

Have **YOUR SAY** on increasing safety for people at risk of domestic and family violence



Discussion Paper: Proposed Amendments to the Domestic Violence Agencies Act 1986

The purpose of this discussion paper is to inform and guide consultation about proposed amendments to the Domestic Violence Agencies Act 1986. The changes aim to allow government and non-government agencies in the ACT to work together to provide a more integrated case management approach to respond to domestic and family violence matters in the ACT.

The ACT Government is undertaking this consultation process to ensure transparency, seek feedback on the proposed legislative changes, and consider how these amendments may be implemented.

While we have included a copy of the draft Domestic Violence Agencies (Information Sharing Amendment Bill (the Bill) to accompany this discussion paper, it is important to recognise that this Bill is a work in progress and just a starting point.

We welcome feedback on both the draft Bill and the issues raised in this discussion paper. We encourage submissions from all members of the community, including individuals. We are particularly interested to hear from people from diverse communities and experiences.

How to get involved

You may wish to comment on all issues covered in this paper, or only the issues that are of particular interest to you. You can provide comments or make a submission on the proposed legislation by:

- Email: saferfamilies@act.gov.au

[Submissions and responses close at 5pm, 31 October 2022.](#)

Privacy statement

Personal information in your comments or submission will be collected by the ACT Government Community Services Directorate (CSD) for the purposes of informing the development of legislation. CSD may contact you for further information on the issues you raise. Your comments or submission may also be provided to others with an interest in these reforms.

If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly. Please note that all submissions may be subject to disclosure under the *Freedom of Information Act*.

Summary of new law

The draft Bill will amend the *Domestic Violence Agencies Act 1986* to allow government and non-government agencies in the ACT to work together to provide a more integrated case management approach to respond to domestic and family



violence matters in the ACT. This will allow agencies to better anticipate needs and provide support for people experiencing domestic and family violence to protect their safety.

It is envisaged that regulations and ministerial guidelines will be drafted to support the Bill to address the issues outlined in this discussion paper. We encourage your feedback on any additional issues that should be covered by regulations and ministerial guidelines.

Terminology

Throughout this document, the term 'person at risk' is used to describe a person subject to risk of domestic and family violence. 'Person using violence' is used to describe a person using (or allegedly using) violence against the person at risk.

This language differs slightly from the words used in the Bill, where 'at-risk person' is used to describe a person subject to risk of domestic and family violence, and 'person of concern' is used to describe the person using violence.

Introduction - Working towards a more integrated response in the ACT

If the broad service system is going to deliver effective responses to domestic and family violence it is critical that it takes a consistent, informed, integrated and supportive approach. An effective service system must include a way that agencies can communicate with each other to obtain an accurate picture of risk and implement appropriate risk management strategies.

Following the tragic death of Bradyn Dillon in 2016, the ACT Government initiated an inquiry into system level responses to family violence in the ACT, led by Laurie Glanfield.¹ The Glanfield inquiry undertook a comprehensive review into system level responses to domestic and family violence, through the lens of Bradyn's case.

While the inquiry identified no absolute *legislative impediments* to communication between agencies, it did find *perceived impediments* to communication between agencies. While agencies can share information about domestic and family violence under current legislation and arrangements, they are often uncertain about their ability to do so. Concerns about privacy is the principal reason behind a lack of proactive agency communication in the ACT.

Although arguably privacy legislation currently allows for communication between agencies to properly assess and manage domestic and family violence cases, the fact that many workers do not feel they have the authority to do this indicates that a scheme which clearly authorises communication between agencies is necessary - the current legislative framework does not do this adequately.

¹ *Report of the Inquiry: Review into the system level responses to family violence in the ACT* by Mr Laurie Glanfield AM (April 2016)





Commitment to progress legislative amendments

In response to the Glanfield Inquiry, the Domestic Violence Prevention Council (DVPC) Death Review², and the Gap Analysis report³, the ACT Government committed to progressing legislation to explicitly authorise the way agencies communicate in domestic and family violence matters. Several reports delivered since this time have strengthened our understanding about opportunities to improve these practices to the benefit of the person at risk. These include Coroner Hunter's findings from her inquiry into the death of Bradyn Dillon, the experiences of the Family Violence Safety Action Pilot which has been operating since 2020, and the findings of domestic and family violence death reviews interstate and overseas.

