

Domestic and Family Violence Information Sharing Guidelines

Draft for consultation – As at 21 March 2019

About the draft guidelines – **to be deleted from final document**

These draft guidelines have been prepared by Territory Families, in consultation with an Advisory Group of government and non-government stakeholders. The guidelines are being released for consultation to ensure that they provide adequate information for Information Sharing Entities (ISEs) and potential ISEs, when complying with their obligations under new information sharing laws contained in Chapter 5A of the Domestic and Family Violence Act.

We are seeking the following feedback:

- 1. Are these guidelines and tools accurate, useful and easy to understand?**
- 2. Do these guidelines and tools provide your organisation with the information it requires to be compliant with the information sharing laws as an Information Sharing Entity?**
- 3. What other information, tools or templates are required?**

Note that **highlighted sections** in the Guidelines are for updating or removing once the final version is complete. Also note that the final guidelines and tools will be professionally laid out by a graphic designer to ensure their readability and accessibility.

Once consultation is complete, and feedback is incorporated, the final document will be subject to Ministerial approval. The approved guidelines will then be provided to ISEs and to those organisations wishing to apply to become an ISE. This process will be completed prior to August 2019, at which point the Act commences.

All feedback on the guidelines should be provided to the contact details below, prior to April 30, 2019.

Email: TF.DomesticViolenceDirectorate@nt.gov.au
Phone: 8999 2597

Acknowledgments

Territory Families acknowledges the assistance of the Department of the Attorney-General and Justice and the members of the Information Sharing Advisory Group in the preparation of these Information Sharing Guidelines.

Members of the Information Sharing Advisory Group include representatives from the Darwin Domestic and Family Violence Network, the Central Australian Family and Sexual Violence Advocacy Network, Tennant Creek Women's Refuge, Territory Families, the Department of Health, the Department of the Attorney-General and Justice, the Office of the Information Commissioner and NT Police, Fire and Emergency Services.

Territory Families also gratefully acknowledges that these Guidelines have been informed by work on information sharing that has occurred in other jurisdictions and in relation to children.

In particular, we acknowledge:

- Northern Territory Government, ***Children's Information Sharing Guidelines***, Published by the Chief Executive Officer of Territory Families under s293H of the *Care and Protection of Children Act 2007*. It is acknowledged that this document was itself informed by work on information sharing that occurred in New South Wales and South Australia.
- State of Victoria, Family Safety Victoria, ***Family Violence Information Sharing Guidelines***, 2017 and ***Guideline: Family violence services and accommodation; Complying with the Equal Opportunity Act 2010***, 2017
- State of Queensland, ***Domestic and Family Violence Information Sharing Guidelines***, May 2017.

Disclaimer

The Northern Territory Government does not accept any liability whatsoever for the information or the use of information provided in these guidelines or incorporated into them by reference.

The content of these guidelines is provided strictly for information purposes only. No claim or warranty is made as to the accuracy, completeness or currency of the content in these guidelines.

These guidelines are not intended for the purpose of providing legal advice. You must not rely upon information in these guidelines as a substitute for your own legal advice. While we make every effort to provide accurate and helpful information, these guidelines do not constitute legal advice and you should seek your own independent legal advice in relation to your statutory and legal obligations.

Summary of information sharing

Preventing domestic violence is everyone's responsibility

- Domestic and family violence (DFV) is prevalent in the Northern Territory and it causes serious harm. Women and children are most at risk.
- Everyone (all adults) have a responsibility under mandatory reporting laws to respond in a way which improves the safety of victim survivors of DFV and holds perpetrators to account.

Mandatory Reporting and other information sharing laws still apply

- New information sharing laws in Chapter 5A of the *Domestic and Family Violence Act* do not replace or change existing information sharing and mandatory reporting laws.
- Under these laws, there are certain situations where information may be shared, reported or disclosed even where the consent of the person has not been given. These existing obligations still apply.
- In the NT every adult is required by law to report DFV to police as soon as practical, if they believe that serious physical harm has or is likely to occur OR if someone's life or safety is under serious or imminent threat.
- Information may be disclosed under Information Privacy Principle 2.1 in the NT Information Act if the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious or imminent threat to an individual's life, health or safety or harm to, or exploitation of a child.
- Authorised Information Sharers under Part 5.1A of the *Care and Protection of Children Act 2007* (NT) may share information that relates to the safety or wellbeing of a child for purposes that are specified under the Act.

New information sharing laws now apply to designated 'Information Sharing Entities' (ISEs)

- Under Chapter 5A of the *Domestic and Family Violence Act*, certain organisations are required to share relevant information about DFV.
- This will help organisations to assess and respond to serious threats to life, health, safety and welfare because of DFV.
- See page **XX** for a list of organisations (called 'Information Sharing Entities' or ISEs) required to share information under the legislation.

