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CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT (INFORMATION SHARING) BILL 2014

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [8.46 p.m.]: I move:

That this bill be now read a second time.

In May 2013 this Parliament passed the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act. That Act provided for the sharing of information by government agencies and non-government domestic violence support services in cases where domestic violence victims came into contact with the justice system. These provisions were not commenced as the department was preparing information management protocols to supplement the legislative provisions. In February this year the Government released "It Stops Here", a comprehensive response to the problem of domestic violence in New South Wales. These reforms will introduce new referral pathways for domestic violence victims to ensure that they receive services in a more coordinated and efficient way.

The amendments to the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013 build on the existing provisions of the Act to support the Government's domestic and family violence reforms and increase the safety of victims at the same time as facilitating their access to domestic violence support services, regardless of how they come into contact with the system. Service providers will be able to use new tools specifically designed to assess domestic and family violence risk of harm. The increased sharing of information between services will assist to improve the safety of victims and to reduce the stress and trauma of victims having to navigate a complex service system and having to repeat their story a number of times.

Domestic violence is a crime. It is also a multifaceted issue that requires a coordinated and integrated response from services in the areas of policing, justice, health, welfare, child protection and victim support services. The bill provides a framework for government agencies and non-government support services to work in partnership and exchange information in order to prevent domestic violence-related deaths, illness or injury. Several inquiries have been undertaken in recent years to review the effectiveness of the government response to domestic and family violence in New South Wales. These include inquiries undertaken by the Legislative Council Standing Committee on Social Issues in 2012, the Auditor-General in 2011, and the New South Wales Law Reform Commission and Australian Law Reform Commission in 2010.

These inquiries recommended the development of more integrated government responses, ongoing and responsive collaboration, and improved information sharing in cases of domestic and family violence in order to keep victims safe and to hold perpetrators accountable. The domestic violence reforms establish a central referral point that will receive referrals from agencies including the Police Force and the Local Court under the framework. The central referral point will be an electronic platform that receives and processes referrals. It will pass on information to local coordination points in the victim's local area. The local coordination point will contact the victim, seeking consent to provide domestic violence support services and for further sharing of information.

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I now turn to the specific provisions of the bill. Item [2] in schedule 1 contains a number of definitions to be used in the proposed part. This includes definitions for the "central referral point" and "local coordination point". The central referral point is defined as the Secretary of the Department of Police and Justice. In practice, this function will be delegated to Victim Services within the department, as it will be responsible for managing the functions of the central referral point. A local coordination point means a support agency or non-government support services nominated by the Minister. Generally, it is proposed that this role will be carried out by Women's Domestic Violence Court Advocacy Services. These are non-government organisations that provide domestic violence support to victims in 28 Local Court areas across New South Wales.

Item [4] in schedule 1 inserts two new divisions into the proposed part. New division 2 deals with general dealings with information. New section 98C contains a definition of "contact purposes", which involves seeking the consent of a primary person to the provision of domestic violence services to the primary person, and to further dealings with the information in relation to the provision of such services. New section 98D permits an

agency to disclose personal information and health information to the central referral point, or a local coordination point, for contact purposes. The agency can do so if it believes on reasonable grounds that a person is subject to a domestic violence threat. This is defined as a "threat to the life, health or safety of a person that occurs because of the commission or possible commission of a domestic violence offence". The disclosure may occur only with the consent of that person.

Under this section, personal information and health information about a person that the agency believes to be a cause of the threat may also be disclosed. No consent is required from that person. The information management protocols will outline the types of information that would be disclosed under the framework. New section 98E permits the Local Court to disclose personal information and health information to the central referral point for contact purposes unless the primary person expressly objects. The consent of the associated respondent is not required. Under the framework, a primary person is the person for whose protection an apprehended violence order is sought or made, or the person who is alleged to be the victim of a domestic violence offence. A person who an agency considers to be subject to a domestic violence threat is also taken to be a primary person.

