.

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.

### Impact of family violence on child victim survivor's willingness to share information

ISEs could also consult with the parent who is not a perpetrator about information sharing in regard to child safety, where it is appropriate, safe and reasonable to do so. In doing this, it is important to remember that a child's safety will always take priority. **ISEs should acknowledge the protective actions the parent who is not a perpetrator has taken to protect the child in situations of family violence.** Often the parent who is not a perpetrator will question their parenting skills due to negative feelings about being unable to protect their children. Acknowledging both the parent's and child's strength and resilience is an important aspect of managing risk.

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 perpetrator's use of power and coercive control over the family. Family violence has an impact on the relationship between the child and the parent who is not a perpetrator and can often lead to estrangement and conflicting feelings for the child. Perpetrators can adversely impact on the relationship between a child and a parent who is not a perpetrator by:

- directly undermining the relationship between the child and the parent
- causing the parent distress that can affect their functioning, making them physically or psychologically unavailable to parent
- attacking the parent's confidence in their capacity or effectiveness as a parent
- undermining the parent's actual and felt relationships with their children
- repeatedly denigrating the parent's character and worth as a person — to the parent and/or their child(ren).

This behaviour can lead a child to have divided loyalties to the perpetrator and the parent who is not a perpetrator. Children may be scared and not want their information to be shared in case it would get the perpetrator in trouble. 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 child's views.





## CASE STUDY

### Obtaining a child victim survivor's views before sharing their information

Matthew has been increasingly physically violent towards his 14-year-old son, Byron. Byron's mother, Janice, and Byron have recently moved out of the home that they shared with Matthew. Janice and Byron are working with a local family violence service to manage their risk. During the preparation of a safety plan with Byron, the family violence service identifies a youth mental health service that could assist Byron with addressing the impact of his father's violence on his mental health. Byron agrees to initiate contact with this service.

Byron discloses to the counsellor at the mental health service that he has been feeling lonely and is thinking about contacting his father by replying to emails his father had sent him. The counsellor talks to Byron about sharing this information with the family violence service and explains that contact with his father could increase Byron and Janice's family violence risk, particularly if Matthew learns of their current location.

Byron says that he does not want this information shared with the family violence service. The mental health service is honest and transparent, validating the concerns raised by Byron. Nonetheless, the service determines that it is important that the information be shared with the family violence service and the reasons for this, which is to manage the risk to him of family violence by his father. The mental health service then involves Byron in the process of how best to inform the family violence service.

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, Byron'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 Byron did not want his information to be shared, the ISE would need to exercise their professional judgement about whether Byron's information should still be shared. In this instance, The counsellor at the mental health service balanced a range of considerations, prioritising Byron's safety first.

### Seeking views of a parent who is not a perpetrator if the child victim survivor does not have capacity

An ISE should also consider seeking the views of a parent who is not a perpetrator prior to sharing a child's information under Part 5A.

Situations where it may be appropriate to seek the views of the parent of the child who is not a perpetrator include where:

- it is unreasonable, impractical or unsafe to seek the views of the child, or they lack understanding (i.e. capacity) to provide their own views
- the ISE has determined that there is a parent who is not a perpetrator on the basis of a family violence MARAM [Framework](#) risk assessment
- seeking the views may inform risk assessment and management for the child and potentially the parent
- it is appropriate, safe and reasonable in the circumstances to seek the views of a parent
- when consulting with a parent about managing risk to children.

#### Remember

When sharing information to assess and manage risks to a child victim survivor, an ISE should always share in a way that avoids blaming the parent who is not a perpetrator and may also be a victim survivor. The ISE should focus on holding the perpetrator to account.

## Sharing a child victim survivor's information without seeking the views of the child or the parent who is not a perpetrator

Situations where it may be appropriate to share a child victim survivor's information without seeking the views of the child or parent who is not a perpetrator 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 4](#) on page 54)
- it is **unreasonable, impractical or unsafe** to seek the views of the child, parent or third party
- the parent is underestimating the risk to the child
- it would otherwise not promote the safety or wellbeing of the child to seek their views.



### CASE STUDY

## Unreasonable to seek the views of the child or their parent

Jenny is a maternal and child health nurse. She has conducted two home visits to Phillip and Andrea's home after the birth of their second baby. During these visits Jenny observes bruising on the couple's four-year-old daughter Dahlia's cheek. Neither parent provides an adequate explanation as to how Dahlia sustained the bruising. Jenny does not have an opportunity to speak to either parent without the other present and notices that Phillip often speaks for Andrea, and Andrea seems nervous around him. Under existing mandatory reporting requirements in Victoria and concerns about Dahlia and the baby's risk of harm in their parents' care, Jenny makes a report to Child Protection about this family. Child Protection conducts an investigation to ensure the safety and protection of the children from further harm.

The Maternal and Child Health service is able to share information about the family with other ISEs for assessment or protection purposes. Jenny is aware that the family is engaged with a family services caseworker. Jenny decides to share information about her concerns for the children with the family services caseworker and decides not to seek the views of Dahlia because it is unreasonable under the circumstances (i.e. the risk, the parents are always present with Dahlia, age and stage). Further, Jenny may not seek the views of her parents, because she is unable to speak to one of them safely without the other present and is concerned that if she seeks their views the risk of family violence may increase.

Under Part 5A ISEs are able to:

- share information to do with risk of family violence to a child with other ISEs
- share this information without seeking the views of the child or their parents when it is not appropriate or safe to do so
- collaborate with other ISEs to manage risk of family violence to the child.



## CASE STUDY

### Impractical and/or unreasonable to seek the child's views

Some examples of when it may be impractical and/or unreasonable to seek the views of the child victim survivor or the parent who is not a perpetrator include where:

- the child or parent is incapacitated (for example, in a coma)
- the whereabouts and phone number of a child or parent is unknown
- repeated attempts have been made to contact the child or the parent to no avail
- the perpetrator is always present and does not let the child or parent have any communications in private (for example, accompanying them to all appointments, listening to phone conversations, monitoring social media use)
- the service involved with one of the parents has never had any contact with the child and it would be beyond the scope of their role and expertise to contact the child to seek their views.



## 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 six and nine. During their relationship, Tim was possessive, controlling and verbally abusive and this behaviour continued post-separation. Recently, Tim has repeatedly called Shana's phone and hung up. He has sent threatening and abusive messages to one of Shana's friends with whom he believes Shana has formed a new relationship. Shana is not of the view that Tim's abusive behaviour has an impact on the children because Tim has never been physically violent towards her or the children. Recently, Tim has told Shana that if she does not resume their relationship, he will not 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's safety. Shana is adamant that Tim is a 'great dad'. She maintains that her difficulties with Tim are not relevant to the children.

Jess meets with the children to explore the children's experiences of family violence and their feelings towards their father, as this will inform the risk assessment for Shana and the children. The children disclose to Jess that sometimes their father's behaviour towards their mum makes them feel afraid. Jess suggests to the children they talk to their mother or someone at school about their worries. She discusses with the children the information she will share with their mother, such as their examples of Tim's behaviour that make them afraid.

Jess determines that it is not appropriate to seek the views of the children with regard to sharing their information. When Jess informs Shana of her meeting with the children Jess explains that she would like to share this information with the homelessness service who are providing the accommodation for Shana and the children. It is important that the homelessness service is aware of the situation should Tim attempt to contact them at their accommodation. Shana, however, does not agree that information should be shared with the homelessness service, based on her belief that her children are not at any risk.

Jess explains to Shana that when children witness or hear abuse, this constitutes family violence and they are at risk of harm. As permitted under Part 5A, Jess informs Shana she will be sharing information about the risk she has identified with the homelessness service, despite Shana's belief that this is not necessary. Shana's view is that while she does not think that Tim poses a risk to the children, she understands Jess is concerned and will need to contact the homelessness service. Jess and Shana create a safety plan for Shana and the children should Tim attempt to contact them, which includes Shana agreeing to contact the police immediately if Tim makes contact. If this happens, an intervention order can be sought to protect Shana and the children. Jess continues to work with Shana and explain to her the impacts of the father's violence on the children's safety and wellbeing.



## CASE STUDY

### Will not promote the child's safety or wellbeing 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. She is currently residing with Emily at her mother's home (at an address unknown to Frank). From the outset of involvement with the family violence service, both Emily and Jane have voiced their concerns about their information being shared. They fear that Frank will find out where they are residing. Jane was recently hospitalised as an involuntary 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. She is linked with a youth mental health service.

The specialist family violence service wants to convene 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 objection. The specialist family violence worker assesses that additional stressors, including seeking their views on sharing information, may further exacerbate both Jane and Emily's mental health conditions.

### Notifying children victim survivor and their parent who is not a perpetrator that information has been shared

The ISE should inform the child victim survivor or their parent who is not a perpetrator (and may also be a victim survivor) that their information has been shared, except where doing so may put them 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:

- Department of Health and Human Services (2013) *Assessing children and young people experiencing family violence: A practice guide for family violence practitioners* <[https://dhhs.vic.gov.au/sites/default/files/documents/201705/Assessing\\_children\\_and\\_young\\_people\\_family\\_violence\\_0413.pdf](https://dhhs.vic.gov.au/sites/default/files/documents/201705/Assessing_children_and_young_people_family_violence_0413.pdf)>

- Department of Human Services (2012) [Children and their families — Best interests case practice model specialist practice resource](http://www.cpmanual.vic.gov.au/sites/default/files/Children%20their%20families%20specialist%20prctice%20resource%202012%203018.pdf) <http://www.cpmanual.vic.gov.au/sites/default/files/Children%20their%20families%20specialist%20prctice%20resource%202012%203018.pdf>
- Department of Human Services (2012) [Adolescents and their families — Best interests case practice model specialist practice resource](http://www.cpmanual.vic.gov.au/sites/default/files/Adolescents%20%26%20their%20families%20specialist%20practice%20resource%202012%203003%20.pdf) <http://www.cpmanual.vic.gov.au/sites/default/files/Adolescents%20%26%20their%20families%20specialist%20practice%20resource%202012%203003%20.pdf>
- Department of Human Services (2012) [Infants and their families — Best interests case practice model specialist practice resource](http://www.cpmanual.vic.gov.au/sites/default/files/Infants%20their%20families%20specialist%20practice%20resource%202012%203015.pdf) <http://www.cpmanual.vic.gov.au/sites/default/files/Infants%20their%20families%20specialist%20practice%20resource%202012%203015.pdf>
- Department of Human Services (2012) [Cumulative harm, Best interests case practice model, specialist practice resource](http://www.cpmanual.vic.gov.au/sites/default/files/Cumulative%20harm%20specialist%20practice%20resource%202012%203014%20.pdf) <http://www.cpmanual.vic.gov.au/sites/default/files/Cumulative%20harm%20specialist%20practice%20resource%202012%203014%20.pdf>
- Department of Human Services (2014) [Working with families where an adult is violent, Best interests case practice model, specialist practice resource](http://www.cpmanual.vic.gov.au/sites/default/files/Working%20with%20families%20where%20an%20adult%20is%20violent%20specialist%20resource%203017.pdf) <http://www.cpmanual.vic.gov.au/sites/default/files/Working%20with%20families%20where%20an%20adult%20is%20violent%20specialist%20resource%203017.pdf>

## What happens when adolescents are victim survivors or using violence towards their families?

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

- adolescents who 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:
  - ... a family member or relative
  - ... an intimate partner.

Where a person under the age of 18, including adolescents, is at risk of being subjected to family violence, Part 5A permits information to be shared without consent if it is relevant to assess or manage the risk of family violence. Additionally, if an adolescent is at risk of using family violence, Part 5A also permits the sharing of their information as a 'person of concern'. See [Chapter 6](#) on page 78 for further discussion on adolescents who are at risk of using family violence.

## Sharing information about adolescent victim survivors

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ISEs should be mindful that adolescents may have strong views on when and how their information should be shared.

Where appropriate, safe and reasonable, ISEs should promote the agency of the adolescent by seeking their views on when and how their information should be shared.

An ISE should determine the appropriateness of seeking and following the views of the adolescent. The ISE should consider the adolescent's:

- age and maturity
- understanding of the facts involved
- comprehension of the main choices
- ability to weigh up the consequences of the choices
- understanding of how the consequences affect them
- capacity to communicate their decision.

Note that adolescents who do not speak English as a first language, are from diverse communities or have a disability, may need additional support and encouragement to express their views. See [Chapter 8](#) on page 90 for further information.

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 adolescent 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 adolescent has the capacity to consider and provide their own views.

Particular consideration should be given when seeking the views of those approaching the age of 18, who will soon fall under the consent model of an adult.