Can information be shared without consent?

- An ISE should obtain the consent of a person who fears or experiences domestic violence before sharing information about the person unless it is not safe, possible or practical to do so.
- However, the safety of a person who fears or is experiencing domestic violence is paramount in determining whether such information can be shared.
- This means that information may be shared without consent under Chapter 5A in certain circumstances.

When can information be shared without consent?

- An ISE may give information to another ISE, without the consent of the person, if the entity that holds the information believes that:

A person fears or is experiencing DFV; and

The information may help the receiving ISE to **assess** a serious threat to a person's life, health, safety or welfare because of DFV, or

The information may help the receiving ISE to **lessen or prevent** a serious threat to a person's life, health, safety or welfare because of DFV.

- An ISE must give the information to an ISE that requests it in order to help it assess, lessen or prevent a serious threat because of DFV, even if the person has not provided consent.
- An ISE may share information on its own initiative or following a request from another ISE for information.

When is it prohibited to share information?

- Information must not be shared if it could endanger a person's life or physical safety.
- Information must not be shared if it could prejudice a court case, police investigation or coronial inquiry or contravene legal professional privilege or enable the identification of a police source or breach a law.

What should ISEs do?

- ISEs must comply with these Guidelines.
- ISEs must ensure that their policies, procedures, practice guidance and tools align with the Northern Territory Government DFV Risk Assessment and Management Tool or Framework (**under development**) to help them identify, assess and respond to family violence.

What if you are not an ISE?

- Even if you are not an ISE you may still be able to share information about a person, without their consent, if it is necessary or required under mandatory reporting laws, information privacy principles, or Part 5.1A of the *Care and Protection of Children Act 2007 (NT)*.
- All organisations (even if they are not an ISE) should have policies and procedures in place so their employees know how to identify and respond to DFV and can meet their mandatory reporting and information sharing obligations

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1 Introduction

These Domestic and Family Violence Information Sharing Guidelines (the Guidelines) are intended to support Information Sharing Entities (ISEs) to share information appropriately in order to assess, lessen or prevent a serious risk of domestic and family violence (DFV).

The Guidelines are consistent with amendments made to the *Domestic and Family Violence Act* (the Act) in October 2018. The new information sharing scheme, set out in Chapter 5A of the Act, is in effect as of XX August 2019.

In situations of DFV, the timely and appropriate sharing of information across agencies can save lives and prevent serious harm. Many different services and practitioners – such as police, specialist DFV services, child protection, and health services – can become involved in an individual case.

Effective, coordinated responses require DFV agencies and services to work together and may depend on the sharing of relevant information across agencies and services. Information sharing is particularly important in assessing and managing risk, as each service may hold different information about the circumstances and relevant risks in each case. The outcomes of appropriate and safe information sharing are that:

- victim survivors of DFV (predominantly women and children) are safer; and
- perpetrators of DFV (predominantly men) are held to account and provided with opportunities to change their behaviour.

The Guidelines clearly outline for ISEs who can share information, what information should be shared, and the circumstances in which information may be shared.

ISEs are required by law to comply with these Guidelines.

These Guidelines do **NOT** replace an organisation's own policies, procedures and systems in relation to DFV information sharing. All ISEs need to develop or adapt their own internal policies, procedures and systems to comply with Chapter 5A and these Guidelines. These Guidelines will assist ISEs to inform the development of their own policies, procedures, systems and practices.

These Guidelines were approved by the Minister for Territory Families on XX July 2019 in accordance with section 124N of Chapter 5A.

1.1 Domestic Violence - Definition and terminology

The definition of domestic and family violence for the Information Sharing Scheme is the definition set out in the Northern Territory *Domestic and Family Violence Act 2007*.

It includes:

- conduct causing harm (including physical and sexual assault)
- damaging a person's property (including the injury or death of any animal that is the person's property)
- intimidation
- stalking behaviour such as following or loitering near the victim survivor (note that this can also include excessive telephone calls, text messages, social media posts, emails or other use of technology to stalk, harass or threaten)
- economic abuse
- attempting to commit any of these acts.

A domestic relationship includes:

- current or previous intimate partners
- family members
- people who currently or previously lived together
- carer relationships (regardless of whether the care is paid or unpaid)
- guardianship or custody relationships
- relatives according to Aboriginal tradition or contemporary social practice.

Terminology used in these guidelines

In these Guidelines the terms 'domestic violence', 'family violence' and 'domestic and family violence' (abbreviated to DFV) are used interchangeably and mean 'domestic violence' as defined in the *Domestic and Family Violence Act*.

These Guidelines recognise that the causes of DFV are complex, and include gender inequality and community attitudes towards women. Contributing factors may include financial pressures, alcohol and drug abuse, mental illness and social and economic exclusion. Further, for Aboriginal people DFV is compounded by discrimination and trauma associated with historical and ongoing injustices.

