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Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues)

Proactive release – Family violence information sharing guidance

Date of issue: 17 July 2019

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1	Sharing Information Safely: Family Violence Information Sharing Guidance for Cabinet approval Cabinet paper Office of the Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues) 6 June 2019	Released in full
2	Sharing Information Safely: Family Violence Information Sharing Guidance Cabinet minute Cabinet Office Meeting date: 12 June 2019	Released in full

In Confidence

Office of the Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues)

Chair, Cabinet Social Wellbeing Committee

Sharing Information Safely: Family Violence Information Sharing Guidance for Cabinet approval

Proposal

1. This paper seeks approval to publish and publicly release the information sharing guidance *Sharing information safely: Guidance on sharing personal information under the Family Violence Act 2018* ('the Guidance').
2. This paper also seeks authorisation for the Minister of Justice, with any delegation as appropriate, to make any necessary further changes to the Guidance that are consistent with the proposals in this paper, in consultation with relevant Ministers as appropriate.

Executive Summary

3. New Zealand has unacceptable rates of family violence, which severely undermines the lifetime wellbeing of victims and their children. Eliminating family violence is one of our greatest opportunities to improve the wellbeing of New Zealanders.
4. The Family Violence Act 2018 ('the Act'), including its information sharing provisions, will come into effect on 1 July 2019.
5. The Act provides that family violence agencies¹ and social services practitioners² ('the family violence sector') may collect, use, request and share personal information for specified purposes. The Act also clarifies that those in the family violence sector have a duty to consider sharing information if it may help protect a victim, or if they receive a request for information for a specified purpose.
6. The Ministry of Justice ('the Ministry') has developed the Guidance to assist the family violence sector in applying and using the new information sharing provisions.

¹ As defined by new section 19, which includes government agencies (such as Police and Oranga Tamariki), publicly-funded family violence non-governmental organisations, school boards, and licensed early childhood services.

² As defined by new section 19, which includes holders of a teacher's practising certificate or limited authority to teach, registered health practitioners, and registered social workers.

It will support collaborative practices by helping the family violence sector to share information appropriately.

7. The Ministry obtained feedback from the family violence sector on draft versions of the Guidance. The Guidance has been updated to incorporate the feedback of the family violence sector and a final draft is now ready for Cabinet approval.
8. If the Guidance is approved, I plan to release it in June 2019 to allow the family violence sector to familiarise itself with the Guidance before the Act comes into effect.

Background

9. People should have confidence that family violence response systems will keep people safe and enable behaviour change. Enabling the safety and wellbeing of our families and whānau requires collaboration across Government and in all communities. Everyone has a part to play. Together we are stronger.
10. The Act comes into effect on 1 July 2019, replacing the Domestic Violence Act 1995 and modernising New Zealand's response to family violence. The Act lays some of the foundations for the transformation of the family violence response system by promoting consistent, collaborative responses to people experiencing family violence. Transforming the system and ensuring victims are heard will help build confidence in the system.
11. Part 2 of the Act provides clear authorisation for the family violence sector to collect, use, request and share personal information for specified purposes. It specifies that those in the family violence sector have a duty to consider sharing information if they believe that the disclosure may protect a victim from family violence, or if they receive a request for information.
12. An integrated and responsive system requires agencies and practitioners to understand their role, collaborate, share information and invest in the workforce that supports people affected by violence. Safe and appropriate information sharing will enable the family violence sector to coordinate responses that more effectively assess and manage risk to better address perpetrators' behaviour and protect victims.
13. The new information sharing provisions in the Act are designed to:
 - 13.1. protect people from family violence and make it easier for them to get help;
 - 13.2. ensure information sharing occurs safely;
 - 13.3. encourage the family violence sector to share personal information about clients in order to work collaboratively to respond to family violence; and
 - 13.4. provide the family violence sector with certainty and confidence that the law will protect them when sharing information appropriately.
14. Together, the provisions seek to encourage the family violence sector to collaborate to identify, stop, prevent and otherwise respond to family violence.