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 objections of the adolescent. 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, who has just turned 17 years old, has been in an intimate relationship with Carl, who is 22 years old for ten months and they have been residing together for three months. Amy and Carl recently had a baby. Amy has stopped attending school. During an appointment with the maternal and child health service (MCHS), Amy discloses that Carl is very controlling of her movements and has attempted to restrict her contact with her friends and family. Amy also discloses that since she became pregnant, Carl has been physically abusive towards her including choking her on one occasion.

As both choking and pregnancy/new birth are identified as high level risk factors of family violence, the MCHS instigates an additional family consultation to speak to Amy about the services that are available to her. Maternal and child health services are prescribed under Part 5A. The MCHS decides it is important to share information including the MARAM Framework assessment with other ISEs. She plans to share the information with a specialist family violence service and Victoria Police to manage the risk posed to Amy and her baby. The MCHS considers the appropriateness of seeking Amy's views prior to sharing the information. The MCHS believes that Amy has the maturity to understand the implications of sharing her information and that of her baby and speaks with Amy about the information she wishes to share. Amy is concerned about the escalating violence and the risk of harm to her baby. She wants her information to be shared as proposed by the MCHS. This view helps inform risk assessment and the risk management responses considered. The MCHS also advises Amy that a report has been made to Child Protection given her concerns for Amy and her baby's safety.

Under Part 5A, the MCHS 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. They assist 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. 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 provide additional support and assistance. Amy continues to engage with the MCHS service, who work closely with Child FIRST and the other support services involved with the family.

Part 5A permits Amy's information to be shared without first obtaining Amy's views. However, Amy has sufficient maturity and she understands the risks to both her and her baby. Therefore, it would be appropriate for the ISE to have an open discussion with Amy and seek her views prior to sharing information.



# CHAPTER 6

## Sharing information about adolescents who are at risk of using family violence

This Chapter outlines the particular considerations required when sharing information about adolescents who use violence against family members. Adolescent family violence was recognised by the Royal Commission as a unique form of family violence requiring distinct responses. The Chapter begins by outlining some of the key considerations when responding to adolescent family violence. The various consent requirements are then outlined, based on whether the information is shared to assess or manage risk to a child or adult victim survivor.



## KEY POINTS

- Family violence used by adolescents is a distinct form of family violence and requires a different response to family violence by adults
- Many adolescents who use family violence have been subjected to violence themselves, and have other linked risk factors
- Therapeutic and diversionary responses to adolescents using family violence are recommended
- An ISE does not need to obtain the consent of the adolescent to share their information for an **assessment** or a **protection** purpose
- ISEs should ensure that the sharing of information about adolescents who use violence is done in a way that supports the therapeutic needs of, and builds trust and transparency in the professional relationship with, the adolescent, as well as the safety of the victim survivor. This may involve informing them that their information has been shared if it does not increase risk to the victim survivor
- Information sharing should be done in a way that avoids stigmatising the adolescent and supports them and the family to seek help, particularly in the case of sexual violence.

In this Chapter, an adolescent at risk of using family violence comes under the definition of a 'person of concern' for the purposes of the FVPA.

Where there is merely a suspicion that the adolescent poses a risk of family violence, the consent requirements will be the same as those for an alleged perpetrator and their information may only be shared with a RAE for a family violence **assessment purpose** (see [Chapter 6](#) on page 78).

As with adult perpetrators, information may be shared about adolescents that use family violence with any ISEs for a family violence **protection purpose**, and the consent requirements to share their information are the same as those for adult perpetrators.

## Working with adolescents who use family violence

The Royal Commission found there is a lack of awareness and understanding of family violence used by adolescents and that this can lead to inappropriate responses. Adolescent family violence 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.

Early therapeutic intervention for adolescents who are at risk of using 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. It is important to focus on the individual strengths and resilience of adolescents, while not minimising indicators of distress and trauma. Consideration must also be given to the adolescent's culture, to inform therapeutic responses (see [Chapters 7](#) on page 84 and [8](#) on page 90). For young Aboriginal people, this includes cultural and community connections and Aboriginal healing approaches (see [Chapter 7](#) on page 84).

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

- There is a need to raise community awareness about adolescents who use family violence, along with easy to find information about the options and services available
- Adolescents who use family violence should be recognised as different from adult perpetrators of 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 adolescent
- There is a need for an immediate response so that young people understand the consequences of their actions and victim survivor's safety can be promoted
- Removal of the adolescent from the home should be avoided where possible
- Improvements to the justice system need to be made so that greater use can be made of diversionary and restorative options.<sup>2</sup>

<sup>2</sup> Royal Commission into Family Violence (2016) *Report and Recommendations* chap 23 p 166



## CASE STUDY

### Sharing information about an adolescent who is using family violence

Debbie lives with her children, Jordan (17 years old), Jasmine (8 years old) and Bentley (3 years). The children's father Emilio was verbally and physically violent towards Debbie, Jordan and Jasmine for many years. When Bentley was born, Emilio passed away and Debbie moved back to Victoria to be with her family. For the last 12 months, Jordan has been exhibiting aggressive, and controlling behaviour towards family members. In a recent incident, Jordan physically assaulted Debbie and one of his younger siblings resulting in police applying for an intervention order against Jordan on behalf of Debbie, Jasmine and Bentley. The conditions of the intervention order allowed Jordan to live in the family home but prohibited him from using any form of family violence towards his mother and siblings. However, Debbie has organised a homelessness worker for Jordan as it's not appropriate for him to stay in the home long-term.

A specialist family violence service contacts Debbie as a result of police involvement and to assess risk and manage their safety. The specialist family violence service discusses the importance of information sharing with services as required, and informs Debbie that they would like to share information about Jordan with a homelessness service to explain the current risk posed by Jordan and the need for him to find appropriate housing as soon as possible. Even though in these circumstances, the specialist family violence service determined that it was appropriate to discuss sharing Jordan's information with Debbie, Part 5A allows for information about any person (including Debbie, Jordan, Jasmine and Bentley) to 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 siblings, information about Jordan (as a person posing a risk of using 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) could only be shared with her consent unless it was determined there was a serious threat.

### Sharing information about an adolescent who is at risk of using family violence against a family member (adult or child)

Part 5A permits an adolescents' information to be shared without their consent where they pose a risk of using family violence against a family member (whether they are an adult or a child). However, ISEs should share adolescents' information in a way that does not stigmatise or further isolate them, to enhance the opportunity of effective early intervention and therapeutic supports.

Where possible, information should be shared in a way that supports the therapeutic needs of the adolescent. This may involve informing them that their information has been shared, as trust and transparency in the professional relationship can be important factors in encouraging young people to engage in a therapeutic response.

However this should only be done where the ISE:

- has expertise in working with adolescents who use violence
- believes it is appropriate, safe and reasonable to do so; and
- is confident that informing the adolescent will not increase the risk to the victim survivor.

Maintaining the safety of victim survivors should remain the paramount consideration.

Information that can be shared when assessing or managing an adolescent at risk of using family violence is set out below:

- information about the child victim survivor without their consent, but seeking views (see [Chapter 5](#) on page 64)

- information about the adult victim survivor with their consent, unless there is a serious threat (see [Chapter 4](#) on page 54)
- information about the adolescent who is at risk of using family violence without consent, though sharing the information should be conducted in a manner that continues to support the therapeutic relationship with the adolescent, where possible (see above)
- Information about any other relevant third party with their consent, unless there is a serious threat or their information can be shared in a de-identified way (see [Chapter 4](#) on page 54).



## CASE STUDY

### Minimising stigma when sharing information about an adolescent who is using family violence

Bella and her 16-year-old son, Noah, were living together. Noah's father left the home two years ago and has had no contact with Bella or Noah. Since that time, Noah has become increasingly angry, hostile and verbally abusive towards Bella. Recently, his abuse has escalated to physical violence and Bella is frightened.

One evening Noah caused significant property damage and physically assaulted Bella. Given the seriousness of Bella's injuries, the police obtained a family violence intervention order on Bella's behalf excluding Noah from the home. The conditions of the order allowed Bella and Noah to have contact by phone (but not in person). Bella is committed to working towards Noah returning home but agreed with police that the risk at that time was too high for Bella and Noah to live together or have face-to-face contact.

It was agreed that Noah would reside with his maternal uncle Todd. Child Protection closed its file after making an assessment that this was a suitable placement for Noah. Noah, Bella and Todd agree that Noah should commence counselling to address his behaviour and help him adjust to his new living situation. Bella also shares information with Noah's new school and asks them to work closely with Noah's counsellor to address his use of violence.

Once prescribed under Part 5A, the counsellor and the school will be permitted to share information for the purposes of managing Noah's risk of using family violence which includes coordinating therapeutic support. Bella consents for her information to be shared between the police (if needed), the counsellor and the school. Although under Part 5A, Noah's information can be shared without his consent, the counsellor informs Noah that his information will be shared given that it is appropriate, safe and reasonable to do so, and the counsellor is confident that informing Noah will not increase the risk to Bella.

Bella has continued to have phone contact with Noah and after six months, she approaches police to request that they vary the conditions of the family violence intervention order so that Noah can return to the family home. However, the police remain concerned for Bella's safety.

Under Part 5A, the police speak with Noah's counsellor and school to discuss his progress and assess the risk of him returning home. In responding to the information request from the police under Part 5A, the counsellor and the school form a reasonable belief that the information they hold will assist in managing the risk posed to Bella. The counsellor and the school share information with police about Noah's disclosures of violence towards Bella, his positive engagement in therapy, and the insight he has developed about the harm he has caused to Bella. The counsellor advises that Noah has regularly attended counselling and is willing to continue this if permitted to return home. In light of this information, police agree to vary the family violence intervention order allowing Noah to return to his mother's home, but the condition that Noah must not commit family violence remains on the order.

## Adolescents who are engaging in sexually abusive behaviours as a form of family violence

There can be significant stigma associated with young people exhibiting sexually abusive behaviours against other family members as a form of family violence. ISEs should acknowledge this and engage with the family respectfully and without blame.

Research demonstrates that young people who receive therapeutic treatment for sexually abusive behaviours have low rates of recidivism. It is therefore vital that these behaviours are identified early and that therapeutic treatment is sought.<sup>3</sup>

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.

When sharing information about an adolescent who is using sexual violence as a form of family violence, ISEs should share information under Part 5A in a way that minimises stigma for the young person. Careful consideration should be given to the purpose of sharing the information, and whom it should appropriately be shared with.

## Further resources

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

- Department of Human Services (2012) *Adolescents and their families — Best interests case practice model specialist practice resource* <<http://www.cpmanual.vic.gov.au/sites/default/files/Adolescents%20%26%20their%20families%20specialist%20practice%20resource%202012%203003%20.pdf>>
- Department of Human Services (2012) *Adolescents with sexually abusive behaviours and their families — Best interests case practice model specialist practice resource* <<http://www.cpmanual.vic.gov.au/sites/default/files/Adolescents%20sexually%20abusive%20behavs%20specialist%20resource%202012%203004%20.pdf>>

<sup>3</sup> Department of Human Services (2012) *Adolescents with sexually abusive behaviours and their families — Best interests case practice model specialist practice resource*, p 14

# CHAPTER 7

## Considerations when sharing information about Aboriginal people

This Chapter outlines the principles and specific requirements when sharing information about Aboriginal people under Part 5A. These reflect the principle of self-determination, and the history of trauma and dispossession that continue to impact on Aboriginal people.

The first part of the chapter provides some background, and then outlines the recommended approach to sharing information about Aboriginal people. The aim is to ensure that universal and mainstream service providers share information about or in relation to Aboriginal people in a culturally competent and safe way.

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. 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.

To practice in a culturally safe way means to carry out practice in collaboration, with care and insight for another's culture whilst being mindful of one's own. A culturally safe environment is one where people feel safe and where there is no challenge or need for the denial of their identity. Cultural competence specifically refers to the relationship of a practitioner with the person receiving support. The responsibility rests with the practitioner to ensure they have reflected on their own cultural, social and individual influences and bias. This process also involves having awareness of the culture of the person receiving support (including historical and current experiences of oppression and injustice and the importance of culture, country and community to Aboriginal health, wellbeing and safety).

## KEY POINTS

- Part 5A contains specific guiding principles for sharing information about Aboriginal 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 family and community connections (s144J of the FVPA)
- These principles reflect the particular context of family violence within Aboriginal communities stemming from the traumatic impacts of white settlement, dispossession and removal of children, and the ongoing legacies of distrust and fear of state intervention
- Family violence is not part of Aboriginal culture
- Aboriginal people have historical and ongoing grounds for fear and suspicion of authority, which has implications for consent and privacy
- Aboriginal people have a right to access Aboriginal Community Controlled Organisations (ACCOs) and ISEs must promote that right
- Cultural consultation by ISEs (e.g. with ACCOs) is important, where appropriate
- Many perpetrators of family violence toward Aboriginal victim survivors are not themselves Aboriginal.