An associated respondent is, in relation to a primary person, the person against whom the apprehended domestic violence order is sought or made—the person who has been charged with the domestic violence offence. Any person that an agency reasonably believes is a cause of a threat to a threatened person is also taken to be an associated respondent. This provision will allow the Local Court to provide information when an application for an apprehended domestic violence order or an interim or final ADVO has been made. This referral will be made unless the primary person expressly objects to the disclosure. New section 98F permits the central referral point to collect information that is disclosed to it in accordance with new sections 98D and 98E or by the NSW Police Force for contact purposes. The central referral point will therefore be able to receive information where the police have sought an ADVO or have laid charges for a domestic violence offence, as well as where police officers consider that there is a threat to an alleged victim due to domestic violence but they do not seek an order or to charge a person in relation to it.

Under new section 98F (2), the central referral point will be able to pass on the information it receives through these referrals to a local coordination point so that it can contact the alleged victim. Under new section 98G, a local coordination point will be able to collect the information that is disclosed to it under the framework. New section 98H permits a support agency to collect information that is disclosed to it as outlined in the section. A support agency may use any information that it is authorised to collect under the new division for contact purposes without the consent of the primary person or any associated respondent, or to provide domestic violence support services to the primary person with the primary person's consent only. New section 98H reproduces the substance of requirements in relation to the sharing of information currently in section 98C of the existing Act. It provides for agencies that offer domestic violence support to collect information from a number of sources, including the central referral point, a local coordination point, other support agencies, non-government support services and the NSW Police Force. Support agencies can use this information for contact purposes and to provide domestic violence support services.

Support agencies may disclose information to other support agencies and non-government support services to allow the other agency or organisation to provide support services if the primary person consents to the disclosure and it is reasonably necessary to disclose the information for the provision of those services. New section 98J requires agencies to comply with protocols made by the Attorney General if the agency deals with information under the new division. The Act already provides that the protocols may contain recommended privacy standards for non-government support services and may prohibit the disclosure of information to services that do not adopt those standards. New section 98L provides that the regulations may prescribe additional circumstances in which an agency may deal with personal information or health information under this framework. The Privacy Commissioner will need to be consulted in the development of any such regulation.

New division 3 deals with dealings where there is a serious threat. New section 98M sets out circumstances in which an agency may share personal information or health information about a person without the consent of the person if the agency believes the person is at serious threat in relation to domestic violence. An agency may rely on this provision if it believes on reasonable grounds that, first, the dealing is necessary to prevent or lessen a domestic violence threat to the person or any other person; secondly, the threat is a serious threat; and, thirdly, it is unreasonable or impractical to obtain the person's consent, or the person has been asked to consent and has refused to do so. This new section reproduces the existing substance of section 98D in the current Act. However, it extends the exception to allow dealings with information even when the person has refused consent.

The effect of this change is that, while it will be necessary to seek consent where it is reasonable and practical to do so, agencies will be able to share information in spite of a refusal of consent if they consider that it is necessary to do so to lessen or prevent a "serious domestic violence threat" as defined in the Act. New section 98M will provide a basis for the sharing of information for safety action meetings, where an agency reasonably believes a person is subject to a serious threat and the person has refused consent, or it is unreasonable or impractical to obtain the person's consent to the proposed dealing. New section 98M authorises agencies to share information where it is necessary to prevent or lessen a serious threat to the life, health or safety of a person. Therefore, agencies will be able to take a broad range of actions as long as they are considered to be

necessary to achieve that purpose.

Item [6] in schedule 1 provides that the part is to be reviewed after two years from commencement, and a report on the outcome of the review will be tabled in Parliament. This will provide an opportunity to consider whether any change to the legislative framework might be required. The Government's domestic violence reforms represent a significant step forward in managing the provision of services to victims of domestic violence in New South Wales. Central to this approach is the need for better coordination between those agencies and organisations providing support services to victims and to overcome barriers to the sharing of information in appropriate circumstances. These amendments provide a firm basis for this to occur. I commend the bill to the House.