15. The Act, including the information sharing provisions, will support the Joint Venture – Family Violence and Sexual Violence ('the Joint Venture')³ in building a cohesive, whole-of-government response to family violence. This will benefit all New Zealanders by improving the responses to those who use violence and ensuring the safety of victims and survivors.

Family violence information sharing Guidance

16. The Ministry has developed the Guidance to assist the family violence sector to apply and use the new information sharing provisions under the Act. The Guidance contains information on the relevant legislative provisions to be considered when sharing information and provides practical help for everyday work in the sector. I seek Cabinet approval to publish and publicly release the Guidance.
17. The Guidance sits alongside the already released *Risk Assessment and Management Framework* and *Workforce Capability Framework* ('the Frameworks') as a tool to support the family violence sector in responding to family violence. Together, these Frameworks and the Guidance seek to provide the workforce with the knowledge and skills to recognise and respond to family violence and sexual violence safely, effectively and respectfully.

Draft versions of the Guidance have been shared with the family violence sector

18. In August and September 2018, the Ministry sought feedback from the family violence sector on an early draft of the Guidance. Feedback was received through an online submission tool, at seven facilitated community workshops across the country, and in face-to-face conversations with thirteen victims of family violence. Contributors to online submissions and the workshops included government agencies, non-governmental organisations, community leaders, iwi representatives, and individual practitioners.
19. Feedback received indicated that the target audience (the family violence sector) were mostly time-poor and would benefit from concise guidance. Submitters emphasised that any guidance should be user-friendly, clear, logically ordered and succinct. Feedback also suggested that the Guidance should make it clear that information sharing should only happen when it can be done safely and appropriately, and that obtaining consent, particularly from victims, should be emphasised.
20. In March 2019, the Ministry sent an updated version of the draft Guidance to targeted government agencies, non-governmental organisations and individuals for further feedback. Overall, submitters at that stage agreed that the re-drafted Guidance was clearer and easier to use, and offered further suggestions to refine and improve specific areas. Where appropriate, the additional feedback was incorporated into the Guidance.

³ Cabinet agreed to establish the Joint Venture in September 2018 to lead the whole-of-government response to reduce family violence and sexual violence.

Overview of the Guidance

21. The Guidance is focused on ensuring people are kept safe, including victims and the practitioners themselves. The Guidance is based around eight principles that highlight the most important things the family violence sector should remember when making decisions around sharing personal information. Those principles are:
 - 21.1. People's safety comes first;
 - 21.2. You should obtain consent to share information when it is safe to do so;
 - 21.3. You must consider sharing information if you think it will protect a victim or if you receive a request;
 - 21.4. You can share information for specific purposes;
 - 21.5. You must only share relevant information;
 - 21.6. You should check that the information is accurate;
 - 21.7. You should record reasons for your decisions;
 - 21.8. You have legal protection from liability when you share information, unless you share in bad faith.
22. The Guidance expands on each principle, explaining what the legal requirements are, what the sector should think about when considering whether to share, and what good practice looks like. Importantly, the Guidance emphasises that it is best practice to obtain consent to share someone's information, even though consent is not a requirement under the Act. This is to remind the family violence sector that it is the people behind the information that matter, and that gaining consent is an important way of involving people in the information sharing process.
23. Several of the principles have associated case examples demonstrating how the information sharing provisions might apply in a range of situations. The case examples were developed in collaboration with individuals working in the family violence sector. The examples are not intended to reflect the complexities of family violence situations; rather, they are provided as high-level practical guides for explanatory purposes.
24. Other key parts of the Guidance include:
 - 24.1. a decision-tree poster to help the family violence sector make decisions on whether to share information;
 - 24.2. links to other relevant tools and websites, including the *Risk Assessment and Management Framework* and the Office of the Privacy Commissioner's website; and
 - 24.3. information on how the Act's information sharing provisions work with other information sharing laws (for example, those under the Oranga Tamariki Act 1989 and the Privacy Act 1993).