One of the most important reasons behind the proposed legislative change is to encourage agency communication effectively and appropriately as early as possible to assess domestic and family violence risk and to put preventative measures in place, rather than waiting until the risk is realised.

Programs such as the ACT Family Violence Intervention Program (FVIP) which has been operating since 1998 currently allows for agency communication, but only once a case has reached the courts - that is, only after violence (or homicide) has occurred and the person using violence is charged with a criminal offence. One of the key tasks the FVIP undertakes is to track domestic and family violence matters through the criminal justice system. Once a week, representatives from ACT Policing, Domestic Violence Crisis Service (DVCS), ACT Corrective Services, Child and Youth Protective Services (CYPS), Office of the Director of Public Prosecutions (DPP) and Victims Support ACT monitor how matters are progressing, identify potential concerns for the person at risk and update risk assessments.

Clarifying and embedding in legislation the ability for agencies to communicate *before* a case reaches the courts will allow agencies to bring all relevant information together earlier. This is critical to undertake an accurate and comprehensive risk assessment, thereby providing the opportunity to intervene earlier and reduce the prevalence of domestic and family violence in our community. However, establishing a scheme for how and when agencies communicate is a complex process requiring a balance to be struck between the right to safety, the right to life and the right to privacy.

The right of an individual to privacy is protected in a variety of ways in the ACT. The *Human Rights Act 2004* (ACT) grants all individuals the right to privacy. There are also further statutory protections for privacy provided in the *Privacy Act 1988* (Cth) and the *Information Privacy Act 2014* (ACT). The right to privacy is not absolute and often one right has to be balanced against another.

² ACT Government Response to Family Violence, June 2016. The Response addressed not only the Glanfield Report but also the *Findings and Recommendations of the Review of domestic and family violence deaths in the Australian Capital Territory* by the Domestic Violence Prevention Council (May 2016)

³ ACT Domestic Violence Service System Final Gap Analysis Report by the Community Services Directorate (May 2016) (the Gap Analysis)



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The *Human Rights Act* provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified. Several limitations currently exist allowing agencies to share information where there is a risk to the safety and wellbeing of one or more people, a strong likelihood of an offence being committed, and where sharing is authorised by law or required by a court. The difficulty is these limitations may be found in multiple laws which means for frontline workers, it is often unclear when the lawful necessary sharing of information for the purpose of protecting the safety of an individual should take place.

How does communication between agencies currently work in the ACT and what are the barriers?

Broadly, the core barriers under current laws that this Bill aims to address include:

- > cultural and structural issues preventing agencies from communicating in the current system
- > a lack of a comprehensive picture of domestic and family violence risk in the ACT, and
- > concerns raised by victim survivors about repeat traumatisation when reporting domestic and family violence.

Reviews into domestic and family violence deaths both across Australia and worldwide consistently find that a lack of agency communication contributes to poor risk assessment and safety planning, which in turn leaves people at risk of further abuse and death. For example, a review into 54 domestic violence deaths in the UK over a two-year period found that, *“failure to share information limited the holistic understanding of cases and may have masked the identification of risk factors”*.⁴

A review into domestic and family violence deaths in the ACT conducted in 2016, found that:

*In some cases reviewed, there were pieces of information available on the files of numerous service providers which, if viewed in isolation, did not indicate risk of future violence or lethality. However, when these various pieces of information were put together in the review of cases, a different picture emerged, resulting in a risk profile that indicated heightened risk of violence or lethality.*⁵

A more integrated approach that improves communication between agencies and provides a better picture of risk will assist the service system to move away from a more crisis-focused response to an earlier intervention response, resulting in better safety and wellbeing outcomes for the community.

It is widely reported by victim survivors of domestic and family violence that they experience repeated trauma by having to constantly explain their circumstances to different agencies. Victim survivors also report a distrust of the system to handle their

⁴ Payton, Robinson & Brookman (2017). 'United Kingdom'. *Domestic Homicides and Death Reviews. An International Perspective* (2017) M. Dawson (ed.), Palgrave Macmillan, London, 107.

