



Changes to Family Law: Information Sharing Orders

Factsheet for family law professionals

The *Family Law Amendment (Information Sharing) Act 2023* (Cth) (Information Sharing Act) introduces a new Subdivision DA within Part VII of the *Family Law Act 1975* (Cth) (Family Law Act) for improved information sharing between the family law, family violence and child protection systems.¹ These changes only apply to child-related proceedings brought under the Family Law Act.

The Information Sharing Act **will commence on 6 May 2024**. Professionals in the family law system should be aware that these changes will apply to all new and existing matters from the commencement date, including where a final hearing has commenced.

This factsheet provides an overview of the amendments, including information on how they will be applied. It contains general information only, and does not constitute legal advice.

¹ It is anticipated that the *Family Law Court Act 1997* (WA) will be amended to reflect the legislative changes introduced by the Information Sharing Act.

Overview

The Information Sharing Act will improve information sharing arrangements between the family law courts and state and territory agencies, or parts of agencies, with responsibility for child protection, policing and firearms.

The new Subdivision DA will:

- repeal section 69ZW and introduce two different types of information sharing orders (orders for particulars of documents and orders for documents or information)
- broaden the scope of information sought through the new information sharing orders in recognition of the complex nature of family violence, child abuse and neglect risk
- outline legal exclusions to information sharing, which are supported by information sharing safeguards prescribed by amendments to the *Family Law Regulations 1984* (the Regulations)
- introduce a restriction on the issue of subpoenas without leave of the court to reduce duplication of information requests and information before the court.

Information Sharing Orders

The Information Sharing Act introduces two different types of information sharing orders:

- Section 67ZBD – an order requiring an information sharing agency to inform the court if it is in possession of any information or documents, and if so, to provide the court with the particulars
- Section 67ZBE – an order requiring an information sharing agency to produce any documents or information to the court

A court may make either order at any time after the commencement of proceedings before final orders are made (section 67ZBJ refers). The court is not required to have made an order under new section 67ZBD before making an order under new section 67ZBE.

Per section 67ZBD(5) and 67ZBE(5), information sharing agencies may also, on their own initiative, provide the court with relevant particulars, documents or information.



Types of information requested

As per subsections 67ZBD(2) and 67ZBDE(2), the Court may request information in the possession and control of an information sharing agency on the following matters:

- any abuse, neglect, or family violence the child to whom the proceedings relate has been, or is suspected to have been, subjected or exposed to
- family violence to which a party to the proceeding has been exposed to, or has engaged, to the extent it may affect a child to whom the proceeding relates
- any risk or potential risk of a child to whom the proceedings relate being subjected or exposed to abuse, neglect, or family violence
- any risk or potential risk of a party to the proceedings being subjected to, or engaging in family violence, to extent to which this may affect a child to whom the proceedings relate.

Disclosure of protected material

Where an information sharing agency is responding to an order, or provides documents or information on its own initiative, they must consider redacting the document, or not providing the information, to the extent it contains protected material. Section 67ZBF defines 'protected material' as information:

- that is subject to legal professional privilege
- that discloses or ascertains the identity of the person who communicated the information in confidence to the agency, or
- the disclosure of which would:
 - endanger a person's life, or present unreasonable risk or harm to a person
 - prejudice legal proceedings
 - contravene a court order or law that would restrict the publication or other disclosure in connection with a legal proceeding, or
 - be contrary to the public interest.

An information sharing agency must advise the court about any risks the court should consider when disclosing particulars, documents or information, as per new section 67ZBG. Additional restrictions apply to the disclosure of the identities of notifiers of child abuse or family violence, as per new subsections 67ZBH(2)-(4).

Admission into evidence

Per section 67ZBH, the court must admit into evidence any particulars, documents or information provided under a section 67ZBD or 67ZBE order, on which the court intends to rely.

However, the court is not required to admit into evidence any particulars, documents or information that the court only intends to rely on to assist in case management.

Information sharing safeguards

Information sharing agencies and the court must have regard to information sharing safeguards prescribed by Regulation 12CBB of the *Family Law Regulations 1984* when sharing, using, storing or accessing shared particulars, documents or information (section 67ZBI refers).

Restriction on certain subpoenas

If the court has issued a section 67ZBE order for documents or information to an information sharing agency, a party cannot issue a subpoena the same agency without leave of the court, in line with section 67ZBK. This restriction on subpoenas does not apply where an information sharing agency has only been subject to a section 67ZBD order for particulars.

Review of amendments

The Information Sharing Act will be subject to two statutory reviews, per section 67ZBL, to ensure the new provisions are operating as intended. The first review will commence no later than 12 months after the commencement of the Act. The second review will commence as soon as practicable after the end of three years from the day of commencement. A report of each review must be tabled in Parliament.

More information

- The *Family Law Amendment (Information Sharing) Act 2023* can be found on the [Federal Register of Legislation website](#).
- The Family Law Amendment (Information Sharing) Regulations 2023 can be found on the [Federal Register of Legislation website](#).