Alignment with other information sharing work

25. Information sharing provisions that will be introduced by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 will also take effect on 1 July 2019. Oranga Tamariki is developing information sharing guidance to assist child welfare and protection agencies in applying its new provisions. The Ministry has been working with Oranga Tamariki to ensure alignment, where possible, across the two guidance documents.
26. The Social Investment Agency (SIA) has been leading a discussion on how to develop a common set of rules and tools for the use and protection of personal information in the social sector. SIA is now developing a Data Protection and Use Policy (Principles and Guidelines) for the social sector. Whilst this applies broadly across the social sector, it will complement the guidance documents developed by the Ministry and Oranga Tamariki.
27. The Ministry, Oranga Tamariki and SIA have developed a common information page and infographic to indicate how the three documents, and the Privacy Act 1993, apply and intersect. These will be included in each agency's guidance or policy to ensure users across the sector understand how the three documents fit and work together.

Public release of the Guidance

28. If approved, the Ministry and I will finalise the Guidance for release. It is intended that the Guidance be New Zealand Government branded, rather than having the Ministry's own branding. This is consistent with the expectation that the Guidance be a sector-wide tool, rather than Ministry-specific, and will be consistent with the Frameworks, which are also presented on New Zealand Government branding.
29. Minor or technical changes may be required as the Guidance is finalised. I seek Cabinet authorisation that the Minister of Justice, with any delegation as appropriate, be able to approve any minor or technical changes as are necessary to finalise the Guidance and keep references up to date in the future.
30. If approved, I intend to launch and publicly release the Guidance in June 2019, prior to the Act taking effect. This will ensure the family violence sector has time to familiarise itself with the new provisions. I plan to launch and communicate the Guidance as part of the approach for communicating the Act's changes generally.
31. I plan to inform the family violence sector of the changes through the newly established Joint Venture structure to engage relevant agencies and reach required audiences. Communications material prepared by the Ministry will be provided to the Joint Venture Chief Executives to inform their own workforces and service users about the legislative changes through their existing channels. This will ensure consistent messaging and information across the family violence sector.

The Guidance should be kept updated

32. Legislative amendments or changes in operational practice may mean that the Guidance becomes out of date over time. As noted in paragraph 28 of this paper, I seek Cabinet authorisation that the Minister of Justice, with any delegation as appropriate, approve any minor and technical changes to the Guidance.
33. I also seek Cabinet agreement that the Minister of Justice, with any delegation as appropriate, be able to approve substantive changes to the Guidance that are consistent with the proposals in this paper, in consultation with relevant Ministers where the changes may impact their portfolio area. This will ensure that the Guidance can be more regularly updated and that it continues to represent best practice.
34. Any substantive changes to the Guidance that go beyond the proposals in this paper will be resubmitted to Cabinet for its consideration.

Consultation

35. The following government agencies and organisations have been consulted on this paper: New Zealand Police, Department of Corrections, Crown Law Office, Te Puni Kōkiri, Parliamentary Counsel Office, Ministry of Health, Ministry of Education, Ministry for Pacific Peoples, Social Investment Agency, Department of Internal Affairs, Ministry of Business, Innovation and Employment, Housing New Zealand Corporation, Accident Compensation Corporation, Oranga Tamariki, The Treasury, Ministry for Women, Ministry of Social Development, the Joint Venture Business Unit, the Office for Disability Issues and the Office for Seniors. The Department of Prime Minister and Cabinet (Policy Advisory Group) were informed of this paper.

Financial Implications

36. In Budget 2018, Cabinet approved funding for the implementation of the Family Violence Act 2018. As the Guidance forms a part of the Phase Two implementation of the Act, design and communication costs associated with the Guidance will be met by that funding allocation.
37. In the future, it may be determined that additional tools or training be developed to support the Guidance. These costs will be considered as part of the Government's wider response to family violence and sexual violence.

