

Overview of the Family Violence Act 2018 information sharing provisions

The information sharing provisions in the Family Violence Act (the Act) promote the sharing of personal information by designated family violence agencies. The intent is to enable the family violence sector to work together and share information to reduce harm from family violence. These provisions come into force from 1 July 2019.

This memo identifies the duty holders within the health sector who will be bound by the information sharing provisions in the Act, provides a summary of the duties with respect to information sharing that will apply to the duty holders and situates the information sharing provisions within the existing privacy frameworks that apply within the health sector, including the Health Information Privacy Code.

Who in the health sector needs to comply with the information sharing provisions of the Family Violence Act 2018?

The information sharing provisions apply to entities and individuals who are, as defined in section 19 of the Act:

- a “family violence agency”; or
- a “social services practitioner”.

The Ministry and DHBs are duty holders under the Act as they are family violence agencies

The Ministry and DHBs are among the listed government agencies who are designated family violence agencies. As such, the Ministry and DHBs must comply with the information sharing provisions. A number of other government agencies are family violence agencies – see the definition in s 19 for the full list.

Within government, the Ministry has been identified as a “lead family violence agency” due to our leadership role within the health system. This has no legislative status – the Ministry has no greater legal responsibility than any other entity that has

responsibilities under the information sharing provisions of the Act and has no legal duty to assist other parties within the sector to comply with their obligations. However, while there is no legal duty on the Ministry to do so, there is an expectation that the Ministry will support the implementation of the Act within the health sector.

Health practitioners will be duty holders under the Act

The term “social services practitioner” is defined as including (among other duty holders in other sectors – see the full definition in s 19) individuals that are registered under the Health Practitioners Competence Assurance Act. All registered health practitioners must comply with the information sharing provisions. Social workers are also identified as social services practitioners for the purposes of the Act.

Many NGOs in the health sector may be duty holders under the Act

The term “social service practitioner” includes all non-governmental organisations that are funded wholly or in part by government, and that exercise powers, perform functions, or provide services to protect, or otherwise help, victims of family violence or to help people to stop their inflicting of family violence. Some Ministry contracted providers may fall within this definition.

It appears that organisations who receive some level of public funding and provide some level of service to victims or perpetrators of family violence will be duty holders under the “social service practitioner” definition, even if family violence prevention or providing assistance to those affected by family violence is not their primary focus.

The definition includes NGOs who are partially publicly funded and who provide help to victims of domestic violence – this may constitute a wide array of services and NGO providers.

Where an NGO is a social service practitioner, they will need to consider the information sharing provisions across all services. As such, their duties to consider sharing information are not limited to situations where they are directly engaged to provide services to victims or perpetrators of family violence.

Overview of duty holder responsibilities under the information sharing provisions in the Family Violence Act

The information sharing provisions are sections 18- 25 of the Act. These sections are summarised below (please refer to the Act itself for exact wording –this is intended as an overview only).

What conduct constitutes family violence?

The provisions allow for information to be shared and used about victims and perpetrators of family violence in certain circumstances. For the purpose of information sharing, perpetrators include persons who have, or may have inflicted family violence in the past, or are, or who may be, currently, inflicting family violence. Family violence is defined as including physical abuse, sexual abuse, psychological abuse. A single act may amount to abuse. The Act also states that number of acts that

form part of a pattern of behaviour may constitute family violence (even if all or any of those acts, when viewed in isolation, may appear to be minor or trivial),

Abuse includes a pattern of behaviour made up of a number of acts that are all or any of physical abuse, sexual abuse, and psychological abuse, and is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person) and/or which causes the person, or may cause the person, cumulative harm.

Psychological abuse includes threats, intimidation or harassment (such as following people, trespass, watching or loitering), damage to property, ill treatment of pets, financial or economic abuse (for example, unreasonably denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education), hindering or removing (or threatening to hinder or remove) access to supports and assistance for those who are physically reliant on the care or support.

Additionally, psychological abuse of children includes causing or allowing a child to see or hear the physical, sexual or psychological abuse of a person with whom the child has a family relationship, or putting them at real risk of seeing or hearing this.

What is a family relationship for the purpose of the Act?

