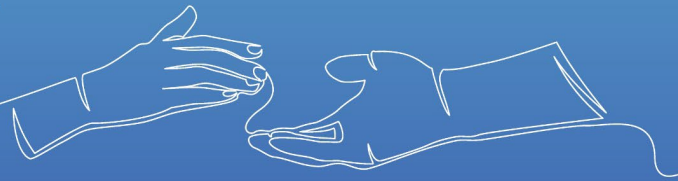


# Have **YOUR SAY** on increasing safety for people at risk of domestic and family violence



## **FACT SHEET: Seeking consent from a person at risk of harm from domestic and family violence**

We want to improve the safety of people at risk of domestic and family violence in the ACT and to better hold people who use violence to account.

We are proposing to change the law in the ACT to enable agencies and support services to share information about a person at risk or a person using violence, with the purpose of keeping people safe.

This could include communication between agencies about the situation of a person at risk, or information about a person using violence that will help to hold them accountable.

The purpose for sharing information must be for the safety, protection and wellbeing of people experiencing domestic and family violence.

### **Protecting a person at risk**

We know that the person at risk is usually best placed to determine their own safety needs. Seeking the consent of the person at risk is central to the proposed law changes and is our preferred approach.

No agency should share information 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 immediate action is necessary.

### **Seeking consent**

Valid consent means the person at risk is adequately informed and provides voluntary, current and specific consent.

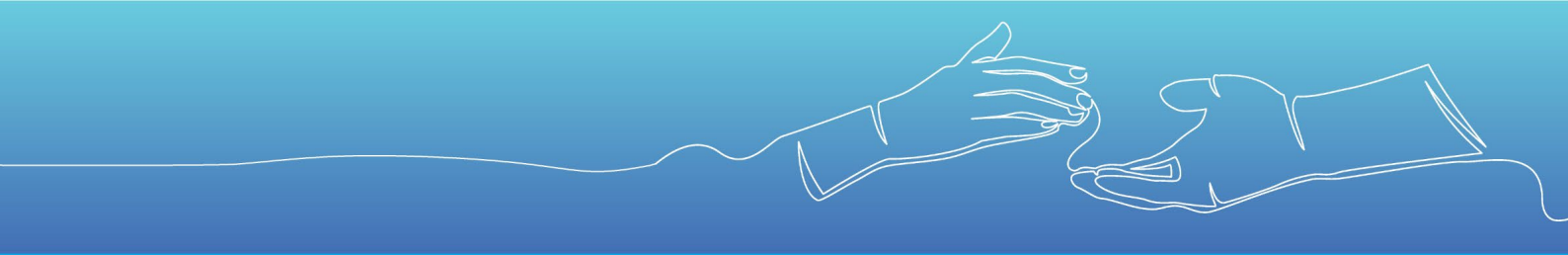
The person at risk must have the capacity to understand and communicate their consent.

The person at risk needs to be made fully aware of how, why and what is being proposed. Any risks and/or benefits must also be made clear.

Agencies must consider identifying:

- > who or what agency will be contacted
- > what information is to be sought or provided
- > why the information is being sought or shared.

The person at risk needs to be informed of what protections are in place to prevent reckless sharing of information and what will happen next to protect their safety.



Seeking consent also means ensuring that the message being communicated is fully understood by the person at risk. This may involve:

- > using plain language
- > checking in with the person at risk multiple times to ensure understanding
- > seeking the involvement of a language interpreter (or suitable third person)
- > seeking assistance with communication if the person's capacity to communicate is impaired in any way.

### **When there is no consent**

Seeking the consent of the person at risk is our preferred approach. However, there will be limited circumstances where communication between agencies can occur without consent to protect the safety of the person at risk.

For example, when the very act of seeking consent may cause the life, health or safety of a person at risk to be compromised or where the person at risk may be unable to provide consent due to injury or incapacitation caused by domestic and family violence.

There may also be circumstances which are so serious and urgent that the immediate disclosure of information is necessary to protect the life, health or safety of the person at risk.

### **Consent from the person using violence**

Information about a person using violence (for example, whether they have been released from custody) is critical in the development of a safety plan for the person at risk.

Accountability for the person using violence is a key factor in keeping people safe from domestic and family violence. For this reason, information about a person using violence must also be able to be communicated between agencies to ensure that a person using violence is appropriately held to account for their actions.

Seeking consent from the person using violence is highly likely to increase the danger to the person at risk and other people directly impacted by the situation. For this reason, consent will not be sought from the person using violence with these proposed changes.

### **Consent from children and young people**

Domestic and family violence directly impacts children and young people as individuals at risk in their own right. Children and young people experience family violence in different ways to that of the adults in their home.

The *ACT Human Rights Act 2004* provides that every child and young person has the right to the protection they need without any distinction or discrimination.



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The proposed changes to the law to allow communication between agencies to assess or manage the risk of domestic and family violence will require agencies, where appropriate, to seek either the consent of a child or young person or their views taking into account their age, maturity and developmental capacity.

In Victoria, there are specific guidelines on how agencies discuss sharing information with children and their families. Agencies explain the benefits of sharing information and identify any concerns that the child and/or family may have. This includes explaining:

- > the threshold that needs to be met before agencies can communicate with each other
- > who this information can be shared with
- > that the agency will seek the views of the child and/or any relevant family members whenever it is appropriate, safe and reasonable to do so, and that those views will be taken into account
- > that consent is not required if the agency considers it would promote the wellbeing or safety of a child
- > the benefits of how this may be used to promote child wellbeing or safety.

### **Consent from other connected persons**

There will be times when communication between agencies will involve some information about a third party or 'connected person'.

A 'connected person' could include the current or former partner, a friend, relative or acquaintance of the person at risk or the person using violence.

The consent from a connected person is not sought as this information is usually incidental to and part of the information relating to the person at risk or the person using violence.

### **Ministerial guidelines**

To ensure best practice in implementing information sharing arrangements between agencies, we will develop ministerial guidelines on all circumstances, providing examples and practical guidance on what steps agencies should take when seeking consent for the sharing of information or when that is not possible.

### **Find out more**

You can find out more details about this issue by reading the discussion paper [INSERT LINK] which is available on the YourSay conversations website at: <https://yoursayconversations.act.gov.au/increasing-safety-people-risk-domestic-or-family-violence>

Alternatively you can contact us at: [saferfamilies@act.gov.au](mailto:saferfamilies@act.gov.au)



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