Human Rights

38. The Guidance is consistent with the rights and freedoms provided for in the New Zealand Bill of Rights Act 1990.

Gender Implications

39. Family violence is gendered in terms of victimisation, perpetration and impacts of violence. Women are nearly twice as likely as men to suffer partner abuse in their lifetime, and experience more cumulative harm from family violence. Women are also more likely to access services and may have different needs based on culture or

ethnicity. Men are more likely to perpetrate sexual violence, serious assaults on adults and children, and to be arrested for family violence.

40. As such, any interventions to address family violence are likely to disproportionately affect certain genders. However, I consider that the Guidance will positively assist the family violence sector in addressing family violence no matter the gender of the victim or perpetrator.

Disability Perspective

41. One quarter of New Zealanders, and one third of Māori, report having a disability. Older people are more likely to have a disability, with 59% of people over 65 years identified as having a disability in the Disability Survey 2013. Disabled people, particularly disabled women and children, have a higher risk of experiencing family violence and sexual violence than people without a disability.
42. As a result, any interventions to address family violence are likely to disproportionately affect individuals with disabilities. However, I consider that the Guidance will positively assist the family violence sector in responding to the needs of individuals with disabilities who are victims or perpetrators of family violence.

Impact on Māori

43. Victims and perpetrators of family violence are disproportionately Māori. Due to this, any interventions that address family violence will likely disproportionately affect Māori. However, I consider that the Guidance will positively assist the family violence sector in addressing family violence no matter the racial identity of the victim or perpetrator.

Publicity

44. Publicity will be managed by my office as outlined in paragraphs 28 – 31 of this paper. I intend to make public statements about the Guidance at the time it is released. I also intend to proactively release this Cabinet paper at the time the Guidance is publicly released. Proactive release will be subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues) recommends that the Committee:

1. **Approve** the information sharing guidance *Sharing information safely: Guidance on sharing personal information under the Family Violence Act 2018* for publication and public release;
2. **Authorise** the Minister of Justice, with any delegation as appropriate, to make any minor or technical changes to the Guidance that are consistent with the proposals in this paper;
3. **Agree** that the Minister of Justice, with any delegation as appropriate, may, in consultation with relevant Ministers, approve substantive changes to the Guidance that are consistent with the proposals in this paper;
4. **Note** that the Minister of Justice, with any delegation as appropriate, will seek further Cabinet approval for any substantive changes to the Guidance that go beyond the proposals in this paper;
5. **Note** that the office of the Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues), with support from the Ministry of Justice, will undertake communications for the release of the Guidance.

Authorised for lodgement

Jan Logie MP

Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues)



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Sharing Information Safely: Family Violence Information Sharing Guidance

Portfolio **Justice (Domestic and Sexual Violence Issues)**

On 12 June 2019, the Cabinet Social Wellbeing Committee:

- 1 **approved** the information sharing guidance *Sharing Information Safely: Guidance on Sharing Personal Information under the Family Violence Act 2018* (the Guidance), attached to the submission under SWC-19-SUB-0062, for publication and public release;
- 2 **authorised** the Minister of Justice to:
 - 2.1 make any minor or technical changes to the Guidance that are consistent with the submission under SWC-19-SUB-0062;
 - 2.2 approve substantive changes to the Guidance that are consistent with the submission under SWC-19-SUB-0062, in consultation with relevant Ministers;
- 3 **noted** that the Minister of Justice will seek further approval from Cabinet for any substantive changes to the Guidance;
- 4 **noted** that the office of the Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues), with support from the Ministry of Justice, will undertake communications for the release of the Guidance.

Janine Harvey
Committee Secretary

Hard-copy distribution: (see over)

Present:

Hon Kelvin Davis
Hon Grant Robertson
Hon Jenny Salesa
Hon Tracey Martin (Chair)
Hon Willie Jackson
Hon Aupito William Sio
Jan Logie, MP

Officials present from:

Office of the Prime Minister
Officials Committee for SWC

Hard-copy distribution:

Parliamentary Under-Secretary to the Minister of Justice

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