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. This is why DFV is often described as 'gender-based violence.' For this reason these Guidelines usually refer to perpetrators as 'he' and victim survivors as 'she'.

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. 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. For example, they may prefer to use the terms 'people who experience violence' or 'people who use violence'.

1.2 Guiding principles for Information Sharing without Consent

The Act identifies the following key principles which guide the collection, use and/or disclosure of information by Information Sharing Entities (ISEs):

1. An ISE should obtain the consent of a person who fears or experiences DFV before sharing information about the person, unless it is not safe, possible or practical to do so. However, the safety, protection and wellbeing of a person who fears or experiences DFV are paramount.
2. Before disclosing information about a person, an ISE should consider whether disclosing the information is likely to adversely affect the safety of the person or another person.
3. An ISE should only collect, use or disclose information to the extent that it is necessary to assess and manage risk to a person's safety because of DFV.
4. An ISE that collects, uses or discloses the information of an Aboriginal person should do so in a manner that promotes cultural safety, is culturally sensitive, and considers the person's familial and community connections.
5. An ISE should have regard to a person's cultural, sexual and gender identity, and their religious faith (if any).

2 Information Sharing Under Chapter 5A¹

These Guidelines provide a guide for services and practitioners on information sharing *without consent*.

The Act states that consent should be sought where it is safe, possible and practical to do so. However, the safety, protection and well-being of a person who fears or experiences DFV are paramount. This means safety takes precedence over consent.

ISEs must consider a number of key questions before sharing relevant information without consent. **The flowchart at Appendix X** provides a summary of these key steps. Further information about each of these steps is provided in this section.

2.1 When can information be shared without consent between ISEs?

Threshold test for whether information can be shared

Chapter 5A allows an ISE to share information with another ISE, without the person's consent, if the ISE believes that:

- A person fears or is experiencing domestic or family violence, and
- The information may help the ISE receiving the information to **assess** a serious threat to a person's life, health, safety or welfare because of domestic or family violence, including by providing or arranging a domestic violence service, or
- The information may help the ISE receiving the information to **lessen or prevent** a serious threat to a person's life, health, safety or welfare because of domestic or family violence, including by providing or arranging a domestic violence service

The belief must be held on **reasonable grounds**. This will depend on the circumstances but will generally require the existence of some facts or information beyond mere suspicion. This is a safeguard to prevent unnecessary or irrelevant information from being shared.

The threat must be **serious**. Note that the serious threat is not just about the loss of life. It includes a serious threat to (mental, emotional and physical) health, safety or welfare.

¹ These Guidelines only provide information relating to the information sharing provisions under Chapter 5A of the Domestic and Family Violence Act 2007. They do not provide information relating to the sharing of information under other legislation or provisions, such as mandatory reporting, the Information Act or the Care and Protection of Children Act. For further information about these issues, please see Section X

[Note that the development of a Risk Assessment and Management Framework is being undertaken and will contribute to this section]

Provided this threshold has been met, and there are no reasons that information sharing is prohibited, an ISE may share information on its own initiative (ie without a request), and must share information when it has been requested by another ISE.

2.2 How can the shared information be used?

Information shared under Chapter 5A may be used by the receiving ISE to:

- a. **Assess** whether there is a serious threat to a person's life, health, safety or welfare because of DFV; or
- b. **Lessen or prevent** a serious threat to a person's life, health, safety or welfare because of DFV, including by:
 - (i) contacting, or attempting to contact, the person or another person; or
 - (ii) providing assistance or a domestic violence related service to a person.

2.3 How can police share and use information shared under Chapter 5A?

There are special rules to make it easier for police to share information with DFV services. Police may give information to an ISE that provides a domestic violence related service if the police officer believes:

- The person fears or is experiencing DFV and there is a threat to the person's life, health, safety or welfare because of DFV, **or**
- The person has committed domestic violence against another person.

A police officer who receives information under Chapter 5A can use the information to perform his or her functions as a police officer immediately if the circumstances are urgent.

If the circumstances are not urgent the police officer must not use the information for an investigation or proceeding unless he/she has consulted with the ISE that provided the information AND determined that using the information is in the best interests of the victim survivor.

This enables the police to act urgently and immediately to prevent harm and save lives if the circumstances require it, while requiring them to consult with the ISE before using the information for an investigation or proceeding in relation to an offence. The over-riding consideration is whether the use of the information is in the best interests of the person experiencing DFV.

3 Who is allowed to share information under Chapter 5A?

3.1 Who are designated ISEs?

The *Domestic and Family Violence Act 2007* designate certain organisations as ISEs. An ISE under the Act is the CEO, commissioner or principal (as appropriate) of government agencies with responsibilities for the services of child protection, adult correctional services, disability services, education services, housing services, public health services, youth justice services, police, courts and tribunals and any other government agency that provides a domestic violence related service.

