



New South Wales

Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to permit dealings with information about a **primary person** (being a person who is (or is alleged to be) subject to, or threatened by, domestic violence) and any **associated respondent** (being a person who is (or is alleged to be) the perpetrator of the violence or the cause of the threat) without the consent of the primary person or associated respondent, but only to seek the primary person's consent:
 - (i) to the provision of domestic violence support services to the primary person, or
 - (ii) to further dealings with the information in relation to the provision of such services,
- (b) to permit dealings with information about a primary person and any associated respondent without the consent of the associated respondent for the purposes of providing domestic violence support services to the primary person,
- (c) to set out the circumstances in which an agency may deal with information about a person without the person's consent where the agency believes domestic violence poses a serious threat to the life, health or safety of any person.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 **Amendment of Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013 No 28**

The *Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013* (which is yet to commence) inserts proposed Part 13A into the *Crimes (Domestic and Personal Violence) Act 2007*. That Part facilitates the collection, use and disclosure of personal information and health information by agencies that provide domestic violence support services (*support agencies*) and other persons and bodies that provide such services (*non-government support services*) in cases involving domestic violence. The information relates to primary persons and associated respondents. A *primary person* is a person for whose protection an apprehended domestic violence order is sought or made or a person who is alleged to be the victim of a domestic violence offence. An *associated respondent* is the person against whom the order is sought or made or the person who has been charged with the domestic violence offence. This Bill makes a number of changes to that Part.

Schedule 1 [1] inserts a Division heading into proposed Part 13A.

Schedule 1 [2] contains a number of definitions to be used in the proposed Part.

Schedule 1 [3] renumbers a proposed section.

Schedule 1 [4] inserts 2 new Divisions into the proposed Part. Proposed Division 2 contains proposed sections 98C–98L and proposed Division 3 contains proposed sections 98M and 98N.

Proposed section 98C contains a definition of *contact purposes* (seeking the consent of the primary person to the provision of domestic violence support services to the primary person and to further dealings with the information in relation to the provision of such services) and clarifies how the proposed Division applies to a non-government support service that has been nominated as a local co-ordination point by the Attorney General.

Proposed section 98D permits an agency to disclose personal information and health information about a person to the *central referral point* (being the Secretary of the Department of Police and Justice) or a *local co-ordination point* (being a support agency or non-government support service that is nominated as a local co-ordination point by the Attorney General) if the agency believes on reasonable grounds that the person is subject to a *domestic violence threat* (being 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 the person. Personal information and health information about a person whom the agency believes to be a cause of the threat may also be disclosed without the consent of that person. In such a case, the threatened person is taken to be a primary person and the person who is believed to be a cause of the threat is taken to be an associated respondent.

Proposed section 98E permits the Local Court to disclose personal information and health information about a primary person and any associated respondent to the central referral point for contact purposes unless the primary person expressly objects. The consent of the associated respondent is not required. The information must relate to an application for an apprehended domestic violence order or an interim apprehended domestic violence order made by a person for whose protection the order would be made or by the guardian of such a person.

Proposed section 98F permits the central referral point to collect information that is disclosed to it in accordance with proposed section 98D or 98E or by the NSW Police Force. The central referral point can disclose any such information without the consent of the primary person or any associated respondent to a local co-ordination point for contact purposes. As the central referral point is a support agency, proposed section 98H provides additional circumstances in which information may be collected, used and disclosed by the central referral point.

Proposed section 98G permits a local co-ordination point to collect information that is disclosed to it in accordance with proposed section 98D or 98F or by the NSW Police Force. As a local co-ordination point is a support agency, proposed section 98H provides additional circumstances in which information may be collected, used and disclosed by a local co-ordination point.

Proposed section 98H permits a support agency to collect information that is disclosed to it in accordance with proposed section 98D, by the NSW Police Force, by another support agency (which includes a local co-ordination point) in accordance with the proposed section, by a primary person (without the consent of the associated respondent) or by a non-government support service (with the consent of the primary person but without the consent of the associated respondent).

A support agency may use any information that it is authorised to collect under the proposed Division for contact purposes without the consent of the primary person or any associated respondent or it may be used, with the consent of the primary person (but without the consent of the associated respondent), to provide domestic violence support services to the primary person.

A support agency may disclose any information that it is authorised to collect under the proposed Division to another support agency or to a non-government support service for the purposes of that other agency or service providing domestic violence support services to the primary person. Such information may only be disclosed if the primary person consents to the disclosure and the disclosure is reasonably necessary for the provision of those services.

Proposed section 98I provides that an agency is not required to take any steps to make an associated respondent aware of any matter about any information that it is authorised to collect under the proposed Division and it is not required to provide the associated respondent with any access to the information.

Proposed section 98J requires agencies to comply with protocols made by the Attorney General if the agency deals with information under the proposed Division.