⁵ Domestic Violence Prevention Council (2016) *Review of Domestic and Family Violence Deaths in the ACT*, pages 28-29.



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information in a way which does not have adverse consequences (such as retribution for the person using violence).

Improvements to how agencies communicate and identify risk will go towards a reduction of victim survivors experiencing this unnecessary retraumatising experience. Further, these reforms will ensure that information is treated with care and confidentiality, shared only to inform safety risk assessment and planning, and which also promotes victim survivor agency by ensuring that they are kept informed of how their information is being shared.

What are other jurisdictions doing to improve communication between agencies?

Other jurisdictions have moved ahead of the ACT to progress reforms to communication between agencies about domestic and family violence matters. The ACT now has the experience of other jurisdictions to draw upon in designing our reform.

To inform our work, a comprehensive review of other state and territory arrangements for agencies sharing domestic and family violence information has been undertaken. Each jurisdiction has progressed dedicated legislative schemes for the same reasons and purpose identified in the ACT.

State/Territory	Relevant legislation	Commencement
Victoria	<i>Family Violence Protection Act 2008</i>	2018
Northern Territory	<i>Domestic and Family Violence Act 2007</i>	2018
Western Australia	<i>Children and Community Services Act 2004</i>	2016
New South Wales	<i>Crimes (Domestic and Personal Violence) Act 2007</i>	2015
Queensland	<i>Domestic and Family Violence Protection Act 2012</i>	2017
South Australia	<i>Intervention Orders (Prevention of Abuse) Act 2009 (SA)</i>	2009
Tasmania	<i>Family Violence Act 2004</i>	2004

While the specific arrangements in each jurisdiction are different and adapted to their respective service delivery and legal arrangements, there are common elements which have informed the development of the proposed ACT scheme. Primary amongst these is a clear message that a scheme is needed which promotes a cultural shift away from uncertainty as to when a frontline worker may communicate with another agency, to a clear legislative framework where safety is the paramount concern.



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Purpose and principles of the Bill

The purpose of the Bill is to promote the safety, protection and wellbeing of people at risk of domestic and family violence, and to hold people using this violence to account.

To meet this purpose, an agency must take reasonable steps to only communicate about a matter to the extent necessary for a *protection purpose*. In the context of the Bill, a protection purpose means any of the following purposes:

- > assessing whether an at-risk person is being subjected to, or is likely to be subjected to, domestic or family violence
- > assessing whether a person of concern is committing, or is likely to commit, domestic or family violence
- > taking action to prevent or reduce the risk of domestic and family violence occurring, including by providing assistance or a service to an at-risk person or a person of concern, or
- > responding to domestic and family violence, threatened domestic or family violence or suspected domestic or family violence, including by providing assistance or a service to an at-risk person or a person using violence.

Further, when agencies communicate for a protection purpose, they must only share information relevant to the protection of the person at risk, and respect the person's:

- > cultural, sexual and gender identity
- > religious or spiritual beliefs (if any)
- > if the person identifies as an Aboriginal or Torres Strait Islander person:
 - o promotes the person's right to self-determination and cultural sensitivities, and
 - o considers the person's family and community connections
- > if the person is a child or young person—takes into account the age, maturity and developmental capacity of the child or young person.

Discussion question: Does the current definition of 'protection purpose' meet the intent of this Bill to promote the safety, protection and wellbeing of people at risk of domestic and family violence, and to hold people using this violence to account?

Seeking consent from the person at risk

The consent and agency of the person at risk is intended to be central to the proposed scheme, and agencies will work to support the person at risk to make an informed choice to engage in the scheme.

Safety, protection, and wellbeing of the person at risk is the key reason behind this law reform. Central to this law reform is that no agency acts without the consent of the person at risk, unless the very act of seeking consent puts their life at risk, or the



circumstances are so serious that the immediate disclosure of information is necessary.

We invite your feedback as to whether this approach to consent ensures that both the personal agency of the person at risk is respected and their safety adequately protected. A Consent Fact Sheet is available to provide more information about how consent relates to this Bill.