Under this definition, prescribed agencies in the Act currently includes the following departments, agencies and associated entities:

- Territory Families (who is also responsible for administering the Act)
- Department of Education
- Department of Attorney-General and Justice (including NT Corrections)
- Department of Health
- Department of Local Government, Housing and Community Development
- NT Police
- Courts and tribunals (although Chapter 5A does not apply to the disclosure of information by judges, registry staff and court officials in relation to, or for the purposes of, its judicial or quasi-judicial functions)
- All non-government schools in the Northern Territory.

3.2 Who else may be prescribed as an ISE?

Any person or entity who provides a domestic violence related service may be prescribed in the regulations as an ISE.

Under the Act, a domestic violence related service is defined as an assistance or support service provided to any of the following:

- (a) persons who fear or experience domestic violence;
- (b) other persons affected by that domestic violence;
- (c) persons who commit domestic violence.

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Examples of such services include: alcohol and other drug treatment services, allied health services, counselling, disability services, health services, housing and homelessness services, legal services and sexual assault services.

However, before a domestic violence related service is prescribed as an ISE the Minister must consult with the proposed ISE and be satisfied that it would comply with the guidelines.

Non-government organisations currently prescribed as ISEs in the regulations include:

[List of ISEs prescribed in the regulations will be included at the time of printing.]

Agencies designated as ISEs may change from time to time. An updated list is published on Territory Families website.

[A website link to a list of all the current ISEs will be included at the time of printing]

3.3 Which personnel within ISEs can share information?

Only appropriate people within an ISE may share information under Chapter 5A. The Act specifies that information may only be given, received or used by:

- a. A person employed, engaged or appointed by the ISE whose duties include assessing domestic violence threats, or taking action to lessen or prevent domestic violence threats (including by providing or arranging a domestic violence service);
OR
- b. A person otherwise authorised by the ISE to give or receive or use the information.

Examples of personnel whose duties include assessing threats because of DFV or taking action to lessen or prevent those threats may include:

- Case workers
- Youth workers
- Child protection staff
- Psychologists
- Social Workers
- Police officers
- Lawyers
- Probation and parole officers
- Doctors, nurses and allied health workers

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- Teachers and Student Welfare Co-ordinators in Government and non-Government schools
- Witness Assistance Officers at the Director of Public Prosecutions
- The supervisors or managers of the personnel listed above.

Staff whose duties do not include assessing or taking action to lessen or prevent threats due to DFV, for example, the gardener or accountant, would NOT be authorised by Chapter 5A to give, receive or use information unless the ISE has provided explicit authorisation for them to give, receive or use information.

It does not matter whether the person is an employee or a contractor. Paramount is the nature of their duties or whether the ISE has specifically authorised them to give or receive or use the information.

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4 What information can be shared?

4.1 What is relevant information?

Only information that is necessary to assess, prevent or lessen a serious threat to a person's life, health, safety or welfare because of DFV should be shared. An ISE should specify the information requested as clearly as possible and the purpose for which it will be used so that the ISE receiving the request can identify the extent to which any information it holds might be relevant to the request. Practitioners should use their professional judgement to determine what, of the information they have received, is relevant information that should be shared for the purposes of Chapter 5A.

The Act makes it clear that information may include both facts and opinion. Facts means absolutes (for example, the date on which a perpetrator may be released on parole), while opinion refers to professional opinion inferred from other information (for example, the practitioners assessment that the victim survivor is at serious risk).

Information should be limited to what is needed to fulfil the purpose of sharing, and should not be excessively detailed.

4.2 Limits on information sharing

The Act specifies that there are certain circumstances where information must not be shared.

This recognises there are a range of limited circumstances where confidential information should not be permitted to be shared due to other policy reasons (e.g. where sharing could endanger a person's life or prejudice a law enforcement investigation), or where information is restricted from being shared under other laws.

Information must NOT be shared under Chapter 5A if the ISE believes it could endanger a person's life or physical safety.

For example, if sharing the address of the victim could alert a person known to pose a threat to the victim's whereabouts then this information should not be shared.

It is also prohibited to share information if doing so could:

- prejudice the investigation of a contravention (or possible contravention) of a law in force in the Territory; OR
- prejudice a coronial inquest or inquiry; OR
- prejudice any proceeding in a court or tribunal; OR
- contravene any legal professional or client legal privilege; OR

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- enable the existence or identity of a confidential police source of information to be ascertained; OR
- prejudice the effectiveness of a procedure for preventing, detecting, investigating or dealing with a contravention of a law.

Information must not be shared if it is prohibited under the *Criminal Records (Spent Convictions) Act or another law*.

