



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

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CHAMBERS OF THE CHIEF JUSTICE

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Legal and Constitutional Affairs Legislation Committee

By email: legcon.sen@aph.gov.au

Confidential submission to the Legal and Constitutional Affairs Legislation Committee regarding the *Family Law Amendment (Information Sharing) Bill 2023*

This response was prepared in consultation with the Joint Legal Committee. This group comprises judicial representatives of both the Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit and Family Court of Australia (Division 2) (collectively “the Courts”). Therefore whilst informed by the views of a number of Judges, it does not necessarily reflect the views of all Judges.

The Courts welcome proposed legislative amendments to the *Family Law Act 1975 (Cth)* which give effect to the *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems* (“the National Framework”).

While the Courts broadly support improved information sharing, we note these legislative amendments are a policy matter for Government. This response serves to identify some of the benefits to the Courts which arise from the Bill.

A key objective of the National Framework is to support informed and appropriate decision making in circumstances where there is, or may be, a risk of family violence, child abuse or neglect.

The Courts wish to highlight the two key benefits of the proposed Bill which are critical in ensuring the Courts have early access to relevant material and a more informed understanding of family violence, child abuse and other risks impacting a family. The Courts rely on this information to identify and respond to risk and ultimately to make orders in the best interest of children:

National consistency

The Commonwealth legislative information sharing framework is currently limited to requests made under section 69ZW of the *Family Law Act 1975*. Responding to information requests made under a section 69ZW order can be time consuming and resource intensive for agencies.

Therefore, primarily through the colocation initiative, state and territory police and child welfare agencies have worked with the Courts to develop “short-form” processes, whereby agencies provide

preliminary information under state or territory legislation. This information is provided early to assist the Courts with triaging urgent matters and determining appropriate case management pathways. However, in relying on the varying state and territory legislation, there are considerable inconsistencies and differences in the information that can be shared with the Courts between state and territory jurisdictions and agencies. Unfortunately, these short-form processes are not available in all jurisdictions, or across all agencies.

This Bill proposes to essentially codify these varying short-form practices in the *Family Law Act 1975* through the introduction of 'Orders to provide particulars of documents or information' under proposed section 67ZBD. This will ensure the early provision of information is available to the Courts regardless of the geographical location of parties. This is of particular importance given the national operation of the Courts across multiple jurisdictions.

Expand the scope of information sharing

Currently, section 69ZW is limited in scope and provides that the court may make an order in child-related proceedings requiring a prescribed State or Territory agency to provide the court with the documents or information specified in the order about:

- a. *any notifications to the agency of suspected abuse of a child to whom the proceedings relate or of suspected family violence affecting the child;*
- b. *any assessments by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations;*
- c. *any reports commissioned by the agency in the course of investigating a notification.*

The Bill broadens the scope of information able to be sought through the new information sharing orders in recognition of the complex nature of family violence, child abuse and neglect risk. The Bill expands the documents or information which agencies hold that relate to:

- a. *abuse, neglect or family violence which a child concerned in proceedings has been subjected or exposed, or to which the court suspects the child has been subjected or exposed*
- b. *family violence to which a party to proceedings has been exposed, or in which a party to proceedings has engaged, to the extent it may affect a child to whom proceedings relate*
- c. *any risk or potential risk of a child to whom proceedings relate being subjected or exposed to abuse, neglect or family violence, and*
- d. *any risk, or potential risk, that a party to proceedings may be subjected to, or engaging in, family violence to the extent any such family violence may affect a child to whom proceedings relate.*

In effect, the Bill not only broadens the nature of documents, but also removes the limitation that it be information about or affecting a child to whom the proceedings relate. As provided in the explanatory statement:

32. *To align with the intention of enhanced information sharing under the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems (National Framework), and in recognition of the complex nature of family violence and child abuse, the new information sharing orders (new sections 67ZBD and 67ZBE), would not be restricted to information relating only to the child concerned in*

proceedings. To ensure the family law courts have all necessary information available to support a holistic assessment of the best interests of the child, relevant information relating to the safety and protection of any party to proceedings, or any child(ren) or other persons connected to the proceedings, could be provided.

However, the Courts consider that the phrase “*or to which the court suspects the child has been subjected or exposed*” is not appropriate as it would appear to require the Court to have undertaken some assessment as to allegations. This section should reference a suspicion of abuse generally, not a suspicion of the Court. Alternatively, the section could be amended to read “*abuse, neglect or family violence which a child concerned in proceedings has been subjected or exposed, or relate to allegations the child has been subjected or exposed*”.

In considering arrangements in a child’s best interests, the Courts benefit from information held by state and territory agencies. Expanding the information sharing framework within the *Family Law Act 1975* will ensure the family law courts are able to access all relevant family violence, child abuse and neglect information, identifying risks to both the children and parties to proceedings.

The Courts support improved information sharing processes which ensure decision makers have access to all relevant information to enable them to make informed and safe decisions, particularly for women and children experiencing family violence.

Yours Sincerely,

The Honourable Chief Justice William Alstergren AO
Chief Justice
Federal Circuit and Family Court of Australia (Division 1)
Chief Judge
Federal Circuit and Family Court of Australia (Division 2)