### **Family violence experienced by Aboriginal people living in Victoria**

Aboriginal women experience significantly higher levels of family violence than non-Aboriginal women. There is also significant under-reporting of family violence in Aboriginal communities. Aboriginal women are also 25 times more likely to be killed or injured as a result of family violence. 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.

Drawing on the work of the Victorian Indigenous Family Violence Task Force, the Royal Commission found that the high rate of family violence against Aboriginal women and children in Aboriginal communities must be understood in the context of the traumatic legacies of colonisation including:

- dispossession of land and traditional culture
- breakdown of community kinship systems and Aboriginal lore
- racism and vilification
- economic exclusion and entrenched poverty
- alcohol and drug abuse
- the effects of institutionalism and child removal policies
- inherited grief and trauma
- the loss of traditional Aboriginal male roles, female roles and status.

The Royal Commission found that these ongoing legacies have contributed to the prevalence of family violence within Aboriginal communities.

### **Choice of service and cultural safety**

An important aspect of self-determination is that Aboriginal people have the right to choose to receive services from ACCOs, where they are available. This reflects the principle that Aboriginal services should be provided by Aboriginal people for Aboriginal people. The Royal Commission heard that most Aboriginal victim survivors prefer to receive support from ACCOs, but that some prefer to attend a non-Aboriginal service.

Where Aboriginal people attend a non-Aboriginal service, that service should operate in a culturally safe manner. To practice in a culturally safe way means to carry out practice in collaboration, with care and insight for another's culture whilst being mindful of one's own.

Cultural competence specifically refers to the relationship of a practitioner with the person receiving support. The responsibility rests with the practitioner to ensure they have reflected on their own cultural, social and individual influences and bias. This process also involves having awareness of the culture of the person receiving support (including historical and current experiences of trauma and oppression). ISEs should ensure that they are operating in culturally safe manner and that their workers receive cultural competency training.



## Concerns about information sharing in Aboriginal communities

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As the Royal Commission recognised, the ongoing legacies of welfare legislation, policy and practice — in particular in relation to the high rates of removal of children and incarceration of Aboriginal people — mean that many Aboriginal people have significant distrust in government. Aboriginal people may be concerned about their information being shared with government agencies and may fear government agency interventions in their lives.

This distrust may flow on to ISEs, which will often be perceived as part of the state.

Some Aboriginal people may be concerned about engaging with services when they perceive that information could be shared with others in their community. This concern might be particularly prevalent when that information relates to traumatic issues such as past removal or child abuse.

It is important that ISEs be attuned to this when collecting information or requesting consent to share information. ISEs must recognise that Aboriginal people may also be fearful of engaging with services if their information may be shared, particularly when children are involved. ISEs working with Aboriginal victim survivors and perpetrators should consider these factors when making decisions to share information. Such considerations should also be reflected in how ISEs inform clients that their information will be shared with certain service providers. ISEs should be mindful that sharing an Aboriginal client's information without consent or appropriate communication could affect the client's trust in the ISE. ISEs should therefore ensure their collection notices are tailored to the particular needs of Aboriginal clients.

## Sharing information about an Aboriginal person

When sharing information or seeking consent from victim survivors to share information about a person who identifies as Aboriginal, 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
- ensuring awareness of any unconscious bias and assumptions in order to reduce occurrence
- clearly explaining how information will be used and for what purpose and ensuring that message is culturally sensitive and addresses the particular concerns that an Aboriginal person 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 person may be particularly wary about the sharing of certain information, such as their past history of removal as a child. Aboriginal clients must be reassured that this information will not be shared where it is not relevant to assessing or managing risk of family violence).

## Additional requirements when sharing information about an Aboriginal person

In recognition of the particular concerns that may be held by Aboriginal clients engaging in the family violence system, and of their rights to self-determination, including in a family violence context, Part 5A contains specific requirements for ISEs when collecting, using or sharing information relating to Aboriginal people, whether they be victim survivors, perpetrators, alleged perpetrators or third parties.

Section 144J(2)(d) provides that ISEs must collect, use or disclose the confidential information of a person who identifies as Aboriginal in a manner that promotes the right to self-determination, is culturally sensitive and considers the person's family and community connections.

To demonstrate their compliance with section 144J(2)(d) all ISEs must:

- ask (at point of intake) all clients, including children, and regardless of appearance, whether they identify as Aboriginal
- ask whether Aboriginal clients (including children) would prefer to receive a service from an Aboriginal Community Controlled Organisation, seek their client's views on which services their information should be shared with and make relevant referrals
- recognise the discrimination experienced by Aboriginal people and the impact of unjust government policies and practices
- demonstrate respect and consideration for Aboriginal people and culture
- work collaboratively with Aboriginal organisations and agencies to support the client in a culturally respectful manner.

## Best-practice principles

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In addition, best-practice approaches for sharing information about Aboriginal people should involve:

- demonstration of cultural competency through training and/or lived experience along with an understanding of the particular issues facing Aboriginal people, including lateral violence
- provision of a holistic and trauma-informed service that has an understanding of broader Aboriginal perspectives of cultural, social and emotional wellbeing
- providing access to culturally informed, safe services and programs<sup>4</sup>
- acknowledgment of 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 ACCOs if a referral is not preferred by the client or not possible.

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<sup>4</sup> Dhelk Dja Partnership Forum (2018) *Dhelk Dja: Safe our way — Strong Culture, Strong Peoples, Strong Families*



# CHAPTER 8

## Additional considerations for particular communities

This Chapter sets out inclusive practice guidance on information sharing for ISEs when working with people whose circumstances may require additional consideration when accessing services and providing informed consent.

This includes people with disabilities, people from culturally and linguistically diverse backgrounds, older people, people from lesbian, gay, bisexual, trans and gender diverse and intersex communities and people from regional, rural and remote communities.

Services that do not have specialisation working with the above communities should refer to this Chapter and to the 2017 Victorian Equal Opportunity and Human Rights Commission's Guideline [\*Family violence services and accommodation: Complying with the Equal Opportunity Act 2010\*](#) to ensure inclusive practice.

## KEY POINTS

- ISEs must consider the many factors that may impact a person's individual experience of family violence and affect their response to information sharing
- Experiences of discrimination, oppression and trauma may make some victim survivors fearful of or unwilling to give consent to share their information
- Some communities' understanding of privacy may be influenced by cultural traditions and beliefs
- Language and other communication limitations can be a significant barrier to engagement when explaining the complex issues of consent and privacy legislation to victim survivors.

## Building inclusive and non-discriminatory services

The Victorian community is diverse, and people express multiple forms of identity and belonging. Family violence occurs across all forms of family relationships and 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, some parts of the Victorian community can be at increased risk of experiencing family violence, being repeat victims, and/or face additional barriers to service access. ISEs should be aware of this and should take measures to ensure that their services are inclusive, accessible and non-discriminatory. The Victorian Equal Opportunity and Human Rights Commission's 2017 Guideline *Family violence services and*

*accommodation: Complying with the Equal Opportunity Act 2010* provides examples of some common barriers and experiences of people from these and other communities, and provides guidance on inclusive and non-discriminatory service delivery to all those accessing the family violence sector.

Identifying and addressing unconscious bias is an important component of ensuring that universal services are fully accessible and provide inclusive, non-discriminatory and responsive services. Partnering with specialist services to provide expert guidance can be essential for universal services to addressing such bias and to build their capacity to operate inclusively and in a non-discriminatory manner.

## Guiding principles when sharing information about people from diverse communities

Section 144J of the Act specifically requires ISEs to have regard to, and be respectful of, the person's cultural, sexual and gender identity and religious faith, in recognition of the fact that these aspects of identity and experience may affect their response to information sharing.

ISEs should share information in an accessible, inclusive and culturally appropriate way. They should actively address any additional concerns when sharing information about:

- people from diverse cultural and linguistic backgrounds, including people from migrant and refugee backgrounds
- people from faith communities
- people with disabilities
- people from lesbian, gay, bisexual, trans and gender diverse and intersex (LGBTI) communities

- older people
- people working in the sex industry
- women in or exiting custody
- people living in rural, regional and remote communities
- male victim survivors.

To address these concerns, when sharing information or seeking consent from victim survivors to share information, ISEs should:

- ensure that necessary supports are in place to enable the client to understand the information being provided (this could include an interpreter or translator, presence of an advocate etc.)
- enquire about the client's particular concerns around information sharing and address the concerns the person might hold

- clearly explain the ISE’s obligations at the outset as well as how information will be used, with whom that information may be shared and for what purpose
- communicate how sensitive information will be protected from privacy breaches
- ensure 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
- ensure that assumptions are not made that victim survivors will be comfortable with having their information shared
- provide appropriate support or referrals to specialist services, where available.

For further information, see the [Diversity and Intersectionality Framework](#) which has been developed to ensure that family violence reform is inclusive of diverse communities.

## Sharing information about people from LGBTI communities

When sharing information about people from Lesbian, Gay, Bi-sexual, Trans and gender diverse and Intersex (LGBTI) communities, ISEs should consider concerns about sharing information that people in these communities may have. If an ISE is considering sharing information the ISE should be aware of well-founded fears related to this, including:

- the impact of sharing information about their sexual orientation, sex or gender identity may have on their safety in their family or community
- that services may discriminate against, further abuse, or exclude them because of their sexuality, sex or gender identity or sex characteristics
- that their sexuality, sex or gender identity or intersex variation will not be recognised by services, or that their needs will not be understood.

Other important factors for ISEs to consider are:

- homophobic, transphobic, or biphobic experiences, discrimination against people with intersex variations and/or a lack of understanding and awareness from mainstream service systems may result in people from LGBTI communities lacking trust in other people or the service system. This may also create an unwillingness to report family violence
- eligibility criteria for some mainstream services are not always clear and may directly or indirectly exclude people from LGBTI communities — for example, women’s refuges exclude male victims and many don’t admit trans women
- people from LGBTI communities may prefer to interact with LGBTI-specific, rather than mainstream, services
- the experiences of lesbians, gay men, bisexual people, transgender people and/or people with intersex variations differ greatly, and they should not be responded to as one homogenous group
- the sex and/or gender that an individual identifies with, the pronouns they use, and preferred name may differ to that on written records.

ISEs could address these concerns by:

- ensuring that their eligibility criteria are clear and visible to LGBTI clients
- ensuring they collect data and information in a manner that doesn’t make assumptions about people’s sex or gender identity or sexuality, and that allows for non-binary options
- asking victim survivors what their preferred pronouns are, and consistently using those pronouns when sharing their information
- providing a referral to a specialist LGBTI victim support agency or, if unavailable or not wanted, seeking a secondary consultation with a specialist LGBTI service
- offering an LGBTI case manager or proposing an advocate
- ensuring their staff undertake training on working with LGBTI clients.


**CASE  
STUDY**

## Sexual orientation

Jonathon has been in a same-sex relationship with his partner, Paolo, for two years. Paolo is not 'out' to his family as he fears they may reject him.

Jonathon has been abusing Paolo throughout their relationship, engaging in tactics including: verbal put downs, shouting at Paolo, and physical assaults.

On one occasion, when Paolo defends himself, the neighbours call the police. When the police attend, the police fail to identify the situation as family violence. Paolo is wrongly identified as the perpetrator and his information is shared without his consent.

Any ISE providing support to Paolo must seek his consent to share his information with appropriate family violence services. However 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 orientation. Paolo does not consider that he can rely on support services to believe that he is the victim survivor of family violence.

Paolo's experience with the police creates a great deal of distress for Paolo. It confirms his fears that his experiences of violence in a same-sex relationship are invisible to the police and services. He feels he cannot rely on help outside the relationship because services won't believe he is a victim survivor of intimate partner violence. Paolo is also concerned that sharing information about his experiences may inadvertently 'out' him to his family.

However, Jonathon's violent behaviour has recently escalated. If an ISE is concerned that there is a serious threat to Paolo's safety, it may share his information without his consent in order to lessen or prevent this serious threat. This may require the ISE to disclose information about Paolo's sexual orientation 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 ensure that they deliver their service in an inclusive and non-discriminatory way. ISEs should consider how their clients may be affected by previous or other experiences of stigma, familial and systemic discrimination, and how this may impact their views on information sharing. Paolo should be offered the assistance of an LGBTI specific service, case manager or advocate if one is available. If not available, ISEs unfamiliar with working with the LGBTI community should seek a secondary consultation with an LGBTI specialist service. ISEs should also assist Paolo to address his previous misidentification as a perpetrator to give him confidence that he will not be further stigmatised as a result. This could take the form of assisting to correct Paolo's records with other services.

