Judicial College of Victoria

Family Violence Information Sharing Overview

Family Violence Royal Commission Recommendation 5

The Victorian Government amend the Family Violence Protection Act 2008 (Vic) to create a specific family violence information-sharing regime [within12 months]. The new regime should be consistent with the guiding principles and design elements described in this report.

The Family Violence Information Sharing regime in Part 5A of the *Family Violence Protection Act 2008* gives effect to Recommendation 5. It exists alongside other exemptions to privacy and data protection laws to broaden the circumstances in which an organisation can share personal, medical and identifying information about a person with another entity.

Commencement

Part 5A commenced operation on 26 February 2018.

Overview of Information Sharing Regime

Part 5A allows organisations to be prescribed as Risk Assessment Entities and as Information Sharing Entities. Entities which have been prescribed include Victoria Police, specialist men's and women's family violence workers, sexual assault service providers, Corrections Victoria and Court officials within the meaning of the *Magistrates Court Act 1989* and the *Children, Youth and Families Act 2005*. Information Sharing Entities and Risk Assessment Entities can request information from an Information Sharing Entity.

An Information Sharing Entity must comply with a request where:

- The information is not excluded information;
- The consent rules are met; and
- Except where the request is from a Risk Assessment Entity for family violence assessment purposes, the receiving entity reasonably believes that the disclosure is necessary for a family violence protection purpose (ss 144KC, 144LC).

Information is excluded where sharing the information would place someone in danger, prejudice law enforcement or court proceedings, disclose privileged information, breach a court order or otherwise be contrary to the public interest (s 144C).

The Act prescribes consent rules for when information may be shared. Information about a child, or a person believed to have committed family violence may be shared without that person's consent. Information about an adult who is believed to have been subject to family violence, or a third party, must not be shared without that person's consent, unless the organisation reasonably believes the disclosure is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare (ss 144N, 144NA, 144NB, 144NC).

Part 5A also allows a prescribed entity to voluntarily share non-excluded information with another Information Sharing Entity where the consent rules are met (ss 144KA, 144LA). In addition, a prescribed entity can share information about a person who is believed to have committed family violence with the person who has been subject to the family violence, to support that person's safety (s 144M).

Impact on Courts

Part 5A is not designed to have a direct impact on courts. Instead, it is designed to help coordinate information across a range of family violence service providers, so that service providers can work collaboratively, promote the safety of individuals and ensure perpetrators are held accountable (s 144J).

Part 5A exempts courts from several features of the information sharing regime. First, s 144I provides that if a court, tribunal, judicial officer, court registry or court staff are prescribed as an information sharing body, then the Part only applies to the Court's nonjudicial functions.

Second, sections 144KC and 144LC, which create an obligation on information sharing entities to share information in response to a valid request, do not apply to entities specified in s 144I.

The impact of Part 5A is most likely to be felt in the courts indirectly, as improved information sharing may mean that organisations are better equipped to call evidence or make submissions about risk management, bring proceedings for contraventions, or seek amendments to existing orders where later circumstances reveal a gap or deficiency in existing orders. The regime may also facilitate voluntary sharing of information from registry staff to support agencies.

Part 5A contains several offences of unauthorised disclosure of information in sections 144R and 144RA. The most serious offence of intentional or reckless unauthorised use and disclosure, carries a maximum penalty of 5 years imprisonment for an individual, or a fine of up to 3000 penalty units for a corporation.

Part 5A also creates a Central Information Point, which is a central repository of information shared across several agencies to support the work of the new Support and Safety Hubs. The Act does not give the Central Information Point any special status, so it may be the subject of subpoenas, and courts will need to determine how to hear any objections to subpoenas against the Central Information Point, where the objections may be from the third parties who provided the information, rather than the Central Information Point itself.