Proposed section 98K provides how the proposed Division relates to the *privacy legislation* (being the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002* and any regulation or code of practice made under either of those Acts) and other Acts and laws including the *Government Information (Public Access) Act 2009*.

Proposed section 98L permits regulations under the *Crimes (Domestic and Personal Violence) Act 2007* to prescribe additional circumstances in which an agency may collect, use or disclose information about primary persons and associated respondents. The Attorney General is to consult with the Privacy Commissioner before recommending the making of any such regulation.

Proposed section 98M sets out circumstances in which an agency may deal with (collect, use or disclose) personal information or health information about a person without the consent of the person if the agency believes there to be a serious domestic violence threat to a person. The agency must believe that the dealing is necessary to prevent or lessen the threat and that the person has refused to give consent or that it is unreasonable or impractical to obtain the person's consent.

Proposed section 98N provides that an agency that is authorised to collect information about a person under proposed section 98M in respect of a threat is not required to take any steps to make the person aware of any matter about that information and it is not required to provide the person with any access to the information if it believes the person to be a cause of the threat.

Schedule 1 [5] updates a cross-reference.

Schedule 1 [6] permits the Attorney General (by order published in the Gazette) to nominate particular support agencies or non-government support services to be local co-ordination points.

Schedule 1 [7] permits the Secretary of the Department of Police and Justice to delegate the Secretary's functions under proposed Part 13A and provides for a review of the proposed Part after 2 years.



New South Wales

Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2014

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New South Wales

Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013* to facilitate the sharing of personal information and health information about victims and perpetrators of domestic violence for the purposes of providing domestic violence support services to those victims; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2014*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013 No 28	1
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[1]	Schedule 1 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80	4
	Insert before proposed section 98A in Schedule 1 [1]:	5
	Division 1 Preliminary	6
[2]	Schedule 1 [1], proposed section 98A	7
	Omit the definition of <i>support agency</i> .	8
	Insert in alphabetical order:	9
	<i>central referral point</i> means the Secretary of the Department of Police and Justice.	10
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	<i>domestic violence threat</i> means 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.	12
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	<i>local co-ordination point</i> means a support agency or non-government support service nominated as a local co-ordination point by the Minister under section 98O (4).	15
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	<i>privacy legislation</i> means the <i>Privacy and Personal Information Protection Act 1998</i> or the <i>Health Records and Information Privacy Act 2002</i> and any regulation or code of practice made under either of those Acts.	18
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	<i>support agency</i> means an agency that provides domestic violence support services and includes the central referral point and each local co-ordination point.	21
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[3]	Schedule 1 [1], proposed section 98E	24
	Re-number as proposed section 98O.	25
[4]	Schedule 1 [1], proposed sections 98C–98N	26
	Omit proposed sections 98C and 98D. Insert instead:	27
	Division 2 General dealings with information	28
		28
98C	Definition	29
		29
(1)	In this Division:	30
	<i>contact purposes</i> means contacting a primary person to seek the primary person's consent to either or both of the following:	31
		32
(a)	the provision of domestic violence support services to the primary person,	33
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(b)	the further use and disclosure of information in relation to the provision of any such services to the primary person.	35
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(2)	For the avoidance of doubt, a non-government support service that is also a local co-ordination point is taken, for the purposes of this Division, to be a support agency and not a non-government support service.	37
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98D	Disclosure of information by all agencies in case of threat	1
(1)	This section applies if an agency believes on reasonable grounds that a person (the <i>threatened person</i>) is subject to a domestic violence threat.	2 3
(2)	The agency may disclose personal information and health information about the threatened person and any person that the agency reasonably believes is a cause of the threat (the <i>threatening person</i>) to the central referral point or a local co-ordination point for contact purposes.	4 5 6 7
(3)	Any such disclosure requires the consent of the threatened person. No consent is required from the threatening person.	8 9
(4)	In such a case:	10
(a)	the threatened person is taken, for the purposes of this Division, to be a primary person, and	11 12
(b)	the threatening person is taken, for the purposes of this Division, to be an associated respondent.	13 14
98E	Disclosure by Local Court	15
(1)	This section applies if an application is made to the Local Court for:	16
(a)	an interim apprehended domestic violence order (but only if the order is made), or	17 18
(b)	an apprehended domestic violence order,	19
	by a person for whose protection the order would be made or by the guardian of such a person.	20 21
(2)	The Local Court may disclose personal information or health information about a primary person and any associated respondent in respect of the application to the central referral point unless the primary person expressly objects to the disclosure. No consent is required from the associated respondent.	22 23 24 25 26
98F	Central referral point	27
(1)	The central referral point may collect personal information or health information about a primary person and any associated respondent if the information is disclosed to the central referral point:	28 29 30
(a)	in accordance with section 98D or 98E, or	31
(b)	lawfully by the NSW Police Force for contact purposes.	32
(2)	The central referral point may disclose information that it is authorised to collect under this section without the consent of the primary person or associated respondent if the information is disclosed to a local co-ordination point for contact purposes.	33 34 35 36
	Note. The central referral point is a support agency, therefore section 98H also applies.	37
98G	Local co-ordination points	38
	A local co-ordination point may collect personal information or health information about a primary person and any associated respondent if the information is disclosed to the local co-ordination point:	39 40 41
(a)	in accordance with section 98D or 98F, or	42
(b)	lawfully by the NSW Police Force for contact purposes.	43
	Note. Local co-ordination points are support agencies, therefore section 98H also applies.	44 45