To constitute family violence under the Act, the conduct described in the previous section needs to occur within the context of a family relationship, which is wider than nuclear family. It includes the relationships between:

- Spouses or partners
- Family members
- People who ordinarily share a household:
 - the existence of a landlord/tenant relationship, employment relationship or co-location within a dwelling house is not on its own sufficient to demonstrate sufficient “sharing” of a household – this requires more than merely living under the same roof
- People who have a close personal relationship:
 - this involves a wide assessment of the nature and intensity of the relationship, including factors such as the amount of time the individuals spend together, the place or places where time is ordinarily spent, the manner in which is ordinarily spent and the duration of the relationship.
 - a caregiving relationship can constitute a close personal relationship (this would appear to include professional contracted caregiving relationships). The existence of an employment relationship, or and landlord tenant relationship, in itself is not sufficient for the existence of a close personal relationship.

When a duty holder believes that there is family violence occurring, what are their responsibilities under the information sharing provisions? How can they use and share information about the victim or perpetrator?

The Act allows personal information about victims or perpetrators of family violence to be used by duty holders, or shared (i.e. requested and disclosed) between duty holders in order to:

- make, or contribute to, a family violence risk or need assessment; and/or
- make, or contribute to the making or carrying out of, a decision or plan that is related to, or that arises from or responds to, family violence; and/or
- help ensure that a victim is protected from family violence.

Before disclosing personal information to an agency or practitioner, the holder of the information must believe on reasonable grounds that the disclosure will or may help the recipient duty holder to use the personal information for all or any of the purposes specified above.

The Act permits information sharing between duty holders under the Act (i.e. social services providers (as defined in the Act) and family violence agencies (as defined in the Act)). The Act does not permit information to be shared with parties who do not fall within these definitions, even if this is considered to be able to assist in some way. Any information sharing to others will need to be consented to by the victim or be permitted by other legislation.

What does a duty holder need to do if they receive a request for information about a victim or perpetrator from another duty holder?

When a duty holder receives a request for information about a victim or perpetrator, they must consider releasing the information, having regard to the principle that helping to ensure that a victim is protected from family violence should usually take precedence over both any applicable duty to keep the information confidential and any limits in the Privacy Act. Agencies will need to demonstrate that they have had regard to this principle.

When will someone who discloses information have the protection of the immunity provision?

Where information is shared in good faith under the Family Violence Act, the party who discloses the information will be immune to liability. This will provide protection to a party who discloses information when they have a reasonable belief that family violence is occurring even if, once investigated, it becomes apparent that those concerns are unfounded.

To demonstrate good faith, it will be important for providers to document the basis for their decision to disclose, ie:

- the basis for their belief that family violence is, or may be occurring; and
- why they consider that disclosure to the duty holder will assist with:
 - making, or contributing to, a family violence risk or need assessment; and/or
 - making, or contributing to the making or carrying out of, a decision or plan that is related to, or that arises from or responds to, family violence; and/or
 - helping ensure that a victim is protected from family violence.

Overview of how the new information sharing provisions in the Family Violence Act fit with existing privacy principles in operation in the health sector

The information sharing provisions are similar to the serious threat provisions in the Health Information Privacy Code and the Privacy Act 1993. The underlying policy under the serious threat exemption and the Family Violence Act is harm prevention. However, the Family Violence Act is different in the following ways:

- the Act may permit disclosure in a wider range of circumstances than the Privacy Act and the Health Information Privacy Code serious threat provisions, as the wide definition of family violence in the Act encompasses conduct that may not necessarily pose a direct threat to health or safety (such as financial or economic abuse)
- the Act may permit disclosure to a slightly broader array of recipients, who may be able to assist with identifying risk to the person and provide support to the victim, whereas the serious threat exemptions under the Health Information Privacy Code and Privacy Act 1993 will generally require disclosure to individuals with power to intervene more directly to protect the health and safety of the individual
- the Act imposes a positive duty to consider release in certain circumstances – whereas the Privacy Act and the Health Information Privacy Code confer a discretion to do so (note however that the Act does not require the holder of the information to release the information, merely to consider doing so)
- the Act provides an immunity to information holders who choose to disclose information – this is stronger protection for providers than the serious threat provisions in the Health Information Privacy Code and the Privacy Act, which justify release but not a wider immunity
- it explicitly states that if the information holder discloses information in good faith under section 20 of the Family Violence Act, they will be protected from civil, criminal or disciplinary proceedings.

Some NGOs have new duties and protections relating to the sharing of information under the new Family Violence Act. However, all members of the wider sector should be aware that they have a discretion to disclose personal information without the consent of the individual where this is necessary to prevent a serious threat to the individual's health and safety, or if criminal activity is being committed. As such, they should continue to have confidence in sharing information to appropriate parties, such as police, in these circumstances, whether or not the Family Violence Act applies to them.