If in doubt about whether these apply, practitioners may need to seek legal advice.

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

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

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5 Safeguards to protect privacy

It is important that people's information is kept confidential at all times unless disclosure is authorised by Chapter 5A (or the National or NT Privacy Principles see page XX).

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 should 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).

This is especially important for people from smaller or interconnected communities.

5.1 What if there is unauthorised disclosure of information?

If information is shared inappropriately under Chapter 5A, offences may apply and penalties may be imposed.

Unauthorised disclosure of a person's confidential information is an offence. It is an offence to obtain information under Chapter 5A and intentionally do something that discloses the information, where the person who discloses is reckless to that result.

The penalty is 200 penalty units or imprisonment for 2 years.

It is **not** an offence if the information is disclosed:

- in a way that is authorised by Chapter 5A
- to a court or tribunal
- for research relating to the purpose of this Chapter, authorised by the Minister
- for an inquiry or investigation conducted by a coroner, the police force or another law enforcement agency, authorised by the Minister
- for any other purpose prescribed by regulation, authorised by the Minister
- where it is required or authorised by law
- in compliance with the Information Privacy Principles or the National Privacy Principles.

While ISEs are required to comply with these Guidelines, a failure to comply with these Guidelines is NOT in itself an offence.

5.2 Protection of practitioners sharing in good faith

Under Chapter 5A a person is not civilly or criminally liable for the act of giving information in good faith in the exercise of a power or function as an ISE.

Generally, a practitioner may be considered to have acted in good faith 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, preventing or managing a serious threat under Part 5A and not for another purpose
- do not act recklessly (being careless of the consequences and lacking the proper caution) when exercising their power to share information
- share information that is relevant to assessing, preventing or managing a serious threat under Chapter 5A.

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6 Good practice in information sharing

6.1 How should ISEs request, share and record information?

The Act does not specify if information requests and information sharing should be made verbally or in writing. However, it is recommended that ISEs keep a written record of all exchanges of information made under the information sharing scheme.

An ISE should specify the information requested as clearly as possible and the purpose for which it will be used so that the ISE receiving the request can identify the extent to which any information it holds might be relevant to the request.

An ISE should keep accurate records of:

- a. personnel who are authorised to share information under Chapter 5A
- b. Information requests received under Chapter 5A
- c. Information requests made under Chapter 5A
- d. Information that has been shared under Chapter 5A
- e. Information requests that have been refused, and the reasons for refusing
- f. Any complaints about information sharing that have been received.

A template form for recording information sharing requests has been developed.

(Attachment 2)

An ISE should always 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.

ISEs should make sure that an organisation they are sharing information with is prescribed as an ISE by the Act or 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).

Good documentation will make it easier for an ISE to establish that they have shared information appropriately and are therefore entitled to the protections available under the Act. A person providing information in good faith in the exercise of a power or function as an ISE is not civilly or criminally liable.

Confidentiality and secure management and storage of confidential information

In a DFV 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. A

person's privacy should be displaced only to the extent that is necessary to assess and manage DFV risks.

Information shared under the Chapter 5A remains confidential information.

Unless consent has been obtained, this information can only be shared in accordance with the provisions in Chapter 5A. Unauthorised disclosure of a person's confidential information is an offence.

Information provided by one ISE can be provided to a second ISE and then a third ISE provided on each occasion the requirements in Chapter 5A have been met.

Information should be requested and provided in a secure way so that it is seen only by those who need to be aware of it. Services must have policies and processes in place to ensure that a person's confidential information is stored securely and safeguarded, especially when the staff at a service provider may be known to the victim survivor and/or perpetrator.

Information required to be collected for the Information Sharing scheme review

Under the Act, the Information Commissioner must, in consultation with the Minister and ISEs, review the operation of the scheme after two years, and again after five years. These reviews must include any adverse effects of the scheme, and may include recommendations.

ISEs must record and provide the following information for feeding in to these reviews:

[these requirements are to be determined by regulation]

6.2 Obtaining consent

An ISE should always obtain consent to share information unless it is not safe, possible or practical to do so.

Professional judgement and service policies should be used to determine whether it is safe, possible and practical to obtain the consent of the victim survivor.

In relation to perpetrators of DFV, it is unlikely to be safe to obtain their consent to share information. This is because asking the perpetrator's consent to share information may increase the risk of further violence and harassment to the victim survivor, other partners, other family members, or children.

If consent is not able to be obtained from the victim survivor, information may still be shared, providing the threshold test for sharing (outlined in section 2.1) has been met.

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

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in, the process. This will also help to reassure 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 because of DFV. ISEs should advise the victim survivor that only information necessary to assess, prevent or lessen the serious threat will be shared, and the potential outcomes of sharing that information.