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 why this information needs to be shared, with whom the information might be shared and the 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, any ISE working with Paolo should have developed a plan to manage the impact this decision might have on Paolo and ensure appropriate supports are 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.



## Sharing information about people from culturally and linguistically diverse backgrounds

Some groups from culturally and linguistically diverse (CALD) backgrounds may face particular challenges accessing the service system, such as people who have limited English language capacity, people who have recently arrived in Australia or those with temporary or vulnerable migration status.

Concerns about information sharing that may be held by some people from CALD backgrounds may include, but are not limited to:

- a lack of understanding about how the justice and family violence service system works — including the roles of police, courts, and family violence specialist services
- fears of being misunderstood or misrepresented to authorities due to language and cultural barriers
- fears about Child Protection interventions and losing custody of children
- concerns about privacy when accessing an interpreter service, as the interpreter may be known to them (especially for people from smaller linguistic communities, or living in rural or regional areas)
- fears about the impact on migration and residency status for victim survivors living in Australia on temporary or provisional visas
- fears about sharing certain information with police (due to past experiences in their countries of origin and/or racial or other discrimination experienced in Australia from authorities)
- the consequences of their community finding out that victim survivors are accessing a service outside of the local cultural community
- fear of reprisals from spouses, extended family members and communities (in Australia and overseas) if they leave the relationship.

Other assumptions or attitudes that may impact information sharing may include:

- heightened respect and/or fear for authority figures, resulting in default compliance with consent requests

- the attitude that family violence is a private matter and should not be discussed outside the family.

ISEs could address these concerns by:

- providing professional interpreters (verbal information) and translators (written information) 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
  - ... see the Victorian Government language services guidelines and the DHHS' [Language Services Policy and Guidelines](#) for further information about using interpreter services.
- ensuring the client understands it is not a burden to organise an interpreter service
- understanding that literal translations for concepts such as consent and privacy may not be applicable and that more nuanced translation may be required
- asking the victim survivor to repeat the information to ensure that they understand what has been said
- pausing a consent conversation as soon as it becomes apparent that a client requires the assistance of an interpreter
- 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
- providing culturally appropriate support to assist with understanding the cultural context of a client's concerns about sharing their information
- referring clients for specialist advice when victim survivors are fearful that information sharing may have implications for their residency status.


**CASE  
STUDY**

## Culturally and linguistically diverse communities (migration and temporary visa status)

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, and has recently threatened to harm her. Mariana is originally from the Philippines and has limited English. Mariana is socially isolated and has limited support networks in Australia.

A member of Mariana's church has some understanding of Ian's violence towards Mariana and assists her to contact a specialist family violence service. When seeking consent from Mariana to share her information, the specialist family violence service should provide Mariana with an interpreter who is able to clearly explain the elements of consent. This will help ensure that Mariana has given fully informed consent and understands why her information may be shared (this may include providing Mariana with examples of who the information may be shared with). The ISE should also consider Mariana's cultural background to ensure she has the right supports to help her understand why and how her information will be used and address any fears she may have about the impact on her migration status.

Mariana has stated that although she wants to leave the relationship with Ian due to his violence, she will not do so due to fear that she will lose her visa and be deported. Ian hides all correspondence from the Department of Immigration and Border Protection 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 fear of deportation. The ISE should consider reassuring her that sharing her information is not intended to impact on her visa status but is about keeping her safe, and that the Department of Immigration and Border Protection is not an ISE. However, Mariana needs correct legal advice on how information sharing may impact on her immigration issues. Therefore the ISE refers Mariana to a migration legal service, to get correct advice on her visa status and assist Mariana with her concerns that she will lose her right to remain in Australia if she leaves Ian.

The ISE completes a comprehensive risk assessment and assists Mariana to take out an intervention order against Ian who is subsequently removed from the home.

## Sharing information about people with disabilities

When sharing information about people with disabilities ISEs should consider the following:

- asking the victim survivor what they need to ensure they understand the information provided and are able to provide informed consent, without making assumptions about which supports may be required
- asking the victim survivor if they would like to seek the support of a trusted person or advocate to ensure that they understand the reason for information sharing. This is particularly important for people with disabilities that involve reduced decision-making capacity
- ensuring the information is being communicated appropriately, e.g. verbal or written information
- that people who are deaf or hard of hearing may require an Auslan interpreter

- that perpetrators may also be carers on whom the victim survivor depends on for everyday support
- that the victim survivor may be unwilling to disclose information in front of a carer or support worker, due to privacy reasons or the role of the carer in perpetrating family violence
- the family-like or interdependent relationships a victim survivor may have with carers and other support persons
- the broad range of perpetrators who use violence against victim survivors with disabilities
- whether a person with a disability might benefit from adjusted support, such as a longer session or scheduling at a time that better suits their needs.



#### CASE STUDY

### People with disabilities

Chelsea is 28 years old, living at home with her parents. Chelsea has a mild intellectual disability and her parents are her carers. Chelsea calls a counselling phone service provided by a specialist family violence organisation. She tells a practitioner at the service that her parents are emotionally and financially abusive, taking her Centrelink payments on the premise that 'she cannot manage her own money'. They 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, Chelsea discloses that she 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 identifies a number of support services available to 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 about 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 Chelsea's disability may have to be disclosed as it relates to her risk of violence. If Chelsea's information is shared without her consent, the ISE should plan how the impact of this decision would be managed and put appropriate supports in place for Chelsea. 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 asks Chelsea whether she needs any support to ensure that this is communicated in a way that Chelsea will understand.

## Sharing information about an older person

The Royal Commission found that family violence against older people can have some distinct characteristics. For example, older people can be at particular risk of economic or financial abuse, and the perpetrator is often the victim's adult child or children.

When sharing information about an older person, ISEs may need to consider the following:

- older people can experience discrimination and ageist attitudes that undermine the agency and experiences of older people experiencing family violence
- older people may be dependent on the perpetrator and have concerns about the consequences of reporting family violence, such as isolation and a loss of everyday dignity and freedom
- barriers to obtaining informed consent such as a lack of understanding of new processes, or disabilities or cognitive impairments that may not be recognised
- incorrect information about the older person may be provided by carers or family members, demonstrating a need to speak with the older person directly where possible
- if the perpetrator is an older person's adult child, the victim survivor may not want to share information that could get the perpetrator into trouble
- older people may believe that family violence is a private matter or may not recognise particular behaviour as violence.



### CASE STUDY

## Older people

Cosima lives with her son George and his family. Cosima relies on George for her care, including the management of her finances. Cosima reports that George is aggressive, rough, verbally abusive, and is taking all her pension to go towards his living 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 ensuring that a 'trusted person' is present, such as a family member (other than George), an advocate, or a professional in a related specialist service such as an aged care service or Seniors Rights Victoria. 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.

## Rural, Regional and Remote Communities

The Royal Commission heard evidence that higher rates of family violence reports occur in

rural, regional and remote communities. Perpetrators may use socio-geographical aspects of living in rural, regional and remote communities to amplify their violence, control and coercion, and victim survivors may face additional barriers to accessing services.

Particular considerations about family violence and information sharing for people from these communities may include:

- geographical and social isolation
- the impact on victim survivor confidentiality and safety when accessing local services as workers may know the victim survivor or perpetrator
- economic and other dependence on the perpetrator
- lack of access to services
- geographical and other barriers to implementing effective safety plans
- increased risk that the perpetrator will discover the victim survivor's service involvement
- poor mobile reception and lack of access to public or alternative modes of transport, increasing the risk of family violence.



## CASE STUDY

### Regional communities

Sarah-Jane is a 14-year-old who identifies as a trans girl and lives with her mother, father and younger sister on a farm in Regional Victoria. Sarah-Jane has questioned her gender identity (assigned cis male at birth) from a young age and began transitioning to affirm her gender identity approximately two years ago. Sarah-Jane accesses services through online blogs and support groups as there are no LGBTI specialist services in her region.

While Sarah-Jane's father, Bob, has been generally supportive of her transition, her mother, Cathy, has had a difficult time accepting this change. For years, Cathy has ridiculed Sarah-Jane for not dressing and behaving like a 'real boy'. Since Sarah-Jane began transitioning to affirm her gender identity, the abuse has escalated. Cathy refuses to use Sarah-Jane's chosen name and preferred gender pronouns of 'she' and 'her'. Cathy has refused to allow Sarah-Jane to go out in public in women's clothing. Cathy's abuse towards Sarah Jane alternates between 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 transition is also causing relationship difficulties between them, which is further impacting upon Sarah-Jane.

Sarah-Jane has become increasingly independent and resists Cathy's abuse with acts of defiance towards Cathy. Cathy is losing her power and 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 that Cathy's abuse will stigmatise Sarah-Jane in their town.

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 services on the phone or where available in their regional area. The ISE should explain the reasons why this information might need to be shared and with whom the information might be shared.

As Cathy's sister works at the nearest hospital where the specialist family violence service is located, the ISE should communicate with Sarah-Jane about the privacy protections that are in place to protect Sarah-Jane'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 understanding of the risk faced may allow them to make more informed decisions around sharing information. A safety plan is created for Sarah-Jane that takes into consideration that her home is in an isolated location. It is also important to consider whether Cathy can be linked with family services to reduce the risk of her committing further family violence, as well as an appropriate LGBTI counselling service, so she can work through her behaviour and recognise the impact she is having on Sarah-Jane. Ultimately Cathy's involvement in a therapeutic response will assist her to better support Sarah-Jane as she transitions.



# CHAPTER 9

## Consent

As outlined in Chapters [4](#) on page 54 and [5](#) on page 64, unless there is a serious threat ISEs require consent from victim survivors and third parties to share their information under the Scheme to assess family violence risk to an adult victim survivor. This Chapter describes the elements of consent, how consent can be given, how it should be documented and what to do when consent is refused or withdrawn.

## KEY POINTS

- There are five elements of consent: capacity, voluntary, informed, specific and current
- Consent can be verbal or written, but both must be documented
- Consent can be withdrawn at any time
- Consent may be express or implied. ISEs are encouraged to obtain express consent where it is reasonable, safe and appropriate to do so
- Where consent is refused by an adult victim survivor, ISEs can still share information if it is to lessen or prevent a serious threat
- Consent is not required from any person if the information is necessary to assess or manage risk to a child victim survivor. See [Chapter 5](#) on page 64 for information on how to seek the views of a child or parent that is not a perpetrator when considering whether to share information to assess or manage risk to a child.

## What is consent?

Part 5A defines consent to mean express and implied consent.

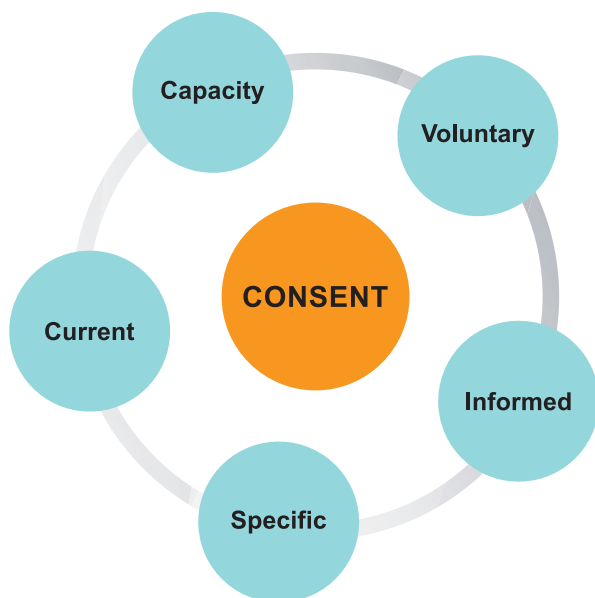
Express consent is when a person has expressly, either verbally or in written form, given their consent to their information being shared.

Implied consent is not expressly given, but can be inferred through a victim survivor or third party's conduct or behaviour and the facts of a given situation.

### Five elements of consent

The following five elements are required for both express and implied consent:

**Figure 4:**  
Five elements of consent



### 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
- **communicate** their decision, views and needs in some way (including speech, gestures or other means).

### Remember

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



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. Lack of capacity 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 should be considered 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
- the person's appearance should not be the basis for assessing their capacity
- the person's English literacy and/or lack thereof should not be an indicator of their capacity. They may simply require an interpreter to assist with understanding and communication
- assessing capacity requires assessing 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 will have decision-making capacity if it is possible for the person to make a decision with practicable and appropriate support.

The more serious and complex the impact of the decision, the greater the understanding the person should have. A person's capacity to consent may depend on appropriate support provided to them. For example, a support person for a victim survivor with a physical, mental or cognitive impairment, including dementia, may be required. A person may have a supportive attorney appointed who could assist. See [Side by Side: A Guide to Appointing Supportive Attorneys](#) for more information.