Information Sharing Coordinator

The draft Bill currently defines agencies under the scheme to include only government agencies when the scheme commences. The Bill allows for further agencies to be added to the scheme via ministerial declaration as the scheme progresses.

The Bill includes the appointment of an Information Sharing Coordinator which will have the ability to facilitate the disclosure and use of information in a confidential manner to ensure the safety and autonomy of the person at risk.

The Information Sharing Coordinator will facilitate the disclosure of information between agencies and facilitate the use of information by information sharing entities for a protection purpose when required. This includes holding service coordination meetings with agencies that are included in the scheme.

In practice this translates to co-ordinated case management meetings that involve multiple agencies discussing cases, assessing risk and identifying appropriate interventions to protect the safety of a person and to hold the person using violence to account.

To manage safety risks for the person at risk, the person using violence will not be able to access information provided to the Information Sharing Coordinator.

Mandatory requests for information

There may be circumstances where an agency refuses to share information about a client with another agency if there is a reasonable excuse for not disclosing it.

In circumstances where an agency refuses to provide information, it is proposed that the legislation will allow the Information Sharing Coordinator to make a mandatory request for information if deemed necessary for safety.

Human rights impacts

The ACT Human Rights Act contains rights based on international agreements about how to protect values such as freedom, respect, equity and dignity. ACT Government agencies and other ACT public authorities must act and make decisions consistently with these rights.

The legislation will be subject to a comprehensive human rights examination, analysing the human rights issues and will be a specific focus of stakeholder consultation.



The proposed scheme seeks to balance competing rights with the least limitation on each of these and any other related rights, consistent with section 28 of the Human Rights Act with safety as the guiding principle.

Discussion question: What human rights issues do you think we should consider when designing this scheme?

Aboriginal and Torres Strait Islander people

For Aboriginal and Torres Strait Islander people, distrust of government and institutions because of historical and current punitive treatment is already a barrier to reporting domestic and family violence. The ACT Government wants to ensure that this Bill is culturally respectful and safe and has a positive impact on outcomes for Aboriginal and Torres Strait Islander people.

We acknowledge that the nature of the Bill itself may not be culturally safe. As the Bill is developed, the ACT Government will be working to ensure that the views, experiences, and expertise of Aboriginal and Torres Strait Islander people in the ACT is front and centre of our work.

Other Australian jurisdictions with similar schemes consider the needs of Aboriginal and Torres Strait Islander people via various mechanisms. For example, in Victoria, the guidelines which accompany similar legislation outline specific considerations and additional requirements for the culturally respectful and safe operation of its scheme for Aboriginal and Torres Strait Islander people.

To do this in the ACT, the ministerial guidelines and regulations that accompany the Bill will detail when and how agencies may communicate with each other for a protection purpose regarding Aboriginal and Torres Strait Islander people, including additional considerations and options to support Aboriginal and Torres Strait Islander people.

Under the Victorian scheme, when seeking consent from an at-risk person Aboriginal and Torres Strait Islander person, the following must be considered:

- > providing the person at risk with the option of an Aboriginal and Torres Strait Islander-specific service or be linked with a trusted third party such as a cultural advisor, mentor or other trusted professional
- > ensuring awareness of any unconscious bias and assumptions in order to reduce occurrence
- > providing consent by clearly explaining how information will be used and for what purpose and ensuring that message is culturally sensitive and addresses the particular concerns that an Aboriginal and Torres Strait Islander person might hold (such as fear of child removal)
- > communicating how sensitive information will be protected from privacy breaches (e.g. how a service will protect a person's confidentiality when the staff at a service provider may be known to the person at risk and/or the person using violence)



- > ensuring that only the information that is relevant for an assessment or protection purpose is shared and that sensitive information is redacted if it is not relevant for that purpose.

The additional requirements in Victoria provide that all agencies part of the scheme must:

- > ask (at point of intake) all clients, including children, and regardless of appearance, whether they identify as Aboriginal and Torres Strait Islander
- > ask whether Aboriginal and Torres Strait Islander clients (including children and young people) would prefer to receive a service from an Aboriginal Community Controlled Organisation, seek their client's views on which services their information should be shared with and make relevant referrals
- > recognise the discrimination experienced by Aboriginal and Torres Strait Islander people and the impact of unjust government policies and practices
- > demonstrate respect and consideration for Aboriginal and Torres Strait Islander people and culture
- > work collaboratively with Aboriginal and Torres Strait Islander organisations and agencies to support the client in a culturally respectful manner.