It is best practice for all ISEs to:

- Have clear client consent procedures and policies in place.
- Have an upfront conversation with all clients at the point they engage with services about how their information may be shared, even if they do not consent, if it is necessary to assess, lessen or prevent a serious threat because of domestic violence, or under other laws such as mandatory reporting.
- This conversation may also occur when an agency becomes an ISE under Chapter 5A. This may involve explaining to clients that information sharing laws have recently changed, and that under the new laws, information sharing can occur to assess, lessen and/or prevent serious threats of DFV, in order to protect their safety. Clients should also be reassured that, wherever it is safe, possible and practical, their consent will be sought, and, wherever possible, they will be informed that their information has been shared. Clients should also be reassured that information will not be shared with the perpetrator of family violence.
- Seek consent where it is safe, possible and practical to do so. Obtaining consent may help foster rapport and connection between you and the victim survivor and show your support for her. Having control over one's own information is a central aspect of dignity.
- 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 (including the use of translators) to victim survivors where English is their second language; where a cognitive impairment is present and/or; where capacity is impaired for any reason.
- Discuss the decision to share or not to share information under Chapter 5A with the victim survivor if possible and safe, and explain to her the reasons for the decision.

There are many reasons why a victim survivor of DFV may not provide consent:

- The ISE not be able to locate her to ask whether she consents
- She may be too afraid to consent

- She may be deeply affected by the trauma of the situation and not be able to think clearly about what is best
- She may not want to get the perpetrator into trouble
- She may be afraid of retribution from the perpetrator or his family
- She may have logistical and practical worries about housing, money, employment or other factors
- She may be worried for her children
- She may distrust or have negative past experiences with the ISE or other agencies
- She may have experienced discrimination and racism from agencies previously
- She may simply not want to consent

6.3 Considerations when sharing information about Aboriginal people

An ISE that collects, uses or discloses an Aboriginal person's information should do so in a manner that:

- promotes cultural safety; and
- is culturally sensitive; and
- considers the person's familial and community connections.

The following points should be considered in the context of the impact of DFV on Aboriginal people and communities:

- Aboriginal communities define 'family' and therefore 'family violence', more broadly than non-Indigenous communities. The term family violence is often preferred to domestic violence, and often the terms are used interchangeably. For Aboriginal people, family violence includes a wide range of physical, emotional, sexual, social, spiritual, cultural and economic abuses that can occur within intimate relationships, families, extended families, kinship networks and communities.
- DFV against Aboriginal people is perpetrated by both Aboriginal people and non-Aboriginal people.
- Aboriginal women experience significantly higher prevalence and severity of family violence than non-Aboriginal women. There is also significant under-reporting of family violence in Aboriginal communities.
- Contributing factors to DFV against Aboriginal women and children in Aboriginal communities include inter-generational 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, as well as ongoing racism, vilification and discrimination.

Cultural safety

A culturally safe service or relationship is one where Aboriginal people feel safe, respected and where their identity does not have to be denied. To practice in a culturally safe way means to work in collaboration with a client, with empathy and compassion for their culture whilst being mindful of one's own culture, influences and biases. Services should also be mindful of the power imbalances that exist between service providers and clients and how this impacts on interactions.

The responsibility rests with the practitioner to ensure they have reflected on their own cultural, social and individual influences and biases, and how they may impact on practise, and adjust their practise accordingly. Best practise includes employing empathy, ensuring respect and being responsive to the client's needs. This process also involves having awareness of the culture of the person receiving support, including their language, family, kinship, country and community, as well as historical and current experiences of oppression, injustice and trauma.

Operating in a way that promotes cultural safety and is culturally sensitive and responsive means being aware of the following issues and adjusting practise accordingly:

- Aboriginal people have the right to access services from Aboriginal Community Controlled Organisations (ACCO), and ISEs should promote this right.
- Many Aboriginal people prefer to receive support from ACCOs, where they are available, but some prefer to attend a mainstream service. Where Aboriginal people attend a mainstream service, that service should operate in a culturally safe manner. A person's choice of services often depends on relationships, trust and confidentiality.
- The ongoing legacies of policies, laws and practices (in particular the high rates of removal of children and incarceration of Aboriginal people) have resulted in many Aboriginal people having significant distrust in government, in particular child protection agencies and police. Aboriginal people may be concerned about their information being shared with government agencies and may fear government agency interventions in their lives. Aboriginal people may avoid disclosing abuse or may minimise reports of harm out of fear of the possible repercussions for their children and families.
- Some Aboriginal people may be concerned about engaging with services when they perceive that information could be inappropriately 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.