## Voluntary

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A person 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 Aboriginal people and those from culturally or linguistically diverse backgrounds.

Experiences of discrimination and trauma along with cultural traditions and beliefs may make victim survivors and others wary about giving consent to share their information.

For more guidance on sharing information about someone from an Aboriginal background, refer to [Chapter 7](#) on page 84. For more guidance on sharing information about someone from a diverse background, refer to [Chapter 8](#) on page 90.

## Informed

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

- what information will be collected, used or disclosed
- what purpose the information will be put to
- with whom the information might be shared and how it might be used
- the consequences of giving consent, and of failing to give consent
- the circumstances in which their information may be shared without their consent.

Any discussion with the person must include an explanation that:

- they may decline the services provided by the service provider
- the victim survivor may choose to receive services from the service provider without having their information shared (if consent is required).

### Remember

If an ISE is working with a person with limited English proficiency, the ISE should check if an interpreter (for verbal interactions) or translator (for written communication) is required where necessary to ensure that consent is informed. For more information on how to use interpreters and translators, see [DHHS Language Services Policy and Guidelines](#).

When working with Aboriginal people, ISEs should be mindful that past interactions and experiences with government may impact on people's willingness to have their information shared. Communication should be tailored accordingly.

## Specific

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Consent must be specific. 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 information
- the proposed use or disclosure
- the recipient and its proposed use.

## Current

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Consent is not indefinite. ISEs should inform the person of the period the consent will cover 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 person that they are entitled to change their mind and revoke consent at any time.

## Giving consent on someone's behalf

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

Under Part 5A, an authorised representative can be:

- the person's guardian within the meaning of Section 4 of the FVPA
- an agent for the person within the meaning of the *Medical Treatment Act 1988* (Vic)
- an administrator or a person responsible within the meaning of the *Guardianship and Administration Act 1986* (Vic)
- 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.

Under Part 5A, an authorised representative cannot be an alleged perpetrator, a perpetrator of family violence, or a person under the control of the perpetrator.

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 or the sharing is necessary to assess or manage the risk to a child. For more guidance, refer to [Chapter 4](#) on page 54.

## Implied consent

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.

Implied consent is not 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 ISE 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 to obtain express consent and avoid the difficulties inherent in implied consent. If an ISE is unsure of whether consent can be implied, they should speak with their manager or equivalent, where possible. If information is shared on the basis of implied consent, a file note of this should be made, including a manager's approval to share information with implied rather than express consent (if possible) and the outcome of sharing the information.

## Documenting consent

Consent can be obtained verbally or in writing. Where obtained verbally, ISEs must make a written record of the verbal consent and the information shared (for example, where providing a telephone-based service).

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 express consent (where possible).

An example consent form is at Appendix C on page 140 to assist ISEs develop consent forms or redevelop existing forms.

## What happens when consent is refused?

Where consent has been refused, 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, refer to [Chapter 4](#) on page 54)
- sharing is necessary to assess or manage family violence to a child victim survivor (for more guidance, refer to [Chapter 5](#) on page 64)
- sharing the information is required or authorised by another law.

The ISE should make it clear that a victim survivor who refuses consent to share information can still receive services from the ISE.

## 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 should be made. Any withdrawal of consent should be stored on file. No information should be shared from the date of the withdrawal 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, refer to [Chapter 4](#) on page 54)
- sharing is necessary to assess or manage family violence to a child victim survivor (for more guidance, refer to [Chapter 5](#) on page 64)
- sharing the information is required or authorised by another law.



# CHAPTER 10

## Record keeping and information management

This Chapter provides information on how ISEs should record and manage information. This Chapter also outlines the procedures that should be followed in relation to requests to access and correct information collected by organisations, including information collected by a person who is an ISE employed by that organisation.



## What information needs to be recorded when sharing information?

When sharing information about **any individual** under the Scheme, either voluntarily or in response to a request, an ISE must record:

- who requested the information, what information was requested and the date the request was made
- what information was shared, who the information was shared with and the date the information was shared
- a relevant family violence risk assessment and safety plan in respect of a victim survivor about whom the information relates (including if they are a child), and any other family members who are at risk of being subjected to family violence.

When sharing information about **adult victim survivors** and **third parties** ISEs must also record:

- if consent was provided, a record of consent whether written, verbal or implied
- if information is shared without their consent:
  - ... the reason why consent was not obtained (i.e. there was a serious threat or the information was to assess or manage risk for a child victim survivor)

... whether it sought and obtained the views of the person and, if not, the reason why

... whether the individual was informed that their information was shared without their consent.

When sharing information about a **child victim survivor**, ISEs must also record:

- whether it sought and obtained the views of the child or their parent (who is not an alleged perpetrator or a perpetrator), and if not, the reason why
- whether the child victim survivor or their parent (who is not an alleged perpetrator or a perpetrator) was informed that the information was disclosed.

Members of RAMPs should refer to the *Victorian Risk Assessment and Management Panel Program: Operational Guidelines* for record keeping requirements specific to RAMP meetings.



### CASE STUDY

## What information needs to be recorded

Danni and her 15-year-old son Campbell recently moved out of the home they shared with Campbell's father, Doug, due to Doug's escalating physical violence towards Danni and Campbell. Doug has been physically violent to Danni for years in front of Campbell and has recently started to be physically violent towards Campbell since Campbell told him that he was gay.

The police attended the most recent incident of violence at the home, prior to Danni and Campbell moving out. The police issued a safety notice and referred Danni and Campbell to a specialist family violence service. As a result, a FVIO is in place against Doug. Both Danni and Campbell are listed on the order as protected persons. Danni and Campbell have moved 40kms away from Doug.

The specialist family violence service practitioner visits Danni and Campbell's new home. During this visit, the practitioner has a private conversation with Campbell, where he discloses Doug has contacted him through text message asking for their new address so he can pick Campbell up to "talk it out" and has asked Campbell not to tell his mother. Doug also told Campbell that he has started attending a men's behavioural change program.



The practitioner determines that Campbell has sufficient maturity to understand the implications of information sharing and that it would be appropriate, safe and reasonable to seek his views. The practitioner therefore asks Campbell his views about sharing this information with his mother Danni, police, and the men's program as it is a breach of the FVIO. Campbell says he doesn't want this information shared, as he believes Doug is only contacting him to apologise and the conversations have nothing to do with Danni. Campbell is also worried that his mother will be angry with him that he wants to see Doug and that Doug may get into trouble with police.

The practitioner explains that the conversations he is having with Doug may increase the risk posed to both Campbell and Danni, particularly if Doug finds out their new address. The practitioner validates the concerns raised by Campbell but says that she thinks it is important for their safety to provide this information to Danni, police and the men's program. The practitioner then involves Campbell in the process of how best to inform Danni. Danni agrees that this information should be shared with police and the men's program. The practitioner makes a safety plan with Danni, Campbell and police in the event that Doug attempts to make contact again. Police agree to investigate the breach of the FVIO.

Part 5A of the FVPA permits ISEs to share any person's information without consent to assess and manage risk for a child victim survivor. However, the views of Campbell and Danni (the parent that is not a perpetrator) should be sought and taken into account where appropriate, safe and reasonable to do so. This includes obtaining their views on what information should be shared and with whom. In this instance, the worker decides to share the information given the priority is Campbell and Danni's safety.

The practitioner makes a case note. Pursuant to the record keeping obligations, the practitioner records:

- that she shared the information about the text messages (in breach of the FVIO) and the fact that Doug has tried to find out Danni and Campbell's new address with Danni, police, and the men's program and the date that this information was shared
- a copy of the safety plan she prepared for Danni and Campbell
- that consent was not sought because the information was shared to manage the safety of a child victim survivor but that Campbell and Danni's views were sought prior to sharing the information
- that Danni was informed that the information was shared with police and the men's program
- that Campbell was informed that the information was shared with Danni, police and the men's program.

In addition, practitioners may also wish to record additional information in their case note (i.e. that Campbell did not want to share the information, the reasons why he did not want to share the information and the rationale why this information was shared contrary to Campbell's views).

## What needs to be recorded where an ISE refuses to share information in response to a request?

An ISE may refuse a request to share information if they do not form a reasonable belief that the information requested is necessary for a family violence **protection purpose**.

Where an ISE refuses a request from another ISE to disclose information about any person, it must record the request and the reason why it was refused.

## What needs to be recorded when a complaint is made?

If a complaint is made to an ISE about the performance of their functions under Part 5A of the FVPA, it must record:

- the date the complaint was made and received
- the nature of the complaint and relevant details
- any action that was taken to resolve the complaint

- any action that has been taken to prevent or lessen the risk of further similar complaints
- time taken to resolve the complaint
- if any further action was taken.

For more information on complaints, see [Chapter 12](#) on page 130.

## How should information be protected?

ISEs must implement reasonable safeguards against loss or unauthorised access, use, modification or disclosure of information, and ensure that information is managed securely to avoid the risk of intentional or unintentional privacy breaches.

Where an organisation provides services to both victim survivors and perpetrators, it may consider whether it is necessary to keep separate files for each client to reduce the risk of inappropriate information sharing.

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](https://ovic.vic.gov.au/resource/guidelines-to-protecting-the-security-of-personal-information-privacy-principle-4-1/) <<https://ovic.vic.gov.au/resource/guidelines-to-protecting-the-security-of-personal-information-privacy-principle-4-1/>>.

## How should information be retained and destroyed?

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 the Public Records Office Victoria [website](#).

## Accessing information

Under Victorian privacy law, people generally have a right to access and correct their personal and health information held by an organisation, including perpetrators.

Organisations should ensure that in providing a person access to information about themselves that there is no unreasonable impact on the privacy of other individuals. Organisations should therefore be careful to review their files and redact any information that relates to another person, including the perpetrator.

Organisations should be particularly careful about the potential impact on the safety of the victim survivor. If an organisation believes a victim survivor is being coerced by a perpetrator or third party to access the information requested, the organisation must take all reasonable steps to ensure that information about the perpetrator is not also accidentally disclosed with their information.

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

## Victim survivor and third party information

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Victim survivors and third parties will continue to have this right in relation to information shared under Part 5A of the FVPA, with the exception of information held by the CIP. This means victim survivors and third parties will not be able to access information held by the CIP.

## Perpetrator information

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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 of family violence to the victim survivor. Perpetrators also cannot access their child's information, or the information of another person they are authorised to access, if giving access to this information would increase the level of risk.

If an organisation refuses access to records, that person may apply for a review of that decision by the relevant privacy regulator (i.e. the Health Complaints Commissioner, the

Victorian Information Commissioner or the Australian Information Commissioner). An application for a review of the decision may also be made to the Victorian Civil and Administrative Tribunal.

Perpetrator information held by the CIP is unable to be accessed by the perpetrator at all.

## Correcting Information

If an organisation becomes aware that information recorded about any person is incorrect, that organisation must take reasonable steps to correct that information. This applies whether information is recorded about a victim, perpetrator or third party. Organisations should correct inaccurate information as soon as possible after they become aware the information is inaccurate and to give prominence to any correction on the client's file.

Incorrect information in the system may put a victim survivor at risk or lead to a victim survivor being misidentified as a perpetrator. Correcting inaccurate information may also assist in rebuilding the relationship between a client and their support service.

## Freedom of information requests

Any person, including perpetrators, may make a freedom of information request to access information under the *Freedom of Information Act 1982* (Vic) (FOI Act). However, a document will not have to be disclosed if it would involve the unreasonable disclosure of information relating to the personal affairs of a person (including a deceased person).

When deciding whether a disclosure to an alleged perpetrator or a perpetrator would meet this exception, a Minister or the relevant agency (where it is also an ISE) must take into account whether a disclosure of that information would increase the risk to a victim survivor's safety from family violence.

Whether a disclosure of information is likely to increase the risk of harm depends on the specific circumstances of each FOI request. Organisations and funded agencies are encouraged to ensure that relevant business areas responding to FOI requests are aware of the family violence risk exception and are trained to identify family violence risk.

This exception may be applicable where disclosure of a document would identify a victim survivor as a source of information about the perpetrator. This might occur in circumstances where:

- information provided is known only to the perpetrator and victim survivor
- the perpetrator's records include information obtained from the victim survivor about their compliance with a treatment order
- a document includes confirmation that a victim survivor provided information about the perpetrator.

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.

If an FOI request is refused, an application may be made for a review of the decision to the Victorian Information Commissioner.

Documents in the possession of the CIP are exempt from FOI.

