

Use of Exchange of Information Part 13A Crimes (Domestic and Family Violence) Act 2007 Form

Summary This Information Bulletin provides assistance for use of the Information Part 13A Crimes(Domestic and Personal Violence) Act 2007 Form. The NSW Health Exchange of Information Part 13A Crimes (Domestic and Personal Violence) Act 2007 Form is a state form that assists NSW Health workers to comply with requirements under the NSW Crimes (Domestic and Family Violence) Act 2007. This legislation governs information sharing related to Safety Action Meetings, and other victims of domestic and family violence at Serious Threat.

Document type Information Bulletin

Document number IB2016_056

Publication date 17 November 2016

Author branch Government Relations

Branch contact 02 9391 9636

Review date 17 November 2021

Policy manual Health Records & Information

File number H16/83488-17

Previous reference N/A

Status Active

Functional group Clinical/Patient Services - Baby and Child, Medical Treatment, Records
Corporate Administration - Information and Data
Population Health - Health Promotion

Applies to Local Health Districts, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Community Health Centres, Public Hospitals

Distributed to Public Health System, Ministry of Health

Audience Health Information managers; Allied health; Nursing;Mental health;AOD;Emergency;Medical record

USE OF EXCHANGE OF INFORMATION PART 13A CRIMES (DOMESTIC AND FAMILY VIOLENCE) ACT 2007 FORM

PURPOSE

The purpose of this Information Bulletin is to inform NSW Health service providers and Health Information Management staff of the publication of the Exchange of Information Part 13A *Crimes (Domestic and Personal Violence) Act 2007* Form. This Information Bulletin also provides guidelines for the use of the form.

The Exchange of Information Part 13A *Crimes (Domestic and Personal Violence) Act 2007* Form is a paper form **ONLY** and is **NOT** to be scanned into any electronic medical records systems.

KEY INFORMATION

Reducing domestic violence is a NSW Premier's Priority. Safer Pathway is a whole-of-government response designed to provide accessible and effective domestic violence support services to victims, with a focus on victims at serious threat. Under Safer Pathway, police, justice, health, education, child protection and victim service agencies work in an integrated manner to reduce threat to adult and children victims of domestic violence. This is to ensure that a seamless response can meet the individual needs of victims and children, and service providers jointly manage threats of further violence.

NSW Health has a key role as an interagency partner in fortnightly Safety Action Meetings, which are a component of Safer Pathway. Participation in Safety Action Meetings includes file searches for relevant health information, participation in fortnightly meetings and follow up actions resulting from Safety Action Plans. NSW Health is represented by up to three clinicians / healthcare professionals at a Safety Action Meeting, including Mental Health and Drug and Alcohol services wherever possible.

Please note that the information contained in this document is to be read in conjunction with the NSW Government guidelines listed below, and attached to this Information Bulletin. Information and records relating to Safety Action Meetings must be managed and stored in accordance with these documents:

- [Safer Pathway Domestic Violence Information Sharing Protocol](#)
- [Safety Action Meeting Manual](#)
- [Domestic Violence and Child Protection Guidelines](#)

Exchange of Information Part 13A *Crimes (Domestic and Personal Violence) Act 2007* Form

The NSW Health Exchange of Information Part 13A *Crimes (Domestic and Personal Violence) Act 2007* Form is a state form that assists NSW Health workers to comply with requirements under the NSW *Crimes (Domestic and Family Violence) Act 2007*. This legislation governs information sharing related to Safety Action Meetings, and other victims of domestic and family violence at Serious Threat.

The form is available for download as an interactive PDF or to print on demand via Stream Solutions.

A number of key principles underlie information exchange at Safety Action Meetings. These include:

- The threshold of *serious threat* under which information exchange at Safety Action Meetings takes place, means that there is a reasonable belief that there is serious threat to a victim's life, health or safety, or other person's life, health or safety, due to domestic violence, and action is necessary to prevent or lessen this threat. A threat does not have to be imminent to be serious.
- Information sharing at Safety Action Meetings is limited to that which is necessary to prevent or lessen a serious threat to the life, health or safety of victims, their children or other persons. Each member is responsible for decisions about what information it considers reasonably necessary to share.
- Consent to share information is preferable, but in instances of Serious Threat, not necessary. The Local Coordination Point which is staffed by the Women's Domestic Violence Court Advocacy Support Service, or Victim's Services, are usually responsible for seeking consent from a victim for information sharing at a Safety Action Meeting.
- Consent to share information is NEVER requested from a person listed on a Safety Action Meeting agenda as a perpetrator of violence. Information about Safety Action Meetings and Safety Action Plans must likewise NOT be shared with alleged perpetrators of violence. This could be vital to ensuring the safety of a victim.

The Exchange of Information Part 13A Crimes (*Domestic and Personal Violence*) Act 2007 Form is to be used with the following guidelines:

- Use in preparation for Safety Action Meetings, and other information exchange that takes place under Part 13A of the NSW *Crimes (Domestic and Family Violence) Act 2007*
- A new form is to be used per client and per client file system reviewed:
 - Information from other service areas are **NOT** to be compiled on a single form
 - Information from other clients' files are **NOT** to be compiled on a single form
- Store in the client file reviewed. This must be in paper form **ONLY** and is **NOT** to be scanned into electronic systems.
- Actions from a Safety Action Meeting are to form part of the contemporaneous client notes in the appropriate client file.