Safely sharing information about an Aboriginal person

ISEs working with Aboriginal people, families and communities should consider these factors when making decisions to share information:

- inquire whether clients identify as Aboriginal and which language group or country they belong to, as well as their family connections and the perpetrator's family and connections.
- engage in respectful culturally-safe communication with the victim survivor about concerns for their safety and the reasons why the ISE would like to share information with another ISE
- obtain informed consent to the sharing of information where possible
- use interpreter services to aid communication where necessary, ensuring that first there is consultation with the victim survivor to make sure they feel safe with the interpreter, their privacy is not threatened and the interpreter has no allegiance with the perpetrator
- provide the victim survivor with the option of having a trusted third party of their choice present. They may choose an Aboriginal-specific service, a cultural advisor, mentor or other trusted person
- clearly explain how information will be used and for what purpose so that the message is culturally sensitive and addresses the particular concerns that an Aboriginal person might hold (eg. fear of child removal)
- communicate how sensitive information will be protected from privacy breaches (eg. how a service will store and safeguard a person's confidential information and protect confidentiality when the staff at a service provider may be known to the victim survivor and/or perpetrator)
- reassure that only information relevant to assessing, lessening or preventing a serious threat is shared and sensitive information is redacted if it is not relevant for that purpose
- reflect on any unconscious bias and assumptions in communications and interactions with the victim survivor and address these
- recognise the ongoing discrimination experienced by Aboriginal people and the impact of unjust policies and practices
- work collaboratively with Aboriginal organisations and agencies, and other agencies and services, to support the client in a culturally respectful manner
- training on cultural safety and cultural competence should be provided for all staff as well as other activities that promote a positive working relationship with Aboriginal communities and families

- acknowledge how complex kinship relationships that exist in Aboriginal families, communities, lore and law may differ from Western understandings of family obligations and expectations and how this may influence people's responses
- acknowledge that many victim survivors and perpetrators of DFV in the Northern Territory may have obligations under traditional Aboriginal law and lore as well as being subjected to the Western legal system.

6.4 Considerations when sharing information about diverse cultural groups

DFV can happen to anyone - violence has no geographical, socio-economic, age, ability, cultural or religious boundaries. This includes people from cultural, religious and linguistically diverse backgrounds, including immigrant and refugee peoples. For many of these groups, DFV can be hidden or rendered invisible. Some people also experience distinct barriers to accessing services.

The Act specifically requires ISEs to have regard to the person's cultural 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 be aware, and respectful, of the many factors that may impact a person's experience of DFV and of the experiences and needs of people from these communities. ISEs should take measures to ensure that their services are inclusive, accessible and non-discriminatory.

People from multicultural communities, particularly refugees or migrants, can be affected by their and their families' experiences of migration and settlement. Their concerns and experiences may include:

- fears about the impact on migration and residency status for victim survivors living in Australia on temporary or provisional visas
- different cultural understandings about forms of DFV reinforced by cultural norms and beliefs, as well as culturally specific understandings of privacy
- speaking English as a second language, and other communication barriers when explaining the complex issues of consent and privacy legislation, as well as fears of being misunderstood or misrepresented to authorities due to language and cultural barriers
- a lack of understanding about how the justice and DFV service system works — including the roles of police, courts, and DFV specialist services
- 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)

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- 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)
- fears of 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.

Safely sharing information about people from diverse cultural communities

ISEs working with victim survivors from diverse cultural communities to share information should:

- reflect on any unconscious bias and assumptions in communications and interactions with the victim survivor and address these
- ensure the client understands information provided, or that necessary supports are given to enable comprehension. For example: providing a professional interpreter or translator 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. Ensure that the client understands it is not a burden to organise an interpreter service.
- enquire about the client's concerns around information sharing and address those concerns
- understanding that literal translations for concepts such as DFV, consent and privacy may not be applicable and that more nuanced translation may be required
- clearly explain the ISE's obligations, including who information may be shared with, and for what purpose
- explain how sensitive information will be protected
- not assume that victim survivors will be comfortable with having information shared with close family members
- ask whether clients would prefer to receive a service from a general or culturally-specific service and provide appropriate support to, referrals to or partnerships with specialist services.

6.5 Considerations when sharing information about people from LGBTI communities

DFV can happen to anyone, as violence has no geographical, socio-economic, age, ability, cultural or religious boundaries. This includes people from lesbian, gay, bisexual, trans and gender diverse, and intersex (LGBTI) communities. For many of these communities, DFV can be hidden or rendered invisible. Some people also experience distinct barriers to accessing services. It is also noted that 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 Act specifically requires ISEs to have regard to the person's sexual and gender identity, in recognition of the fact that these aspects of identity and experience may affect their response to information sharing. ISEs should be aware, and respectful, of the many factors that may impact a person's experience of DFV, and of the experiences and needs of people from these communities. ISEs should take measures to ensure that their services are inclusive, accessible and non-discriminatory.

