



# **Family Law Amendment (Information Sharing) Act 2023**

**No. 88, 2023**

**An Act to amend the *Family Law Act 1975*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Family Law Amendment (Information Sharing) Act 2023

No. 88, 2023

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## An Act to amend the *Family Law Act 1975*, and for related purposes

[Assented to 6 November 2023]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Family Law Amendment (Information Sharing) Act 2023*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |   |              |
|--------------------------|---|--------------|
| Column 1                 | Column 2  | Column 3     |
| Provisions               | Commencement  | Date/Details |
| 1. The whole of this Act | A single day to be fixed by Proclamation.<br>However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | 6 May 2024   |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Family Law Act 1975*

#### **1 Subsection 4(1)**

Insert:

*information sharing agency* has the meaning given by section 67ZBC.

*information sharing safeguards* has the meaning given by section 67ZBI.

*protected material* has the meaning given by subsection 67ZBF(3).

#### **2 Section 60CI (heading)**

Omit “prescribed State or Territory agencies”, substitute “information sharing agencies”.

#### **3 Paragraphs 60CI(1)(a) and (2)(a)**

Omit “a prescribed State or Territory agency” (wherever occurring), substitute “an information sharing agency”.

#### **4 Subsection 60CI(4)**

Repeal the subsection.

#### **5 After paragraph 67A(c)**

Insert:

(ca) orders for information etc. in child-related proceedings (Subdivision DA); and

#### **6 Subsection 67ZBB(4)**

Omit “69ZW to obtain documents or information from State and Territory agencies”, substitute “67ZBD or 67ZBE to obtain particulars, documents or information from information sharing agencies”.

#### **7 After Subdivision D of Division 8 of Part VII**

Insert:

**Subdivision DA—Orders for information etc. in child-related proceedings**

**67ZBC Meaning of *information sharing agency***

If the regulations prescribe an agency of a State or Territory, a part of such an agency, or a part of a Commonwealth agency that provides services on behalf of a State or Territory, for the purposes of this section, the prescribed agency, or prescribed part, is an *information sharing agency*.

**67ZBD Order to provide particulars of documents or information relating to certain matters**

- (1) The court may make an order, in child-related proceedings, requiring an information sharing agency to:
  - (a) inform the court whether the agency has in its possession or control any documents or information relating to a matter mentioned in subsection (2); and
  - (b) if it has—give the court particulars of the documents or information.

Note: An information sharing agency is not required to give the court protected material: see section 67ZBF.

- (2) The matters are the following:
  - (a) abuse, neglect or family violence to which a child to whom the proceedings relate has been, or is suspected to have been, subjected or exposed;
  - (b) family violence to which a party to the proceedings has been exposed, or in which a party to the proceedings has engaged, to the extent it may affect a child to whom the proceedings relate;
  - (c) any risk or potential risk of a child to whom the proceedings relate being subjected or exposed to abuse, neglect or family violence;
  - (d) any risk or potential risk of a party to the proceedings being subjected to, or engaging in, family violence, to the extent any such family violence may affect a child to whom the proceedings relate.



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- (3) The order may (but is not required to) include descriptions of the kinds of documents or information that the court considers the agency may have in its possession or control relating to a matter mentioned in subsection (2). However, any such descriptions do not limit the scope of the order.
- (4) The following are examples of descriptions of kinds of documents or information that may be included in an order:
- (a) notifications to the agency of suspected abuse of a child to whom the proceedings relate;
  - (b) notifications to the agency of suspected abuse, by a party to the proceedings, of any other child.

Note: Section 15AD of the *Acts Interpretation Act 1901* has the effect that examples of the operation of a provision are not exhaustive, and may extend the operation of a provision.

