



THE LAW SOCIETY
OF NEW SOUTH WALES

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22 May 2023

Dr James Popple
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: nathan.macdonald@lawcouncil.asn.au

Dear Dr Popple,

Family Law Amendment (Information Sharing) Bill

Thank you for the opportunity to provide feedback on the Family Law Amendment (Information Sharing) Bill. The Law Society's Family Law Committee contributed to this submission.

The reform as a whole

As noted in our submission on the exposure draft Bill,¹ we support the intent of the Bill to improve processes for informing the Court about family violence risk to the parties, and their children, in family law proceedings, without creating further risk to safety. However, we maintain the concerns raised in that submission about the proposed reform as a whole, and continue to share concerns raised in the Law Council's October 2022 submission.

As noted in our previous submission, key elements of the reform, as part of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems (**National Framework**), are to be provided in regulations. These include:

- (a) information sharing agencies to which the legislation applies (section 67ZBC); and
- (b) information sharing safeguards on the handling, storing, accessing and sharing of information (section 67ZBI).

The Law Society would welcome the opportunity to comment on draft regulations when available, as they will be critical in assessing whether the reforms are likely to achieve their purpose or not.

We agree with the Law Council that the effectiveness of the reform will depend on including, as prescribed sharing information agencies, all bodies that hold relevant information, including health information, criminal and corrections history, domestic violence records, prior DV records, records of other violent offences, parole orders and bail conditions, driving records, and material tendered at sentence hearings.

¹ Law Society of NSW, letter to Law Council, 7 October 2022.

The effectiveness of the prescribed information sharing safeguards will depend on agencies having the necessary resourcing, expertise, appropriate training, and guidance material (preferably at a national level) to position them to assess orders and respond appropriately and in a timely fashion.

This will be particularly important, given that sections 67ZBD, 67ZBE and 67ZBF confer an absolute discretion on agencies (subject to matters prescribed in the regulations) to determine what material is relevant, and whether they will provide the material at all, regardless of whether it falls within the definition of 'protected material'.

As noted in our previous submission, there will also be resourcing and training implications in positioning the Federal Circuit and Family Court of Australia to process the material produced, in accordance with section 67ZBH.

Specific provisions in the Bill

"To the extent that it may affect a child to whom the proceedings relate"

The Bill in its current form enables the Court to make orders requiring an agency to produce material relating to matters including:

- "family violence to which a party has been exposed or engaged in *to the extent that it may affect a child to whom the proceedings relate*" (subsections 67ZBD(2)(b) and 67ZBE(2)(b)); and
- "any risk or potential risk of a party to the proceedings being subjected to, or engaging in family violence *to the extent it may affect a child to whom the proceedings relate*" (subsections 67ZBD(2)(d) and 67ZBE(2)(d)).

We appreciate these alterations may be included as a reflection of the overarching consideration of the best interests of children in family law proceedings, and that Subdivision DA specifically concerns child-related proceedings.

However, although the Court, and family law practitioners, are likely to be familiar with making nuanced assessments about what matters concerning family violence may affect a child to whom the proceedings relate, agencies may be less so, particularly as the agency may lack visibility over the full circumstances of the matter. It may be difficult for the Court to formulate orders to which agencies can respond in a meaningful and consistent way, even with the benefit of further guidance provided through regulations or guidance materials. In that regard we suggest monitoring the operation of the provision.

Examples

Subsections 67ZBD(4) and 67ZBE(4) provide examples of the types of documents and information that may be included in an order. We appreciate the examples may be included as an indication to agencies of the types of orders the Court could be expected to make. However, the Bill provides only two examples in each case, which may be of limited use to agencies. There is also a risk that providing examples in the legislation, rather than in regulations or guidance materials, may be construed as implying a limited discretion to make information sharing orders.

Statutory review

Section 67ZBL provides for a 12 month review of the operation of Subdivision DA. Given the uncertainties about the reforms as outlined above, we suggest that further reviews after 24 months and five years would be beneficial in assessing whether the objectives of the National Framework are being achieved.

If you have any questions in relation to this letter, please contact Sue Hunt, Senior Policy Lawyer on (02) 9926 0218 or by email: sue.hunt@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink that reads "CBanks". The letters are cursive and connected.

Cassandra Banks
President