

HEALTH RECORDS & INFORMATION MANUAL FOR COMMUNITY**HEALTH FACILITIES****Amendment: 63**

This amendment reflects the provisions of the following information bulletins:

| Document Number | Title | PDS Issue date | Page number |
|-----------------|--|------------------|-------------|
| IB2020_022 | Electronic Medical Records of Information Exchange to reduce Domestic and Family Violence Threat | 18 June 2020 | 183 |
| IB2016_056 | Use of Exchange of Information Part 13A Crimes (Domestic and Family Violence) Act 2007 Form | 17 November 2016 | 179 |

Note IB2016_056 is added to the Manual because of its relationship with IB2020_022

Where a number appears at the bottom of an amended page [e.g. 252(17/09/15) – amendment number, date] an alteration has been made or new section included. Amendment numbers are sequential, the date represents the date the source document was published on the Policy Distribution System (PDS).

With this amendment the Table of Contents was updated and pages 179 to 184 added to the online manual on 6 August 2020

The Manuals and amendments are available on the Internet at
<http://www.health.nsw.gov.au/policies/manuals/Pages/default.aspx>

USE OF EXCHANGE OF INFORMATION PART 13A CRIMES (DOMESTIC AND FAMILY VIOLENCE) ACT 2007 FORM (IB2016_056)

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 *PPIP 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.

ELECTRONIC MEDICAL RECORDS OF INFORMATION EXCHANGE TO REDUCE DOMESTIC AND FAMILY VIOLENCE THREAT (IB2020_022)

PURPOSE

This Information Bulletin clarifies the requirements around notations made within electronic medical records of information exchange under Part 13A Crimes (Domestic and Personal Violence) Act 2007.

It contains information for health services which supplements the NSW Health Information Bulletin *Use of Exchange of Information Part 13A Crimes (Domestic and Personal Violence) Act 2007 Form* ([IB2016_056](#)).

KEY INFORMATION

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 Personal Violence) Act 2007*.

This legislation governs information sharing related to Safety Action Meetings, and other victims of domestic and family violence at Serious Threat.

Health workers are to continue to follow the NSW Health Information Bulletin *Use of Exchange of Information Part 13A Crimes (Domestic and Personal Violence) Act 2007 Form* ([IB2016_056](#)), including the guidance around use of the State Form.

Health services may include minimal information in the progress notes of the electronic medical record indicating that information exchange has occurred to reduce a serious domestic violence threat to a person. Standard statements are included below for use in the progress notes. The statements include a prompt on how to respond where clinicians have ongoing concerns regarding a domestic violence threat.

Information shared under Part 13A about a client who is the alleged perpetrator

Staff may include a brief statement in the progress notes of the electronic medical record when information is shared under Part 13A about a client who is the alleged perpetrator and a Safety Action Meeting is held that identifies actions for Health pertaining to the perpetrator.

- Any such statement should be labelled '*VAN Progress Note: Strictly Confidential - not to be shared with client*' and indicate that:

“This client’s file has been reviewed and relevant information shared for the express purpose of reducing a serious domestic violence threat to another person/s including children.

The client must not be informed that this has occurred.

Any inappropriate disclosure of the information to [insert client’s name] has potential harmful consequences for the safety of a victim/s.

To discuss concerns about an ongoing or escalating domestic violence threat, contact [LHD service/contact]. Where a clinician has reasonable grounds to suspect that there is a serious and imminent risk to the victim/s or others' safety, Police should be contacted."

Information shared under Part 13A about a client who is a victim

Staff may include a brief statement in the progress notes of the electronic medical record when information is shared under Part 13A about a client who is a victim, and a Safety Action Meeting is held which identifies actions for Health.

- Any such statement should be labelled 'VAN Progress Note: Strictly Confidential – not to be shared before contacting the nominated clinician/service below' and indicate that:

"This client's file has been reviewed and relevant information about the client shared for the express purpose of reducing a serious domestic violence threat to the client or another person, including a child.

Any inappropriate disclosure of the information has potential harmful consequences for the victims' safety.

To discuss the above information and/or concerns about an ongoing or escalating domestic violence threat, contact [LHD service/contact]. Where a clinician has reasonable grounds to suspect that there is a serious and imminent risk to the victim/s or others' safety, Police should be contacted."

The suggested statements for progress notes above can also be applied where information is shared at Safety Action Meetings using Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.

For further relevant information on information sharing and documentation please refer to the NSW Government [Domestic Violence Information Sharing Protocol](#) and, where sharing information under Chapter 16A, the NSW Health Policy Directive Child Wellbeing and Child Protection Policies and Procedures for NSW Health ([PD2013 007](#)).

The complete Information Bulletin is available at:

https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=IB2020_022