- (5) The agency may, on its own initiative:
- (a) produce to the court any documents the particulars of which are required by the order; or
  - (b) give to the court any information the particulars of which are required by the order; or
  - (c) give to the court any other particulars that the agency considers useful to characterise documents or information particulars of which are required by the order.
- (6) If the agency produces a document or gives information or particulars on its own initiative under subsection (5), the agency must consider:
- (a) redacting the document if the document contains protected material; or
  - (b) not providing the information or particulars to the extent that the information is, or the particulars would reveal, protected material.
- (7) A law of a State or Territory has no effect to the extent that it would, apart from this subsection, hinder or prevent the agency:
- (a) complying with the order; or
  - (b) providing documents, information or particulars on its own initiative under subsection (5).

**67ZBE Order to provide documents or information relating to certain matters**

- (1) The court may make an order, in child-related proceedings, requiring an information sharing agency to produce to the court any documents, and give the court any information, in the agency's possession or control relating to a matter mentioned in subsection (2).

Note: An information sharing agency is not required to give the court protected material: see section 67ZBF.

- (2) The matters are the following:
- (a) abuse, neglect or family violence to which a child to whom the proceedings relate has been, or is suspected to have been, subjected or exposed;
  - (b) family violence to which a party to the proceedings has been exposed, or in which a party to the proceedings has engaged, to the extent it may affect a child to whom the proceedings relate;
  - (c) any risk or potential risk of a child to whom the proceedings relate being subjected or exposed to abuse, neglect or family violence;
  - (d) any risk or potential risk of a party to the proceedings being subjected to, or engaging in, family violence, to the extent any such family violence may affect a child to whom the proceedings relate.
- (3) The order may (but is not required to) include descriptions of the kinds of documents or information that the court considers the agency may have in its possession or control relating to a matter mentioned in subsection (2). However, any such descriptions do not limit the scope of the order.
- (4) The following are examples of descriptions of kinds of documents or information that may be included in an order:
- (a) notifications to the agency of suspected abuse of a child to whom the proceedings relate;
  - (b) notifications to the agency of suspected abuse, by a party to the proceedings, of any other child.

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Note: Section 15AD of the *Acts Interpretation Act 1901* has the effect that examples of the operation of a provision are not exhaustive, and may extend the operation of a provision.

- (5) The agency may, on its own initiative:
  - (a) produce to the court other documents, or give the court other information, in the agency's possession or control that, in the agency's opinion, relates to a matter mentioned in subsection (2); or
  - (b) particulars of those other documents or information.
- (6) If the agency produces a document or gives information or particulars on its own initiative under subsection (5), the agency must consider:
  - (a) redacting the document if the document contains protected material; or
  - (b) not providing the information or particulars to the extent that the information is, or the particulars would reveal, protected material.
- (7) A law of a State or Territory has no effect to the extent that it would, apart from this subsection, hinder or prevent the agency:
  - (a) complying with the order; or
  - (b) providing documents, information or particulars on its own initiative under subsection (5).

## **67ZBF Disclosure of protected material**

- (1) An order made under section 67ZBD or 67ZBE does not require, but allows, an information sharing agency to:
  - (a) give the court particulars of a document or information, to the extent that the particulars would reveal protected material; or
  - (b) produce a document to the court, to the extent that the document contains protected material; or
  - (c) give the court information that is protected material.

Note: An information sharing agency's ability to give the court particulars, documents or information may also be affected by the information sharing safeguards: see subsection 67ZBI(1).

- (2) If the agency does not give the court particulars or information, or does not produce a document, on the grounds that the particulars would reveal, or the document contains or the information is, protected material, the agency must inform the court:
  - (a) that the agency has not provided, or, that in the agency's opinion it is not required to provide, certain particulars, documents or information; and
  - (b) in the agency's opinion, which of paragraphs (3)(a) to (c) apply to the particulars, document or information.
- (3) **Protected material** is information:
  - (a) that is the subject of legal professional privilege; or
  - (b) that discloses, or would enable a person to ascertain, the identity of a person who communicated information to the agency in confidence; or
  - (c) the disclosure of which would:
    - (i) endanger a person's life or present an unreasonable risk of harm to a person; or
    - (ii) prejudice legal proceedings (including proceedings in a tribunal and a coronial inquiry, investigation and inquest); or
    - (iii) contravene a court order or law that, disregarding subsections 67ZBD(7) and 67ZBE(7), would restrict the publication or other disclosure of information in connection with legal proceedings; or
    - (iv) be contrary to the public interest.