98H	Support agencies	1
(1)	A support agency may collect personal information or health information about a primary person and any associated respondent if the information is disclosed to the support agency:	2
	(a) in accordance with section 98D, or	3
	(b) lawfully by the NSW Police Force for contact purposes, or	4
	(c) by another support agency in accordance with this section, or	5
	(d) by the primary person (no consent is required from the associated respondent), or	6
	(e) by a non-government support service with the consent of the primary person (no consent is required from the associated respondent).	7
(2)	A support agency may use information that it is authorised to collect under this Division:	8
	(a) for contact purposes—without the consent of the primary person or the associated respondent, or	9
	(b) to provide domestic violence support services to the primary person— with the consent of the primary person (no consent is required from the associated respondent).	10
(3)	A support agency may disclose information that it is authorised to collect under this Division to another support agency, or to a non-government support service, for the purposes of that other agency or service providing domestic violence support services to the primary person, but only if:	11
	(a) the primary person consents to the disclosure (no consent is required from the associated respondent), and	12
	(b) it is reasonably necessary to disclose the information to the other agency or service for the provision of those services.	13
98I	Access to information collected under Division	14
	An agency is not required to take any steps to make an associated respondent aware of any matter about any information that it is authorised to collect under this Division and it is not required to provide the associated respondent with any access to the information.	15
98J	Agency must comply with protocols	16
	An agency that collects, uses or discloses information under this Division must comply with any protocols made by the Minister under section 98O.	17
98K	Relationship with other laws	18
(1)	This Division has effect despite any provision of the privacy legislation.	19
(2)	Nothing in this Division restricts or prevents the disclosure of information under any other Act or law, including the privacy legislation or the <i>Government Information (Public Access) Act 2009</i> .	20
98L	Regulations	21
(1)	The regulations may prescribe additional circumstances in which an agency may, despite the privacy legislation, collect, use or disclose personal information or health information about a primary person and any associated respondent.	22

(2)	The Minister is to consult with the Privacy Commissioner before recommending the making of a regulation under this section. Failure to comply with this subsection does not invalidate the regulation.	1 2 3
Division 3	Dealings where serious threat	4
98M	Dealings if serious domestic violence threat	5
(1)	In this section: <i>dealing</i> with information means the collection, use or disclosure of the information.	6 7 8
(2)	An agency may, despite the privacy legislation, deal with information about a person without the consent of the person if the agency believes on reasonable grounds that:	9 10 11
(a)	the particular dealing is necessary to prevent or lessen a domestic violence threat to the person or any other person, and	12 13
(b)	the threat is a serious threat, and	14
(c)	the person has refused to give consent or it is unreasonable or impractical to obtain the person's consent.	15 16
98N	Access to information collected in respect of serious threat	17
	An agency that is authorised to collect information about a person under section 98M in respect of a threat is not required to take any steps to make the person aware of any matter about that information and it is not required to provide the person with any access to the information if the agency believes on reasonable grounds that the person is a cause of the threat.	18 19 20 21 22
Division 4	Miscellaneous	23
[5]	Schedule 1 [1], proposed section 98O Protocols and other orders of Minister (as renumbered by item [3])	24 25
	Omit "section 98C (6)" from proposed section 98O (2). Insert instead "Division 2".	26
[6]	Schedule 1 [1], proposed section 98O (4) and (5)	27
	Insert after proposed section 98O (3):	28
(4)	The Minister may, by order, nominate particular support agencies or non-government support services to be local co-ordination points for the purposes of this Part.	29 30 31
(5)	An order under this section is to be published in the Gazette.	32
[7]	Schedule 1 [1], proposed sections 98P and 98Q	33
	Insert after proposed section 98O:	34
98P	Delegation	35
	The Secretary of the Department of Police and Justice may delegate the exercise of any function of the Secretary under this Part (other than this power of delegation) to:	36 37 38
(a)	any member of staff of that Department, or	39
(b)	any person, or any class of persons, authorised for the purposes of this section by the regulations.	40 41

98Q	Review of Part	1
(1)	The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.	2 3 4
(2)	The review is to be undertaken as soon as possible after the period of 2 years from the commencement of this Part.	5 6
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.	7 8