# CHAPTER 11

## Interaction with privacy and other laws

This Chapter provides general guidance on how Part 5A of the FVPA interacts with particular Victorian and Commonwealth laws, including the:

- *Privacy and Data Protection Act 2014* (Vic) (PDP Act)
- *Health Records Act 2001* (Vic) (HR Act)
- *Privacy Act 1988* (Commonwealth Privacy Act)
- *Children, Youth and Families Act 2005* (Vic) (CYFA).

This Chapter also sets out provisions in other laws that are specifically overridden to remove restrictions on sharing or using information when assessing or managing a risk of family violence.

In addition, it provides recommendations for ISEs on responding to subpoenas and keeping information secure.

## KEY POINTS

- Sharing information about family violence is already permitted in certain circumstances under other laws, such as the Commonwealth Privacy Act, PDP Act and HR Act
- ISEs continue to be subject to their existing obligations under those laws
- Part 5A of the FVPA provides ISEs with exceptions to existing privacy requirements to assist them to assess or manage family violence risk, including:
  - ... authority to refuse a perpetrator access to information if it could increase risk to a victim survivor
  - ... the ability to collect personal or health information about a perpetrator from sources other than the perpetrator without having to notify them or get their consent.
- Provisions in a number of other Acts that could otherwise prevent an ISE from being able to share some information under Part 5A of the FVPA have been overridden
- Information that is restricted from being shared under other laws must be shared only in accordance with those laws, unless Part 5A of the FVPA overrides them. Important provisions that are likely to restrict the sharing of certain information under Part 5A of the FVPA are in this Chapter
- ISEs should update their privacy policies and other organisational materials to reflect these changes.

## Can the information already be shared?

Nothing in the 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, the HR Act or the Commonwealth Privacy Act.

If information could lawfully be shared without relying on Part 5A of the FVPA, the requirements of Part 5A do **not** have to be met before doing so.

### Remember

If an ISE was able to lawfully disclose information prior to being prescribed to be an ISE, then they can continue to lawfully disclose that information under those laws after they are prescribed to be an ISE.

## Does Victorian privacy law apply?

Part 5A of the FVPA works within existing Victorian privacy laws, with some modifications to allow ISEs to restrict access to information where appropriate and to allow the 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.

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 organisation that collects, holds or uses health information. Any health information held by an organisation to which the HR Act applies must be handled in accordance with that Act.

### Complying with Victorian privacy law

ISEs should ensure they are familiar with their obligations under the PDP Act and the HR Act. These Guidelines should not be relied on as a summary of ISEs' existing obligations under privacy laws or taken as a substitute for advice where needed.

A range of resources on compliance with the PDP Act are available on the Office of the Victorian Information Commissioner's [website](#). 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](#), including a free online introductory training portal and information on other face-to-face training offered by the Commissioner's office.

The Office of the Victorian Information Commissioner (OVIC) and the Health Complaints Commissioner (HCC) have issued [resources](#) to assist ISEs navigate the interaction of the Scheme with Victoria's privacy laws.

## How have Victoria's privacy laws been modified by Part 5A of the FVPA?

Part 5A of the FVPA provides ISEs with exceptions to the PDP Act and HR Act to assist ISEs assess and manage family violence risk.

### Collection of personal information

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The PDP Act and the HR Act have been amended to ensure that ISEs:

- are not required to collect information about an alleged perpetrator or 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 an alleged perpetrator or a perpetrator when 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 an alleged perpetrator or a 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 assessing or managing risk to a child victim survivor, despite anything in IPP 10.1.

In relation to both adult and child victim survivors, ISEs are encouraged to consider discussing the relevant individual's views and preferences for the use of their information and ensure that these are taken into account wherever safe, reasonable and 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.

In light of these changes, ISEs should update their privacy policies to reflect how information that has been collected might be used or disclosed. ISEs are encouraged to also consider notifying clients of any additional use of information already collected, especially if using or disclosing information for a different purpose from that for which it was collected.

For further guidance on seeking consent and notifying individuals about how their information may be used, refer to Chapters [3](#) on page 42, [4](#) on page 54 and [5](#) on page 64.

## Access to personal information

An alleged perpetrator or a perpetrator's request for access to their own information under the PDP Act or the HR Act may be refused if the ISE reasonably believes that giving the person access would increase the risk of family violence to a victim survivor.

If an organisation refuses access to an alleged perpetrator or a perpetrator's records, that person can apply to the relevant privacy regulator (i.e. Health Complaints Commissioner, the Victorian Information Commissioner) for a review of that decision. A person may also apply for a review of a decision by the Victorian Civil and Administrative Tribunal.

ISEs may need to provide information necessary to assess the complaint.

If the ISE determines that a person has been incorrectly identified as a perpetrator of family violence and is not 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. Refer to [Chapter 3](#) on page 42 for information on correcting this information.

ISEs should ensure their relevant business areas that respond to access requests are made aware of the new family violence risk exception.

For further discussion on individuals' rights of access to information shared under Part 5A of the FVPA, refer to [Chapter 10](#) on page 108.

### Remember

- Any organisation bound by the PDP Act or HR Act may use or disclose personal or health information in accordance with those laws. This includes sharing 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 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. Information may also be shared with services that are not ISEs
- 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](#).

## Interaction with the Child Information Sharing Scheme

Information may also be shared between ISEs to promote the wellbeing or safety of a child or group of children by organisations and services prescribed under the CIS scheme. Chapter 3 of the [CIS Guidelines](#) provides further information.

## Interaction with Children, Youth and Families Act

The *Children, Youth and Families Act 2005* (Vic) (CYFA) provides a legislative framework for ensuring that child, youth and family services best support children's needs.

Part 5A of the FVPA 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.

## Interaction with Commonwealth Privacy Act

A number of ISEs are currently subject to the Commonwealth Privacy Act. These ISEs will continue to be bound by the Commonwealth Privacy Act.

### Sharing information

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While ISEs bound by the Commonwealth Privacy Act must continue to comply with that Act and the Australian Privacy Principles (APPs), APP6 permits information to be used or disclosed when required or authorised under another Australian law, which would include Part 5A of the FVPA. This means that information may be **shared** under the Scheme by an ISE working for an organisation to which the Commonwealth Privacy Act applies.

### Collecting information

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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. It may not be considered reasonable to inform an individual that their information has been collected in a family violence context. ISEs should have regard to the guidance on APP 5 issued by the [Office of the Australian Information Commissioner](#).

### Access

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Part 5A of the FVPA specifically provides that an ISE may refuse an alleged perpetrator or a perpetrator's request for access to their personal or health information if the ISE reasonably believes that it would increase the risk of family violence to a victim survivor. This change will apply to access to information under the Commonwealth Privacy Act.

This is intended to provide ISEs with a greater ability to ensure that victim survivors are not exposed to increased risk of perpetrators accessing information about them. This does not prevent ISEs 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, refer to [Chapter 10](#) on page 108.

## Interaction with other legislation

Part 5A of the FVPA and the Regulations explicitly override certain provisions in other Victorian Acts that could prevent an ISE from being able to share information under Part 5A.

The following table sets out those provisions of other Acts that have been overridden, and the information that can now be shared under the Scheme.

**Table 3:**  
Legislation overridden by Part 5A of the FVPA

Legislation overridden by Part 5A of the FVPA	Information that can now be shared under Part 5A of the FVPA
<b>Information that can identify the following persons or court venues</b>	
Section 16ZE(3A) <i>Child Wellbeing and Safety Act 2005</i>	A person who has made a reportable conduct notification or a child who is subject to an allegation.
Section 534 <i>Children, Youth and Families Act 2005</i>	A child, other party or witness in a proceeding in the Children’s Court or the particular venue in which the proceedings were heard.
Section 166 <i>Family Violence Protection Act 2008</i>	A party to a proceeding under the <i>Family Violence Protection Act 2008</i> , a witness in a proceeding, a person the subject of an order or the venue of the court.
Section 123 <i>Personal Safety Intervention Orders Act 2010</i>	A child who is a party or witness to a proceeding under the <i>Personal Safety Intervention Orders Act 2010</i> or the venue of a court.
Section 141 <i>Health Services Act 1988</i>	A patient that has accessed a health service.
Section 23 <i>Human Services (Complex Needs) Act 2009</i>	A person considered or found to be an eligible person, a person to whom a care plan relates or a member of any such person’s family under the <i>Human Services (Complex Needs) Act 2009</i> .

<b>Legislation overridden by Part 5A of the FVPA</b>	<b>Information that can now be shared under Part 5A of the FVPA</b>
Sections 3 and 4 of the <i>Judicial Proceedings Reports Act 1958</i>	A party to a proceeding.
Section 43 <i>Victims of Crime Assistance Act 1996</i>	A party or another person who appeared at a hearing of the Victims of Crime Assistance Tribunal.
<b>Information obtained in the following official capacities</b>	
Section 132ZC <i>Disability Act 2006</i>	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 in the exercise of their powers under the Act.
Section 55 <i>Commission for Children and Young People Act 2012</i>  Section 41B <i>Child Wellbeing and Safety Act 2005</i>	As a Commissioner, delegate of the Commissioner, authorised person or member of staff of the Commission for Children and Young People.
<b>Information collected or obtained in the following ways</b>	
Sections 205(2) <i>Children, Youth and Families Act 2005</i>	From an investigation by a protective intervener.
Section 207(2) <i>Children, Youth and Families Act 2005</i>	From a protection report provided to a police officer from the Secretary of the Department of Health and Human Services.
Section 140 <i>Confiscation Act 1997</i>	Disclosed in the course of performing a duty under or in connection with the <i>Confiscation Act 1997</i> or in connection with law enforcement.
Section 36 <i>Disability Act 2006</i>	Because of a person's appointment as a community visitor.
Section 39(3) <i>Disability Act 2006</i>	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.
Section 207 <i>Family Violence Protection Act 2008</i>	By a police officer for the purpose of locating a respondent to effect service of a document under the <i>Family Violence Protection Act 2008</i> .

<b>Legislation overridden by Part 5A of the FVPA</b>	<b>Information that can now be shared under Part 5A of the FVPA</b>
<p>Section 141 <i>Health Services Act 1988</i></p>	<p>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.</p>
<p>Section 23 <i>Human Services (Complex Needs) Act 2009</i></p>	<p>By reason of being:</p> <p>the Secretary of the Department of Health and Human Services or a person engaged by or employed on behalf of the Secretary</p> <p>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</p> <p>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, offender services, emergency services or housing and support services to an eligible person under the Act.</p>
<p>Section 124J(2) <i>Magistrates' Court Act 1989</i></p>	<p>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 and Regulation to access data under Section 124I <i>Magistrates' Court Act 1989</i>.</p>
<p>Section 181 <i>Personal Safety Intervention Orders Act 2010</i></p>	<p>By a police officer for the purpose of locating a respondent to serve a respondent with a document under the <i>Personal Safety Intervention Orders Act 2010</i>.</p>
<p>Section 48LB <i>Sentencing Act 1991</i></p>	<p>As a result of the electronic monitoring of an offender.</p>

## Legislation overridden by Part 5A of the FVPA

## Information that can now be shared under Part 5A of the FVPA

### 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.

### Health information

Section 347 *Mental Health Act 2014*

Health information from an electronic health information system.

### Student number and related information

Sections 5.3A.10 and 5.3A.14 *Education and Training Reform Act 2006*

A Victorian student number or related information. (Note: the education and training providers bound by these Sections have not yet been prescribed as ISEs so this information cannot yet be shared under the Scheme).

For further discussion of information that cannot be shared, or to which restrictions on sharing apply due to the continued application of other laws, refer to [Chapter 1](#) on page 18

## Restrictions on sharing information under other laws

Secrecy and confidentiality provisions in other laws will continue to apply unless expressly overridden for the purposes of the Scheme, or allowed under those provisions.

Where information is restricted from being shared under another law, that information should only be shared in compliance with that law.

ISEs should be aware of their obligations under other laws. Penalties may apply for unauthorised sharing of information if it was not shared in good faith and with reasonable care.

It is recommended that an ISE obtain legal advice should they be in any doubt as to whether the information they seek to share may be restricted by another provision, such as those in the list below (noting it is not an exhaustive list).

**Table 4:**

Key legislative provisions that continue to apply

Victorian legislation restricting information sharing	Information that cannot be shared under Part 5A of the FVPA
<b>Details of an investigation</b>	
<i>Children, Youth and Families Act 2005</i>	Details of an investigation into a registered foster carer or out-of-home carer, or information that a person is a disqualified carer, under Part 3.4 of the CYFA should not be shared unless that Act allows it.
<b>Information that can identify certain persons</b>	
<i>Children, Youth and Families Act 2005</i>	The identity of a person who has made a protective intervention report or a wellbeing and safety report to Child Protection or a referral to Child FIRST under the CYFA should not be shared unless that Act allows it.