The Exchange of Information Part 13A *Crimes (Domestic and Personal Violence) Act 2007* Form intersects with other healthcare privacy considerations and information exchange processes including:

1. Sexual Assault Communications Privilege

It is vital that staff are aware that information sharing at Safety Action Meetings is limited to that which is necessary. In the case of information which may be subject to the Sexual Assault Communications Privilege, it is recommended that advice

from Local Health District legal services, or the Domestic and Family Violence team at the Ministry of Health be sought *prior* to information exchange under 13A.

Sexual assault communications are made in the course of a confidential relationship between a victim of sexual assault and a counsellor. The sexual assault communications privilege provides an absolute prohibition, in NSW courts, against requiring the production of documents recording counselling communications in preliminary criminal proceedings. Once the main criminal proceedings have started, the privilege will also apply unless the court specifically grants leave and requires the documents be provided. Documents that are the subject of this privilege in any criminal proceedings continue to be privileged in subsequent civil proceedings. A sexual assault privilege also applies in ADVO proceedings.

The purpose of this privilege is to give victims a confidential and safe place to talk about, or disclose, information about their traumatic experience, personal or sensitive issues and concerns. It includes counselling communications made by, to or about a victim. In NSW, an objection may be made to produce a protected confidence on the ground that it is privileged; but the victim of the sexual assault can consent to disclosure.

2. Child Protection

In cases of domestic violence where children are victims, or are affected by domestic violence in the home (including when listed on a SAM agenda as a perpetrator of violence), prescribed bodies should exchange information under Chapter 16A in the first instance. Both Part 13A and Chapter 16A prioritises the safety, welfare, and wellbeing of a child or young person over an individual's right to privacy.

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998 (CYPCP Act)* overrides other laws that prohibit or restrict the disclosure of personal information such as the *Privacy and Personal Information Protection Act 1998 (PIPP Act)* and the *Health Records and Information Privacy Act 2002 (HRIP Act)*. The focus of the exchange of information is on the safety, welfare and wellbeing of children, and facilitating the provision of services to these children and their families.

Service providers who are prescribed bodies under the *CYPCP Act* may exchange information that relates to a child or young person's safety, welfare or wellbeing, whether or not the child or young person is known to the Department of Family and Community Services (FACS).

Where Chapter 16A does not apply, information may be shared under Part 13A and the Safer Pathway Domestic Violence Information Sharing Protocol.

NSW Health staff should also be aware that information sharing under 13A *does not replace* mandatory reporting obligations for children and young people at risk of significant harm. Where information exchange processes identify risk of harm to a child or young person, NSW Health staff are required to apply usual clinical practice, including application of the Mandatory Reporter's Guide, and reports to FACs where indicated. This occurs within the normal timeframe for any risk of harm identification and is *not* dependent on Safety Action Meeting dates or processes.

3. Health Information Access

The *Health Records and Information Privacy Act 2002*; the *Government Information (Public Access) Act 2009* and the *Privacy and Personal Information Protection Act 1998* govern access to information held in health records. As a general rule, a victim's personal and health information must never be disclosed to an alleged perpetrator or any other person acting on behalf of the alleged perpetrator, such as the alleged perpetrator's legal representative. Part 13A and the Protocol seek to ensure that the victim's safety is not compromised by individuals' right to access their information under NSW privacy laws. For this reason, Part 13A and the Protocol override the *PIIP Act* and the *HRIP Act* in when the applicant is the alleged perpetrator.

In domestic violence situations it can be important for the victim's safety that the alleged perpetrator remains unaware of impending interventions. If the alleged perpetrator is aware, this may result in an escalation of violence. Service providers must also consider the potential for placing the victim at increased risk of violence where the attempt to reduce or prevent the serious threat was not successful and the alleged perpetrator becomes aware that the victim has reached out for support.

Requests for any file containing the Exchange of Information Part 13A *Crimes (Domestic and Personal Violence) Act 2007* Form and other related file notes, where the applicant is the alleged perpetrator, **could reasonably be expected to expose a person to a risk of harm**. For information relating to this see the NSW Health *Privacy Manual for Health Information*, section 12. Where any doubt exists about the release of information relating to Safety Action Meetings, consult Local Health District legal advice.

4. Subpoenas

A service provider that has used or disclosed information may be subpoenaed to produce the information held, including the Exchange of Information Part 13A *Crimes (Domestic and Personal Violence) Act 2007* Form. If a Local Health District or Specialty Health Network receives a subpoena to produce information about a victim or an alleged perpetrator, that service provider must seek legal advice before producing any information. A subpoena may be challenged on a number of different grounds, including abuse of process, oppression and/or on the basis of a privilege at law over the information.

All subpoenaed files containing the Exchange of Information Part 13A *Crimes (Domestic and Personal Violence) Act 2007* Form, where privilege at law does not exist, should be subject to a Sensitive Information Claim. See NSW Health Subpoenas Policy (PD2010_065) for how to make these claims.

ATTACHMENTS

Nil