



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.