## Victorian legislation restricting information sharing

## Information that cannot be shared under Part 5A of the FVPA

Section 330(1) *Crimes Act 1958*

The identity of a person that has made a disclosure about a sexual offence committed against a child under the age of 16 years under Section 327(2) of the *Crimes Act 1958* should not be shared unless that Act allows it.

*Serious Offenders Act 2018 (including offenders on an interim, supervision or detention order under the Serious Sex Offenders (Detention and Supervision) Act 2009)*

The *Serious Offenders Act 2018* repeals and replaces the *Serious Sex Offenders (Detention and Supervision) Act 2009* (SSODSA) with a new post-sentence scheme for serious violent offenders and sex offenders that commences on 3 September 2018.

The *Serious Offenders Act* places restrictions on the use and disclosure of information on a supervision, detention or emergency detention order and information should not be shared unless that Act allows it.

The *Serious Offenders Act* provides that an offender on an order made under the SSODSA continues to have effect after the commencement date of the *Serious Offenders Act*, until the order is revoked or replaced by a new order under the new Act. The restrictions on the use or disclosure of information continues to apply to orders made under SSODSA.

## Information acquired through the following conciliation or alternative dispute resolution

Section 40J *Legal Aid Act 1978*

A person who attends an alternative dispute resolution program under Section 40J of the *Legal Aid Act 1978* may only disclose the information acquired as a result of the ADR program under that Act.

*Children, Youth and Families Act 2005*

A person who attends a conciliation conference under Part 4.7 of the *CYFA* is subject to confidentiality provisions and may only disclose information if the *CYFA* allows it.

## Information contained in particular 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 unless the legislation under which the Report was ordered permits it or the Court orders that the information can be shared.

Victorian legislation restricting information sharing	Information that cannot be shared under Part 5A of the FVPA
<b>Sex offenders register</b>	
<i>Sex Offenders Registration Act 2004</i>	The <i>Sex Offenders Registration Act 2004</i> places restrictions on the use and disclosure of information that is contained on the sex offenders register and information should not be shared unless that Act allows it. (Note: a perpetrator’s criminal history may be shared separately from their status on the register).
<b>Criminal intelligence</b>	
Sections 84 and 85 <i>Criminal Organisations Control Act 2012</i>	Information that is protected criminal intelligence or that was subject to a protection application not granted by the court under the <i>Criminal Organisations Control Act 2012</i> should not be shared unless that Act allows it.
<b>Information related to organised crime offences</b>	
Section 20(5) <i>Major Crime (Investigative Powers) Act 2004</i>	Information connected with a witness summons or order issued under the <i>Major Crime (Investigative Powers) Act 2004</i> should not be shared unless that Act allows it.
<b>Preventative detention orders</b>	
Section 13ZJ <i>Terrorism (Community Protection) Act 2003</i>	Information about a person detained under a preventative detention order under the <i>Terrorism (Community Protection) Act 2003</i> should not be shared unless that Act allows it.
<b>Witness protection</b>	
Section 10 <i>Witness Protection Act 1991</i>	Information relating to the identity or location of a person who is or has been a participant under the <i>Witness Protection Act 1991</i> , or that compromises their security, should not be shared unless that Act allows it.

## Responding to subpoenas

An organisation that holds information that was collected under Part 5A of the FVPA may be subpoenaed to produce that information.

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 for an organisation 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.

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

A subpoena may be challenged on a number of grounds, including that it is not relevant, oppressive, vexatious, a 'fishing expedition', it does not demonstrate a legitimate forensic purpose or on the basis of a privilege at law or public interest immunity. An objection can also be made seeking orders to limit a party's level of access to any documents produced. Other legislative provisions may apply to the issuing of and compliance with subpoenas, for

example Section 32C of the *Evidence (Miscellaneous Provisions) Act 1958* and legislation and rules relating to the type of case or Court (e.g. the *Family Law Act 1975* (Cth) and Family Court Rules).

Organisations are encouraged to:

- carefully read instructions provided on complying with subpoenas, including in relation to producing the documents
- consider and take steps to manage any potential impact on the safety of victim survivors as their foremost consideration when deciding whether to challenge a subpoena or object to inspection
- notify a victim survivor that a subpoena has been received where a victim survivor's record has been subpoenaed and the victim survivor is not a party to the proceeding and when doing so, consider the safety of the victim survivor
- seek legal advice if required.

## Information management and data security

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. Keeping information safe and secure is a critical part of managing risks to people's safety.

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 the Scheme is handled in accordance with the PDP Act.

Security measures to protect information collected 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.

Further information on how to undertake a Privacy Impact Assessment is available from the Office of the Victorian Information Commissioner's [website](#).

### Protective data security standards

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

Further information on protective data security is available from the Office of the Victorian Information Commissioner's [website](#).



# CHAPTER 12

## Offences, complaints and good faith defence

This Chapter outlines the possible consequences for the inappropriate sharing of information under Part 5A of the FVPA and the processes for dealing with complaints.

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

## KEY POINTS

- If an individual acts in good faith and with reasonable care when sharing information under the Scheme, 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.
- Complaints may be made directly to an ISE or through existing complaints mechanisms under privacy laws.

## Offences

Offences may apply where information is shared in ways that are not permitted by Part 5A of the FVPA or another law. There are offences under Part 5A for sharing information for purposes other than to assess and manage family violence risk, if the use or disclosure of information is unauthorised, 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.

If a person charged with one of these offences can demonstrate that they acted in good faith and with reasonable care when sharing information, then they will not be held liable.

Offences and complaints provisions will not apply to victim survivors who have been provided with information by ISEs under Part 5A of the FVPA for a family violence **protection purpose**. However, victim survivors may 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 confidentiality provisions that continue to apply (refer to [Chapter 10](#) on page 108).

## Protection for individual workers

A person who is authorised to share information under the Scheme, who acts in good faith and with reasonable care when sharing information 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.

Generally, a practitioner may be considered to have acted in good faith and reasonable care when, with the knowledge that they have, they:

- share information in accordance with their obligations, functions and authorisations
- intend for the information to be shared for the purpose of assessing or managing risk of family violence under Part 5A of the FVPA and not for another purpose
- do not act maliciously, recklessly or negligently when exercising their power to share information
- share information that is relevant to assessing and managing risk of family violence having regard to the MARAM Framework.



## CASE STUDY

### Demonstrating good faith and reasonable care

Emre works for an RAE. He is friends with Adut but would like to pursue a romantic relationship. However, she is married and has no plans to end her relationship. Emre requests information about Adut's husband, Aziz, from a mental health service that he had seen Aziz attending, claiming that he needs the information for a family violence assessment purpose on the basis that Aziz is an alleged perpetrator. The service verifies Emre's credentials, and upon confirming that Emre is authorised to request this information, shares information about Aziz that would be relevant to a family violence assessment purpose. Emre then shares information about Aziz's mental health with Adut.

Emre intentionally requested and shared this information for a purpose that was not authorised under Part 5A of the FVPA as he did not intend to use the information for an assessment purpose but for his own benefit. In these circumstances, Emre may be charged with an offence and may have difficulty in demonstrating that he acted in good faith and with reasonable care. However, the mental health service acted appropriately in responding to the request and would not be considered to have committed an offence.

## Accountability of organisations employing ISEs

Organisations may be held to account for any interference with privacy through existing mechanisms. These mechanisms include complaints made under state and Commonwealth privacy laws and action in the Victorian Civil and Administrative Tribunal. Organisations should therefore ensure that they have policies in place to protect against unnecessary breaches of privacy.

Departments that contract services may choose to reconsider funding arrangements with ISEs that repeatedly do not act in good faith or with reasonable care.

## Complaints

In the first instance, complaints about a breach of a person's privacy should be made directly to the relevant ISE, which should have procedures in place for dealing with complaints and should make these available. Records should be kept of complaints made about disclosures of information under the Scheme. See [Chapter 10](#) on page 108 for further information.

When receiving a complaint, the complaint should be assessed against state or Commonwealth privacy laws (whichever applies). It is effective practice to inform the complainant of the organisation's findings and proposed response within 30 days of the complaint being made.

Procedures for making an external complaint about an organisation differ, depending on whether that organisation is bound by Victorian or Commonwealth privacy laws.

## Complaints under state privacy laws

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A complaint may be made in relation to an interference with privacy under the Scheme to the Office of the Victorian Information Commissioner (OVIC) or the Health Complaints Commissioner (HCC).

Complaints should be made to:

- **OVIC** when personal information is being collected or used by ISEs on behalf of the Victorian government and other non-government entities that provide services on behalf of the Victorian government **or** when neither the HR Act nor the Commonwealth Privacy Act are applicable
- **HCC** when the ISE collects 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 the Scheme. Civil penalties may also be sought against organisations for serious breaches.

For further information about complaints to OVIC or the HCC, please refer to the Commissioners' websites at <<http://www.ovic.vic.gov.au>> or <<https://hcc.vic.gov.au>>.

## Making complaints when Commonwealth privacy law applies

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When the Commonwealth Privacy Act applies to an organisation, a complaint may be made to the Office of the Australian Information Commissioner (OAIC).

If the OAIC chooses to investigate a complaint and it is considered likely that an interference with privacy has occurred, the OAIC may refer the matter to conciliation. If conciliation is not appropriate or does not resolve the complaint, then the OAIC may consider enforcement action.

For further information about complaints to the OAIC, please refer to the Commissioner's [website](#).



# RESOURCES

## Family violence

Family Safety Victoria (2018) [\*Family Violence Multi-Agency Risk Assessment and Risk Management Framework\*](#) (the MARAM Framework) <<http://www.thelookout.org.au/training-events/craf/materials-resources>>

The Lookout (2018) [\*MARAM Framework Practice Guidance\*](#) <<http://www.thelookout.org.au/training-events/craf/materials-resources>>

The Lookout (2013) [\*Fact Sheet 3 — Safety Planning\*](#) <<http://www.thelookout.org.au/fact-sheet-3-planning-for-safety>>

1800RESPECT, [\*Safety planning checklist\*](#) <<https://www.1800respect.org.au/help-and-support/safety-planning/checklist>>

## Sharing information about a child

Department of Human Services (2014) [\*Working with families where an adult is violent, Best interests case practice model, specialist practice resource\*](#) <<http://www.cpmanual.vic.gov.au/sites/default/files/Working%20with%20families%20where%20an%20adult%20is%20violent%20specialist%20resource%203017.pdf>>

Department of Health and Human Services (2013) [\*Assessing children and young people experiencing family violence: A practice guide for family violence practitioners\*](#) <[https://dhhs.vic.gov.au/sites/default/files/documents/201705/Assessing\\_children\\_and\\_young\\_people\\_family\\_violence\\_0413.pdf](https://dhhs.vic.gov.au/sites/default/files/documents/201705/Assessing_children_and_young_people_family_violence_0413.pdf)>

Department of Human Services (2012) [\*Adolescents and their families — Best interests case practice model specialist practice resource\*](#) <<http://www.cpmanual.vic.gov.au/sites/default/files/Adolescents%20%26%20their%20families%20specialist%20practice%20resource%202012%203003%20.pdf>>

Department of Human Services (2012) [\*Adolescents with sexually abusive behaviours and their families — Best interests case practice model specialist practice resource\*](#)

<<http://www.cpmanual.vic.gov.au/sites/default/files/Adolescents%20sexually%20abusive%20behavs%20specialist%20resource%202012%203004%20.pdf>>

Department of Human Services (2012) [\*Children and their families — Best interests case practice model specialist practice resource\*](#) <<http://www.cpmanual.vic.gov.au/sites/default/files/Children%20their%20families%20specialist%20prctice%20resource%202012%203018.pdf>>

Department of Human Services (2012) [\*Cumulative harm, Best interests case practice model, specialist practice resource\*](#) <<http://www.cpmanual.vic.gov.au/sites/default/files/Cumulative%20harm%20specialist%20practice%20resource%202012%203014%20.pdf>>

Department of Human Services (2012) [\*Infants and their families — Best interests case practice model specialist practice resource\*](#) <<http://www.cpmanual.vic.gov.au/sites/default/files/Infants%20their%20families%20specialist%20practice%20resource%202012%203015.pdf>>

## Sharing information about communities who may have additional requirements

Department of Human Services (2017) [Balit Murrup: Aboriginal social and emotional wellbeing framework](https://dhhs.vic.gov.au/publications/balit-murrup-aboriginal-social-and-emotional-wellbeing-framework) <https://dhhs.vic.gov.au/publications/balit-murrup-aboriginal-social-and-emotional-wellbeing-framework>

Department of Human Services (2017) [Korin Korin Balit-Djak: Aboriginal health, wellbeing and safety strategic plan 2017–2027](https://dhhs.vic.gov.au/publications/korin-korin-balit-djak) <https://dhhs.vic.gov.au/publications/korin-korin-balit-djak>

