



Women's Legal Services Australia

National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems

1 December 2020

Contact: Liz Snell
Phone: 02 8745 6900

Women's Legal Services Australia

✉ PO Box 3496, Alice Springs NT 0871 ☎ (08) 8952 4055

🌐 www.wlsa.org.au

Contents

About WLSA	3
Information sharing framework.....	4
Potential risks in information sharing	4
Recommended safeguards in information sharing systems	5
Information sharing – child protection	6
Information sharing – family violence system.....	7
Information sharing – family law system.....	7
Information sharing – victim-survivor’s sensitive records.....	7
Concerns about two-way sharing of information	8
Sharing of information between police and family courts.....	8
Conclusion	8

About WLSA

Women's Legal Services Australia (WLSA) is a national network of community legal centres specialising in women's legal issues, which work to support, represent and advocate for women to achieve justice in the legal system. We seek to promote a legal system that is safe, supportive, non-discriminatory and responsive to the needs of women. Some of our centres have operated for over 35 years.

Our members provide free and confidential legal information, advice, referral and representation to women across Australia in relation to legal issues arising from relationship breakdown and violence against women, across all jurisdictions. Our legal services are directed to marginalised and disadvantaged women, most of whom have experienced family and domestic violence. Therefore, our primary concern when considering any proposed legal amendments is whether they will make the legal system fairer and safer for our clients – marginalised and disadvantaged women.

Our members' principal areas of legal service work are family and domestic violence (family and domestic violence intervention orders), family law, child protection and crimes compensation. Our members also deliver training programs and educational workshops to share our expertise regarding effective responses to violence and relationship breakdown.

Finally, both WLSA and its individual member services work to contribute to policy and law reform discussions, primarily focused on sexual and family and domestic violence, to ensure that the law does not unfairly impact on women experiencing violence and relationship breakdowns.

The terms 'victim,' 'survivor,' and 'victim-survivor' have been used interchangeably throughout this submission to refer to women, children and others who have experienced or are experiencing family and domestic violence in any of its forms. Further, in acknowledgement of the gendered nature of family and domestic violence, survivors are referred to as women and children and perpetrators are referred to as men.

Acknowledgement

We acknowledge the family and domestic violence victim-survivors with whom we work and whose voices and experiences inform our advocacy in the hope for positive change.

Information sharing framework

1. We thank the Attorney-General's Department for the opportunity to comment on Co-ordinated approaches to family safety: supporting information sharing between the family law and criminal justice and child protection systems.
2. We believe ongoing conversations between the NGO sector and government departments about the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems are vital.
3. We advocate for an ethical framework for information sharing that is trauma informed and focused on the safety and agency of victim-survivors, developed with input from sexual and domestic violence experts. The informed consent of the victim-survivor is an important part of an ethical framework for information sharing.
4. We believe information about the alleged perpetrator relating to risk is also relevant to the framework of information sharing.
5. A national information sharing framework must be clear on the purpose of information sharing – what will be shared, with whom and in what circumstances, and how will this scheme fit in with existing information sharing schemes.
6. We acknowledge there can be benefits in information sharing. However, it is important that information sharing is not seen as the panacea. It will not solve systemic problems such as delays or inexperience in responding to family violence.
7. WLSA considers that safeguards for any information sharing scheme must be put in place to protect against unintended consequences.
8. Below we outline potential risks in information sharing and some recommended safeguards.

Potential risks in information sharing

9. Potential risks arising from information sharing schemes include:
 - a. There is risk of harm to victim-survivors if information is wrongly shared with a perpetrator, particularly where parties are self-represented.
 - b. There is a danger that the impact of incorrect or poor information is magnified in an information sharing system. For example, the risks arising from the use of an expert report later found to be flawed increase with the number of times the report is used. Furthermore, given that workers may categorise clients under pressure without sufficient information or sufficient training it is common for the primary offender to be misidentified. The risk of harm from this misidentification again increases each time this identification is used in different systems. This could result in inaccurate and untested information being admitted as evidence into other jurisdictions, such as family law, which may then place children in greater danger if they are ordered to spend time with the actual primary aggressor.
 - c. There is a risk of victim-survivors losing their agency in controlling their own information if there is not an emphasis on informed consent. WLSA is supportive of

the need for consent for victim-survivors to release of their information in any information sharing scheme.