#### **67ZBG Advice to court about risk of disclosure**

- (1) This section applies if, under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5), an information sharing agency:
  - (a) gives the court particulars of a document or information; or
  - (b) produces documents to the court; or
  - (c) gives the court information.
- (2) The agency must advise the court about any risks the court should consider when disclosing the particulars, documents or information, including any risk to:

- (a) a party to the proceedings; or
- (b) a child to whom the proceedings relate; or
- (c) a person who communicated information to the agency in confidence; or
- (d) any other person.

**67ZBH Admission of particulars, documents or information into evidence**

- (1) The court must admit into evidence any particulars, documents or information provided under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5), on which the court intends to rely.
- (2) However, if a particular, document or information is or relates to:
  - (a) a notification to the agency of suspected child abuse or family violence; or
  - (b) an assessment by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations; or
  - (c) a report commissioned by the agency in the course of investigating a notification;
 the court must not disclose the identity of the person (the **notifier**) who made the notification, or information that could identify the notifier, unless subsection (3) applies.
- (3) This subsection applies if:
  - (a) the notifier consents to the disclosure; or
  - (b) the notifier is a party to the proceedings; or
  - (c) the court is satisfied that the notifier's identity, or information that could identify the notifier, is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.
- (4) Before making a disclosure for the reasons set out in paragraph (3)(b) or (c), the court must:
  - (a) ensure that the agency is notified about the intended disclosure and given an opportunity to respond; and

- (b) have regard to any advice given to the court under section 67ZBG (advice to court about risk of disclosure).
- (5) 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.

**67ZBI Information sharing agencies and court must have regard to information sharing safeguards**

- (1) An information sharing agency must, when providing particulars, documents or information under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5), have regard to the matters prescribed by the regulations for the purposes of this subsection (the *information sharing safeguards*).
- (2) The court must have regard to the information sharing safeguards when using particulars, documents or information provided by an information sharing agency under an order made under section 67ZBD or 67ZBE, or under subsection 67ZBD(5) or 67ZBE(5).
- (3) For the purposes of subsection (2), *use* includes handle, store and access.

**67ZBJ When orders may be made**

- (1) The court may make an order under section 67ZBD or 67ZBE at any time after the commencement of child-related proceedings and before making final orders.
- (2) The court may make an order under section 67ZBE in relation to an information sharing agency without first making an order under section 67ZBD in relation to that agency.

**67ZBK Subpoena in respect of certain documents or information**

If an order has been made under section 67ZBE in the course of child-related proceedings requiring an information sharing agency to provide documents or information, a party to those proceedings must not, without the court's permission, request the issue of a

subpoena requiring that agency to provide documents or information in relation to those proceedings.

### **67ZBL Review of provisions**

- (1) The Minister must arrange for the conduct of a review of the operation of this Subdivision, and regulations made for the purposes of this Subdivision, to start at both of the following times:
  - (a) no later than 12 months after the commencement of this section;
  - (b) as soon as practicable after the end of 3 years after that commencement.
- (2) The review mentioned in paragraph (1)(b) is to be completed within 12 months of the day the review starts.
- (3) Both reviews must consider the effectiveness of the Subdivision and regulations in meeting the objectives of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems endorsed by the Meeting of Attorneys-General.

Note: The National Framework could in 2023 be viewed on the Attorney-General's Department's website (<https://www.ag.gov.au/>).

- (4) The Minister must arrange for reports of both reviews to be prepared.
- (5) Copies of a report must be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

### **8 Section 69ZW**

Repeal the section.

### **9 Application of amendments**

Despite the repeal of section 69ZW of the *Family Law Act 1975* made by this Schedule, that section (as in force immediately before this item commences) continues to apply, after that commencement, in relation to orders made before that commencement, as if the repeal had not happened.

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*[Minister's second reading speech made in—  
House of Representatives on 29 March 2023  
Senate on 13 June 2023]*

(38/23)

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