

9 October 2023

Family Safety Information Sharing Team
Family Safety Branch
Attorney-General's Department

By email: FSIS@ag.gov.au

Exposure Draft Consultation – Family Law Amendment (Information Sharing) Regulations 2023

Thank you for the opportunity to comment on an Exposure Draft of the Family Law Amendment (Information Sharing) Regulations 2023. This submission has been informed by the Exposure Draft, the supporting consultation paper, consultation with members of the Relationships Australia federation, and discussion with members of the Family Safety Information Sharing Team.

Across several recent inquiries into the family law, family violence and child protection systems, Relationships Australia has consistently recommended reforms to:

- lift from families the burdens of navigating related but siloed systems
- deny perpetrators opportunities to exploit siloed systems with a view of exercising control and perpetuating abuse
- centre the safety of adults and children who are victim survivors of all forms of domestic and family violence and child maltreatment
- simplify and clarify the *Family Law Act 1975* (Cth) and subordinate instruments
- enable courts to make timely and well-informed decisions that centre safety, and
- support all professionals across family law, family violence and child protection systems by the provision of accessible and timely training and education.

Accordingly, we welcome the proposed amendments of the *Family Law Act 1975* (Cth) to operationalise the *National Strategic Framework for the Sharing of Information Between the Family Law and Family Violence and Child Protections Systems*. We look forward to the passage and commencement of these amendments.

We offer the following comments and suggestions about the draft regulations.

Prescribing information sharing agencies

As we observed in previous consultation on the amendments of the Act, we are very pleased that firearms issuing authorities are to be included as agencies in respect of which the courts can make the new orders pursuant to clause 67ZBD.

We also welcome the approach of prescribing information sharing agencies by reference to function, rather than name, as an important way of ensuring continuity of operation of these provisions notwithstanding machinery of government changes. We consider the inclusion of

these arrangements in subordinate, rather than primary, legislation to be appropriate. This enables the Commonwealth to more swiftly make necessary changes (eg to potentially prescribe agencies that carry out functions that may emerge as being important for the successful operationalisation of the Framework).

Information sharing safeguards

The consultation paper indicates that the proposed safeguards are intended to provide a minimum standard for the protection of sensitive information, and that this standard will complement existing practices. We have some concerns that, once the Regulations commence (or in anticipation of commencement) existing practices may fall into disuse if they are more expensive or time-consuming to follow than the proposed minimum standard. However, we consider that the legislative provision for two reviews in the short and medium term should enable timely identification of any 'safety gaps'. Provided the legislation as passed includes effective mechanisms for review and implementation of review recommendations, then we would consider our concerns in this regard to be adequately addressed.

Relationships Australia welcomes the explicit attention to conflicts of interest, and supports proposed subregulations 12CBB(5) and (6). We have made recent submissions to State and Territory governments about situations where police officers are perpetrators of domestic and family violence, and where police officers misuse their position to aid friends and family who are perpetrators. Victim survivors in these circumstances are at particularly elevated risk.

Recommendation 1 The proposed training materials and the proposed Information Sharing Protocol must build on the safeguards to be included in the Act and the Regulations by paying specific attention to police perpetrators and police officers who engage in conduct that risks the safety of victim survivors of domestic and family violence and child maltreatment and/or the safety of notifiers.

We support the data minimisation approach reflected in the draft Regulations (see regulation 12CBB) and the proposed arrangements to delete, destroy and/or redact where no information is held in relation to the subject of a request or order under the Subdivision.

Relationships Australia welcomes the increased recognition of children as victim survivors of domestic and family violence in their own right, and the increased focus on the safety of children. We have also commended reforms that recognise the increasing diversity of family formation and family composition and allow for holistic consideration of risk within families. Against this background, we consider that it would be optimal to ensure that the protections to be afforded by the Regulations extend to children who, while not named in particular proceedings, may nevertheless be part of a household or family grouping and so directly affected by orders made pursuant to proceedings under Part VII of the Act. This would be consistent with the breadth of approach adopted elsewhere in the draft Regulations (see, eg, proposed subregulation 12CBB(3)). We recognise, however, that there may be Constitutional hurdles to be cleared for this to occur.

Recommendation 2 That the Commonwealth, States and Territories ensure that operationalisation of the Framework takes the broadest possible approach to ensure that

safeguards apply to any children who may be affected by an order, whether or not they are named or concerned in proceedings under Part VII of the Act.

Training

Relationships Australia welcomes the Government's recognition of the importance of training in the application of the National Framework. We are pleased to see the attention to culturally safe and trauma-informed practices.

Recommendation 3 The Government should involve professionals and judicial officers in co-designing a training package.

Recommendation 4 Programs to raise awareness of the National Framework should be extended to Family Dispute Resolution Practitioners and other professionals who work in Family Relationship Centres and Children's Contact Services, as well as to members of Family Law Pathways Networks.

Recommendation 5 Training and awareness programs should deal explicitly with the relationship between the National Framework and applicable Commonwealth, State and Territory privacy legislation.

Recommendation 6 Resourcing should be made available on a recurrent basis to support initial and ongoing refresher training, to enable professionals to keep up to date as the National Framework and associated arrangements evolve.

Conclusion

Thank you again for the opportunities you have provided us to be involved in ongoing reforms to make Australia's family law system safer, more accessible and more navigable for families affected by domestic and family violence. If we can further assist with the development of the proposed Regulations and supporting measures, please do not hesitate to contact me at ntebbey@relationships.org.au or our National Policy Manager, Dr Susan Cochrane, at scochrane@relationships.org.au. We can also be contacted by telephone on 02 6162 9300.

Kind regards



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