- d. There is a risk that agencies may not act on risk if they assume another agency with access to the information sharing system will now be responsible.
- e. There are particular risks for Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse (**CALD**) communities, people with disability and LGBTIQ+ communities where there is a lack of cultural competency and lack of awareness and understanding of disability awareness and LGBTIQ+ awareness.
- f. There is a risk of disengagement from support services if a victim-survivor feels the service is not confidential. For example, if the victim-survivor has not provided consent to sharing of information or has not understood what that consent involves. Victim-survivors may also be dissuaded from reporting to police or contacting other services out of fear that their confidential information may be shared and ultimately obtained by the perpetrator.

Recommended safeguards in information sharing systems

10. WLSA recommends the following safeguards be carefully considered in a National Information Sharing Framework:

- a. Identifying the purpose and framing the information sharing system as a safety focused and a risk management tool which is based on sexual, family and domestic violence and trauma informed principles and aims to be consistent, minimally intrusive, proportionate, culturally appropriate and respectful of agency.
- b. Placing emphasis on agency, privacy and informed consent for all participants. There should be measures to explain the information sharing system and the meaning of consent to all participants. There should be further consultation and research into the appropriateness and utility of mechanisms to allow for participants to share information with some organisations and not others, and mechanisms to allow participants to share some information but not other information.
- c. Testing the information sharing system amongst a small group of participants first before roll out to a larger population.
- d. Consider the particular needs of Aboriginal and Torres Strait Islander communities, CALD communities, people with disability, LGBTIQ+ communities and people living in regional, rural and remote areas, to be developed in consultation with each of these groups.
- e. Extensive, regular and ongoing training in sexual, family and domestic violence for all staff putting information into the shared system, including the recognition of dynamics of sexual, family and domestic violence and unconscious bias, working with victim-survivors of trauma and cultural competence. Training in response-based practice such as not concealing or mutualising family violence, holding perpetrators to account and not blaming or pathologising victim-survivors as well as in appropriate note-taking is essential. Staff must have the appropriate skills to analyse the

information regarding family violence and be able to correctly identify the predominant aggressor and the person most in need of protection.

- f. Training on interpreting the types of reports and information prepared in each jurisdiction (for example, training on types of orders in each jurisdiction and the basis for such orders) that are put into the information system and how such reports and information are used to inform decision-making about safety and best interests.
 - g. Clear protocols around who is able to access information.
 - h. Clear protocols around roles and responsibilities of different agencies.
 - i. If there is to be a database that each of the Courts can access, issues of timeliness and currency of data should be considered. For example, it would need to be made clear to users that it should not be assumed that a lack of relevant information on a database necessarily reflected the latest circumstances.
 - j. Inclusion of specialist legal practitioners and sexual, domestic and family violence experts on the Family Violence Working Group to guide the development and implementation of the framework.
 - k. A regular review mechanism to ensure the information-sharing framework is operating as intended and to be able to identify and respond to any issues arising in a responsive way.
11. There may be other potential safeguards to identify and minimise the risks involved with information sharing.

Information sharing – child protection

- 12. Family and domestic violence remains a significant factor in child removals across Australia, including removals at birth.
- 13. It is our members' experience that mothers are commonly held responsible for being unable to protect their children and blamed for having contact with perpetrators.
- 14. Insufficient attention is given to supporting victim-survivors. Children are commonly removed because of complex violence-related issues (eg housing, drug use) without assistance being provided to the victim-survivor to properly support their recovery and enable reunification to occur.
- 15. Many women do not report domestic violence to police or reach out to services for help because they fear their children will be removed from their care if they do so. This is particularly the experience of First Nations women, CALD women and women with disability.
- 16. Where child protection services are involved the requirements they place on victim-survivors are not always trauma-informed. This leads to unrealistic expectations being placed on mothers, for example to attend numerous psychiatric assessments, parenting courses and comply with home-schooling requirements during COVID 19 when the immediate priority is finding suitable housing.