We will be consulting with local Aboriginal and Torres Strait Islander-led organisations and community members to ensure we get this right. This consultation will include seeking the expertise of the Domestic Violence Prevention Council Aboriginal and Torres Strait Islander Reference Group and the Aboriginal and Torres Strait Islander Elected Body. We also strongly encourage YourSay submissions from Aboriginal and Torres Strait Islander members of the community.

Discussion questions:

We acknowledge that the nature of the scheme itself may not be culturally safe. What do you think should be done to ensure that the Bill is safe, appropriate and improves outcomes for Aboriginal and Torres Strait islander people?

Victim survivor consent is central to the Bill – how do we ensure that consent from Aboriginal and Torres Strait Islander people is obtained in a culturally-appropriate way?

Currently the Bill acknowledges that there may be limited occasions where information may be shared for a purpose other than a protection purpose. Are there ever any circumstances where not seeking consent is appropriate? If so, are the circumstances where consent is not sought in this draft Bill appropriate?

Protecting priority communities

The Bill must be equipped to support people from priority communities who may require additional considerations and requirements due to vulnerabilities related to their background or life experience. These factors must be considered when seeking consent from the person at risk and will impact how agencies communicate with each other regarding a matter. To do this, the ministerial guidelines and regulations



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that accompany the Bill will detail additional processes and considerations for priority groups, and welcome community feedback on these issues.

For example, we understand that that the Bill may raise concerns for people living with disability. We are aware that the privacy of people with disability is often compromised and that mechanisms will need to be put in place to protect their privacy and agency. This includes considerations when seeking consent from a person with cognitive impairment and how data is managed and shared to ensure people with disability are empowered to be owners of their own information.

Information sharing may also raise concerns for people from culturally and linguistically diverse backgrounds due to mistrust of government and institutions based on their previous experience in another country or in Australia as a recent migrant. This includes people on temporary visas.

People from LGBTIQ+ communities may have concerns regarding the impact of agencies sharing information about their sexual orientation, sex or gender identity, and may have concerns that agencies may discriminate against them or not understand their needs because of this.

We acknowledge that we have work to do to support everyone in the community to feel safe and supported to engage with domestic and family violence support services. We encourage people from diverse communities and experiences to make a submission to this process so that your voice can be heard.

Discussion question: What do you think should be done to ensure that the information sharing scheme is safe, appropriate and improves outcomes for people from diverse backgrounds and experiences?

Implementation

Implementation of the new scheme will commence shortly after the Bill becomes law. The scheme will focus first on government agencies and ACT Policing, with additional agencies to be added via legislative instrument as the scheme progresses. These additional agencies will likely eventually include specialist domestic and family violence services, but could also include other community organisations who do not have domestic and family violence service provision as their core business.

We know implementation of this scheme will require time and resources from participating agencies to build capability of staff and to put operational processes in place. For this reason, we encourage submissions relating to resourcing requirements and other impacts on agencies, and how best we can address these issues.



**Discussion question: What impacts will participating agencies experience due to this scheme?
How can these impacts be addressed?**

Next steps – drafting the Bill

While we have included a copy of the draft Bill to accompany this discussion paper, it is important to recognise that the proposed scheme is a work in progress. The draft Bill is a starting point.

The ACT Government welcomes public submissions on all aspects of the current draft Bill and what should be included in the accompanying regulations and ministerial guidelines. The ACT Government will continue to consult with key government and non-government entities as the Bill is developed.

Discussion question: Do you have any other feedback that you would like to raise for consideration?

How to make a submission

You may wish to comment on everything covered in this discussion paper, or only the parts that are of particular interest to you. You can provide comments or make a submission on the proposed legislation by uploading it on the YourSay conversation page or by email at saferfamilies@act.gov.au

[Submissions and responses close at 5pm, 31 October 2022](#)

For more details go to:

<https://yoursayconversations.act.gov.au/increasing-safety-people-risk-domestic-and-family-violence>



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