People from LGBTI communities may have concerns and experiences that result in feeling unsafe to report DFV, or lacking trust in the service system, including:

- discrimination, 'outing' or exclusion by services
- having their sexuality, sex or gender identity or intersex variation questioned or not recognised by services, or not having their needs understood
- inappropriate services and unsafe accommodation
- unsafe consequences of the impact of sharing information about their sexual orientation, sex or gender identity in their family or community

Safely sharing information about people from LGBTI communities

ISEs working with victim survivors from LGBTI communities to share information should:

- reflect on any unconscious bias and assumptions in communications and interactions with the victim survivor and address these
- ask victim survivors what their preferred pronouns are, and consistently use those pronouns when sharing their information. Be aware that the sex and/or gender that an individual identifies with, the pronouns they use, and preferred name may differ to that on written records
- ensure 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

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- ask whether clients would prefer to receive a service from a specialist LGBTI service and provide appropriate support to, referrals to or partnerships with specialist services.

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7 Special rules for courts and tribunals

Although courts and tribunals are ISEs, Chapter 5A does not apply to the disclosure of information by judges, registry staff and court officials in relation to, or for the purposes of, its judicial or quasi-judicial functions.

[This section is being developed by NT Department of Attorney-General and Justice]

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8 Sharing without consent under other legislation

Sharing or disclosing information, without the consent of the person, is already permitted and sometimes required under other pieces of legislation. ISEs continue to be subject to obligations under these laws. 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 without having to meet the requirements of Chapter 5A.

The following laws are not changed as a result of the Information Sharing Scheme outlined in Chapter 5A.

8.1 Mandatory reporting

Under section 124A of the Domestic and Family Violence Act, all adults in the NT are required by law to report DFV to the police, if they believe on reasonable grounds that:

- A person has caused serious physical harm or is likely to cause serious physical harm to someone with whom they are in a domestic or family relationship **and, or**
- The life or safety of a person is under serious or imminent threat because domestic or family violence has been, is being, or is about to be committed,

you must report it to police as soon as practicable. It is an offence not to report it to the police, unless you have one of the following reasonable excuses:

- You believe someone else had reported the DFV
- You were involved in the removal of the victim survivor from DFV and planned to report this as soon as practical after the removal
- You believed a serious or imminent threat to the life or safety of any person may occur as a result of your reporting.

The above mandatory reporting obligations are not changed as a result of the Information Sharing scheme outlined in Chapter 5A.

8.2 Sharing information about children

The Chapter 5A DFV Information Sharing Scheme also applies to information about victim survivors and perpetrators of DFV who are under 18.

In addition, information about children may be able to be shared by authorised information sharers under *Part 5.1A of the Care and Protection of Children Act 2007 (NT)*. The Guidelines for this information sharing scheme are available at:

<https://territoryfamilies.nt.gov.au/about/publications-and-policies/guidelines-for-information-sharing>

8.3 Information Privacy Principles

ISEs can share information with organisations that are not ISEs in certain circumstances under information privacy principles. Where non-ISEs need to share information, they may also be covered by the information privacy principles.

NT Information Privacy Principles

Public sector organisations are permitted to use or disclose information if they reasonably believe that the use or disclosure is necessary to lessen or prevent:

- i. a serious or imminent threat to the individual's or another individual's life, health or safety; OR
- ii. a serious or imminent threat of harm to, or exploitation of, a child; OR
- iii. a serious threat to public health or public safety.

(Information Privacy Principle 2.1(d), *NT Information Act*)

This may also apply to organisations who have funding contracts with public sector organisations, depending on the provisions in the contract.

For further information: <https://infocomm.nt.gov.au/about-us/the-information-act>

National Privacy Principles

In addition, organisations with a turnover of more than \$3 million may fall within the Commonwealth Privacy Act.

For further information contact the Office of the Australian Information Commissioner:

1300 363 992

enquiries@oaic.gov.au

<https://www.oaic.gov.au/>

8.4 Family Safety Framework

The Family Safety Framework is an action-based integrated service response to individuals and families experiencing family or domestic violence who are at HIGH risk of serious injury or death. The Family Safety Framework is led by NT Police in collaboration with other agencies as part of an integrated response. Victim survivors assessed as at a high risk of injury or death are referred to fortnightly Family Safety Meetings where agencies who may be able to assist are represented. The agencies share information and co-ordinate action to increase the safety of victim survivors at high risk and monitor the extent to which the actions have improved safety.

9 Complaints

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

People have 12 months to make a complaint from when the interference in their privacy occurred.

For further information contact the Information Commissioner. The complaints process is explained in the Information Commissioner's website:

<https://infocomm.nt.gov.au/complaints-and-appeals/complaints-to-the-information-commissioner>

Northern Territory Information Commissioner Freecall 1800 005 610

10 Attachments

[to be determined, including flowchart(s), record keeping templates and Risk Assessment and Management Framework]