17. Safety risks tend to be overlooked or downplayed. For example, it is the experience of our members that the victim-survivor's knowledge of the perpetrator and safety risks are rarely taken into account by child protection workers. Our members have examples of children being placed with the perpetrator or his family in the context of severe violence and ongoing safety issues.
18. There is often a gap between the department's guidelines and child protection practice. Understanding of domestic and family violence by child protection workers varies, leading to inconsistent responses and outcomes.
19. Given the many failings in child protection there are concerns that low-quality information/information that miscategorises the situation will be shared, and this will follow women through multiple legal systems. This includes file notes that, for example, blame the mother and do not recognise her protective behaviour or mutualise violence rather than hold the perpetrator accountable; misidentify the person most in need of protection; minimise the risk posed by the father and paternal family members; suggests a lack of engagement when the issue is lack of cultural competency.
20. The ongoing training of everyone working with victim-survivors of sexual, domestic and family violence in response-based practice, unconscious bias and the importance of note taking is essential. Ongoing cultural competency training and LGBTIQ+ awareness and disability awareness training is also important. Any National Information Sharing Framework must be accompanied by such training.

Information sharing – family violence system

21. We seek further information sharing in addition to what is suggested from the domestic violence system.
22. In particular, we support embedding domestic violence workers in the court who are independent of the court but can assist the court with information gathering, assessments and determining risk.

Information sharing – family law system

23. We support the “Lighthouse project” and the creation of the Evatt List. The Evatt List focuses on early information gathering and support, through a Judge-led support team. The team has specialised training and is experienced in working with families where high risk safety issues have been identified. We support the national roll-out of the project and its expansion to include the testing of family violence allegations early, in 2021 and beyond.

Information sharing – victim-survivor's sensitive records

24. We are concerned that any information-sharing framework protects the sensitive records of victim-survivors.
25. WLSA member, Women's Legal Service NSW, has published a paper: *Sense and Sensitivity: Family Law, Family Violence and Confidentiality*. This paper highlights the impact of disclosure of sensitive material on the safety of victim-survivors and their children and on the

integrity of therapeutic relationships. The paper advocates that less intrusive options be exhausted before seeking access to therapeutic records.

Concerns about two-way sharing of information

Sharing of information between police and family courts

26. We support the sharing of information by police to the family courts. In addition to protection orders, charges and convictions, we support state/territory police being required to enquire about whether a person is currently involved in family law proceedings before they issue or renew a gun licence.
27. We further support police being required to inform the family courts if a person makes an application for a gun licence when they are involved in family law proceedings.
28. To enable the person's whose safety may be impacted to take steps to manage the risks, WLSA recommends this information be available through the Commonwealth Courts Portal.
29. We do not support the family courts sharing allegations of family violence with police.
30. In some jurisdictions, such as NSW, there are different ways to seek domestic violence protection orders, for example, through police application or private application. Those who fear reporting to the police can access protection orders through a private application which does not require a report to police. This is an important reason why WLSA does not support family courts being required to notify police of family violence allegations.
31. Other concerns related to family courts sharing family violence allegations with police include:
 - a. There may be safety issues if police investigate something without the knowledge of the parties.
 - b. If parties at family court are aware that police will be advised of allegations of family violence, they may expect police to take action and police may not investigate/take action for a range of reasons, including due to limited resources.
 - c. This may create barriers to some women disclosing family violence in family law proceedings if they know the police will be informed.

Conclusion

32. We would welcome ongoing conversations with the Attorney-General's Department as this project develops.
33. We believe it is important to test ideas with specialist practitioners working on the ground with victim-survivors to carefully consider the benefits and any unintended consequences. Women's Legal Services Australia is well placed to assist.