Victorian Equal Opportunity and Human Rights Commission's (2017) [Guideline Family violence services and accommodation: Complying with the Equal Opportunity Act 2010](https://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/eaop-practice-guidelines/item/1577-guideline-family-violence-services-and-accommodation-complying-with-the-equal-opportunity-act-2010) <https://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/eaop-practice-guidelines/item/1577-guideline-family-violence-services-and-accommodation-complying-with-the-equal-opportunity-act-2010>

Department of Human Services (2017) [Language Services Policy and Guidelines](https://dhhs.vic.gov.au/publications/language-services-policy-and-guidelines) <https://dhhs.vic.gov.au/publications/language-services-policy-and-guidelines>

Office of the Public Advocate (2017) [Side by Side: A Guide to Appointing Supportive Attorneys](https://www.publicadvocate.vic.gov.au/our-services/publications-forms/supported-decision-making-1/side-by-side-a-guide-to-appointing-supportive-attorneys/232-side-by-side-booklet-web-version) <https://www.publicadvocate.vic.gov.au/our-services/publications-forms/supported-decision-making-1/side-by-side-a-guide-to-appointing-supportive-attorneys/232-side-by-side-booklet-web-version>

Family Safety Victoria (2017) [Diversity and Intersectionality Framework](https://www.vic.gov.au/familyviolence/designing-for-diversity-and-intersectionality.html) <https://www.vic.gov.au/familyviolence/designing-for-diversity-and-intersectionality.html>

## Privacy and information management

Commissioner for Privacy and Data Protection (2017) [Guidelines to protecting the security of personal information: 'Reasonable steps' under Information Privacy Principle 4.1](https://ovic.vic.gov.au/resource/guidelines-to-protecting-the-security-of-personal-information-reasonable-steps-under-information-privacy-principle-4-1/) <https://ovic.vic.gov.au/resource/guidelines-to-protecting-the-security-of-personal-information-reasonable-steps-under-information-privacy-principle-4-1/>

# APPENDIX A

## Information sharing process checklist when making a request

When making a request for information, either verbally or in writing, under Part 5A of the *Family Violence Protection Act 2008* (FVPA), you should make sure that:

- You are prescribed as an ISE and that you are authorised to share for that purpose.
  - ... Check the regulations to make sure you are a prescribed ISE, and to confirm whether you are a risk assessment entity that can share information for a family violence assessment purpose.
- That you are requesting information from a prescribed ISE.
  - ... Check the regulations and make sure the worker is prescribed as an ISE
  - ... Ensure you are speaking with someone suitably trained to use Part 5A of the FVPA
  - ... 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 entity's official account).
- Your information request is for a permitted purpose under Part 5A of the FVPA — namely, either for:
  - a. A family violence assessment purpose
    - ... Only prescribed Risk Assessment Entities are entitled to make requests and receive information for a family violence assessment purpose, which focuses on identifying who the 'actual' perpetrator and victim survivor are and establishing the level of risk the perpetrator poses to the victim survivor
  - OR
  - b. A family violence protection purpose
    - ... Any prescribed ISE is permitted to request and receive information for a family violence protection purpose. The focus at this stage is about managing the risk of the perpetrator committing family violence or the victim survivor being subjected to family violence. This could include information sharing as part of ongoing risk assessment.
- 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 purpose permitted by law.
- If your information request is refused, record this refusal in writing and keep this refusal on file.
- You have read [Chapter 7](#) on page 84 if you are sharing information about an Aboriginal or Torres Strait Islander person.
- You have read [Chapter 8](#) on page 90 if you are sharing information about people with disabilities, people from culturally and linguistically diverse backgrounds, older people, people from lesbian, gay, bi-sexual, trans, gender diverse and intersex communities or people from regional, rural and remote communities.

# 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 ISE.
  - ... 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 of the *Family Violence Protection Act 2008* (FVPA) — namely:
  - a. If the information is being requested for a family violence assessment purpose
    - ... Only specifically prescribed Risk Assessment Entities can request and receive information for a family violence assessment purpose. Therefore, confirm that the person requesting information is specifically prescribed as a Risk Assessment Entity
    - ... Refer to the MARAM 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.
  - OR
  - b. If the information is being requested for a family violence protection purpose.
    - ... Any prescribed ISE 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 MARAM 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 the victim survivor/s at further risk of harm.
- Prior to sharing the relevant information, make sure the information is not excluded information or that sharing it would not 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 of the FVPA):
  - a. 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 MARAM 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
    - ... Consent from a child victim survivor is not required but their views or the view of their parent that is not a perpetrator should generally be sought. This is crucial for building open and transparent relationships between service providers and victim survivors

- ... 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 of the FVPA, irrespective of consent.
- b. 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 of the FVPA, 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 of the FVPA.

- Document the entity that requested the information and the worker you spoke with.
- Document the information that was shared and any consent 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.

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### **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.

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### **Remember**

If you think that a perpetrator or victim survivor has been misidentified, you should only share information consistent with Part 5A of the FVPA 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.

# 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 service providers that are legally allowed to receive that information because of their role in assessing your risk, or 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.

You may be contacted by other Information Sharing Entities that hold information about you to seek your consent to share that information. You can indicate your preferred method of contact on the consent form below.

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.

## Information sharing consent form

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 name (print): \_\_\_\_\_

Verbal consent obtained:  Date: \_\_\_\_\_

Please indicate your preferred contact method:

Mail: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Would you prefer to be called from a private number?

What is the best day and time for us to call:

\_\_\_\_\_

Text message: \_\_\_\_\_

A message left with an authorised person for you to return the call:

Authorised person contact details: Full name, relationship, telephone:

\_\_\_\_\_

# APPENDIX D

## Tips for conversations with adult victim survivors about consenting to information sharing

### Model Conversation: Obtaining consent from an adult victim survivor

Organisations are required to obtain consent in order to share information about adult victim survivors in a number of circumstances when sharing information under privacy laws but there are also some limitations to the requirement for consent that practitioners discuss with victim survivors. In addition to the conversations practitioners already have with adult victim survivors around information sharing, it is important that practitioners also outline the limitations of consent as it relates to sharing information under Part 5A when obtaining consent from an adult victim. This conversation may occur when an adult victim survivor first comes into contact with your service. Or, for existing clients of a service, the conversation may occur when workers are prescribed and authorised as ISEs to share family violence information in accordance with Part 5A.

These dot points should be considered for your conversation with adult victim survivors, where there is no child at risk of family violence. Please note there are extra considerations for this model conversation when the adult victim survivor's information is being shared to assess or manage risk to a child victim survivor. Please refer to [Chapter 5](#) on page 64 for more information.

These conversation prompts can be adapted for practitioners in a variety of roles. Not all points need to be addressed – using your professional judgement on how to address limited consent with clients in individual circumstances is essential.

To check the victim survivor understands, consider the following approaches:

- provide examples of when their information would be shared and for what purpose, to provide context to the discussion
- check in multiple times to confirm the victim survivor understands what has been said, possibly asking them to repeat the information if you are concerned they do not understand
- tailor this conversation to victim survivors where English is their second language; where a cognitive impairment is present and/or; where capacity is impaired for any reason.

When having a conversation with adult victim survivors about consent, consider the following prompts:

#### *The new Scheme*

- information sharing laws have recently changed
- under the new laws, information sharing can occur to assess and/or manage your risk of family violence
- the Scheme is in place to promote your safety
- information sharing allows organisations to work collaboratively to assess and manage your safety, to reduce the burden on you to manage family violence risk on your own
- I acknowledge this is a difficult time for you. The Scheme is in place to support you, not to create further stress.



### *Consent*

- in the majority of instances your consent will be sought. However, if it will lessen or prevent a serious threat to an individual's life, health, safety or welfare, your consent is not required to share information
- while your consent is not required in some limited circumstances, wherever appropriate, safe and reasonable to do so we will seek your views on how and when your information is shared
- wherever possible, you will be informed that your information has been shared
- after we have requested your information from other organisations they may also wish to obtain your consent to share your information. You may want to let them know the safest way to contact you by writing this on the consent form.

### *Reassurance*

- information will not be shared with the perpetrator of family violence.

# APPENDIX E

## Tips for a conversation with a child victim survivor or parent who is not a perpetrator

### Model Conversation with a child victim survivor of family violence, or parent who is not a perpetrator

Part 5A explicitly recognises the precedence of a child's right to be safe from family violence over any individual's rights to privacy. When explaining the impact of Part 5A to child victim survivors and/or a parent who is not a perpetrator, it is important to highlight that the purpose of the Scheme is to promote the safety of victim survivors.

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. This includes information about a child, their parent who is not a perpetrator, the perpetrator or any third party.

In order to provide effective support it is crucial for service providers to build and maintain relationships of trust with children and the parent who is not a perpetrator. An important way of achieving this is through open and transparent communication. This means making it clear that 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. Practitioners already have conversations about limitations around confidentiality in relation to sharing information under other laws, including the *Children, Youth and Families Act 2005* and privacy laws.

These conversation points should be considered as a guide for your conversation with child victim survivors and/or their parent who is not a perpetrator. These prompts can be adapted for practitioners in a variety of

roles. Not all points need to be addressed — your professional judgement is essential to determine how to discuss Part 5A with clients in individual circumstances.

To check the victim survivor understands, consider the following approaches:

- provide examples of when their information would be shared and for what purpose, to provide context to the discussion
- check in multiple times to confirm the child victim survivor or parent who is not a perpetrator understands what has been said, possibly asking them to repeat the information if you are concerned they do not understand
- tailor this conversation to child victim survivors or parents who are not perpetrators where English is their second language; where a cognitive impairment is present; and/or where capacity is impaired for any reason.

When having a conversation with a child victim survivor or a parent who is not a perpetrator, consider the following prompts:

#### *The Scheme*

- information sharing laws have recently changed
- under the new laws, information sharing can occur to assess and/or manage your (or your child's) risk of family violence
- the Scheme is in place to promote your safety (or the safety of your child)
- information sharing allows organisations to work collaboratively to assess and manage your safety (or your child's safety), to reduce the burden on you

- I acknowledge this is a difficult time for you. The Scheme is in place to support you (and your child), not to create further stress.

#### *General*

- I recognise the steps you have taken to protect your child from family violence.

#### *Consent*

- if your information is relevant to assessing and/or managing a risk to your child, your consent is not legally required to share information
- while your consent is not legally required, where it is appropriate, safe and reasonable to do so, your views will be sought over how and when your information is shared
- wherever possible, you will be informed that your information is shared.

#### *Reassurance*

- if it is not possible to speak with you before sharing your information, I will tell you as soon as possible afterwards
- information will not be shared with the perpetrator of family violence
- the safety of family members that are not perpetrators will also be taken into account in safety planning.

# APPENDIX F

## 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 an individual's 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 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, safe and reasonable 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, the Health Complaints Commissioner or the Australian Information 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 Family Violence Information Sharing Scheme established under Part 5A of the *Family Violence Protection Act 2008*.

### 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.
- You should not share the information you receive in ways that are unrelated to managing your safety (e.g. sharing on social media). Sharing your information with the wrong person could affect your or others 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.

# APPENDIX G

## Example record keeping form

Who did you share information about? (tick all that apply)

Perpetrator     Alleged Perpetrator     Adult Victim Survivor     Child Victim Survivor (under 18 years)     Adult Third Party

Date the information was disclosed (DD/MM/YYYY)

Which organisation was the information disclosed to?

Please attach:     a record of the information that was disclosed.     a family violence risk assessment or safety plan for the victim survivor or member of their family (if made by your organisation).

**Requested information**

Was this information shared in response to a request?     Yes     No

If **yes**, what was the date of the request? (DD/MM/YYYY)

If **yes**, what information was requested?

### Information shared about an adult victim survivor or third party (where no child is at risk)

Was this information shared with consent?     Yes     No

If **yes**, please attach record of consent

If **no**, what is the reason why information was shared without consent? (i.e. serious threat)

Was the adult victim survivor/third party informed that their information was disclosed?     Yes     No

### Information shared about an adult victim survivor or third party to assess or manage risk to a child victim survivor

If **no**, did you seek the views of the adult victim survivor/third party?     Yes     No

If **no**, why were the views of the adult victim survivor/third party not sought?

Was the adult victim survivor/third party informed that their information was disclosed?     Yes     No

### Information shared about a child victim survivor (under 18 years)

Did you seek the views of the child/young person (under 18) or their parent (who is not a perpetrator or alleged perpetrator) about sharing their information?     Yes     No

If **no**, why were the views of the child/young person or their parent not sought?

Was the child/young person or their parent informed that their information was disclosed?     Yes     No

