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CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT (INFORMATION SHARING) BILL 2013

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [5.47 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2013. The bill will amend the Crimes (Domestic and Personal Violence) Act 2007 to provide for information sharing between certain public sector agencies and non-government organisations for the purposes of facilitating access by alleged victims of domestic violence to support services appropriate to their needs. In November last year the Attorney General launched the NSW Domestic Violence Justice Strategy. The NSW Domestic Violence Justice Strategy aims to make the criminal justice system more responsive to the immediate needs of people who experience domestic violence. The Domestic Violence Justice Strategy is the result of work done by the Attorney General's department together with the police and other key justice and human services agencies. It builds on work undertaken in projects such as the Domestic Violence Intervention Court Model—a trial established in 2005 in Wagga Wagga and Campbelltown as a testing ground for strategies to improve the justice system response to domestic violence in New South Wales.

Outcomes from the Domestic Violence Intervention Court Model have informed the Domestic Violence Justice Strategy. Recommendations made by the New South Wales Attorney General, the New South Wales and Australian Law Reform Commissions and the New South Wales Legislative Council Standing Committee on Social Issues Inquiry into Domestic Violence Trends and Issues have also been incorporated into the justice strategy. These amendments, along with the recently announced reforms that will allow police to issue provisional apprehended domestic violence orders, are key planks of the implementation of the Domestic Violence Justice Strategy.

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In 2011, the Auditor-General's performance audit of government organisations' response to domestic and family violence identified a number of problems in the current response to domestic violence. These included the lack of a coordinated response stemming from inconsistent approaches to sharing information in domestic violence cases among government agencies in New South Wales and few victims being referred to services, particularly by police, because there is no common approach to referral. Another problem identified was that when police seek consent to refer a victim to services, many victims are not in a position to provide informed consent at the time of a domestic violence incident. Victims are often also reluctant to give consent to police but would agree to referral if consent were requested by a support service. A further problem identified was widespread confusion within government agencies regarding procedures for requesting a victim's consent, a lack of clarity about circumstances when consent is not required, and no consistent procedures for safeguarding people's information.

The bill will modify the application of the Privacy and Personal Information Protection Act 1998 and the Health Records and Information Privacy Act 2002 to remove restrictions that could limit or prevent interagency collaboration aimed at responding appropriately to the needs of victims of domestic violence. The bill will allow for the collection of information from police without the consent of the alleged victim or alleged perpetrator by agencies providing domestic violence support services—known as support agencies. This will enable the direct referral of victims by police to support agencies, and will facilitate access to services by victims who are often in situations of great need and vulnerability. Following referral by police, support agencies would need to seek the consent of the alleged victim to provide domestic violence support services. Any further disclosures of information, to other support agencies or to non-government services providing domestic violence support, would occur only where the alleged victim had consented and it was reasonably necessary to provide support to her or him.

The amendments also allow for the collection, use and disclosure of information without consent to address a serious threat to a person's life, health or safety. This would be authorised only where an agency believes, on reasonable grounds, that the collection, use or disclosure of the information is necessary to prevent or lessen a

serious threat to the life, health or safety of a person; where the threat relates to the commission or possible commission of a domestic violence offence; and where it is unreasonable or impracticable to obtain the consent of the person to whom the information relates. Given that the sharing of information under these provisions will occur without the alleged perpetrator's consent, careful attention has been paid to the need to balance the rights of the alleged perpetrator against the needs of the alleged victim.

In particular, information sharing will be possible only where a case meets a threshold of seriousness—that is, where an apprehended domestic violence order has been sought, including the issuing of a provisional or interim order, or made, or a person has been charged with a domestic violence offence. Generally, victim consent will be required for all sharing after the initial police referral. Exchanges of information with victim consent will be subject to requirements of confidentiality. However, in cases of a serious threat to a person's life, health or safety, sharing of information will be possible without consent, as the need to respond to the threat will outweigh the need to protect privacy. Information-sharing protocols will provide further privacy protections, such as ensuring that non-government support services with which information is shared can appropriately manage the personal and health information of individuals.

I now turn to the key provisions of schedule 1 to the bill. Item [1] inserts into the Crimes (Domestic and Personal Violence) Act 2007 a new part 13A to provide for information sharing between agencies, and disclosure and collection to and from non-government domestic violence support services. The amendments provide for the exchange of personal and health information of alleged victims, known as "primary persons", and alleged perpetrators, known as "associated respondents", in certain circumstances in domestic violence cases. New section 98C sets out the circumstances in which information will be able to be shared in situations other than those involving a serious threat to life, health or safety.

The new section applies if an interim apprehended domestic violence order has been made, or an apprehended domestic violence order has been sought or made, or a person has been charged with a domestic violence offence. The new section applies to the personal and health information of each primary person and associated respondent that is related to the relevant order or offence. This could include personal information about the criminal history of the associated respondent, previous allegations of domestic violence against the respondent, information about the associated respondent's access to firearms, or health information such as the associated respondent's mental health status or previous and current drug or alcohol use. A support agency may collect personal information or health information about a primary person and any associated respondent that is lawfully disclosed to it by the NSW Police Force for the purpose of the agency providing domestic violence support services to the person.

Although this information can be provided by the police without the consent of the primary person or the associated respondent, a support agency receiving the information is required to obtain the consent of the primary person before any use or disclosure of that information occurs. In addition to collecting information from police, a support agency may also collect personal and health information of the primary person and associated respondent in certain circumstances—that is, from another support agency where that support agency has disclosed the information with the primary person's consent, it was reasonably necessary to disclose the information to the collecting support agency for the provision of domestic violence support services, and the primary person was originally the subject of a police referral; from a non-government support service where the primary person consents to the non-government support service disclosing that information; and from the primary person.

A support agency is not required to inform an associated respondent about its dealings with the information, nor is it required to provide the associated respondent with access to the information. This has the effect of relieving support agencies from obligations under New South Wales privacy legislation that require agencies to make a person aware when his or her personal information is collected, and to give that person access to any personal or health information that the agency holds about that person. This is to avoid placing victims of domestic violence at increased risk. A support agency must obtain the primary person's consent for any disclosure of information under the new section, but the associated respondent's consent is not required.

However, this may be done only in the following circumstances: where the primary person was originally referred to a support service by the NSW Police Force, where the disclosure is for the purposes of that other agency or service providing domestic violence support services to the primary person, and where the disclosure is reasonably necessary for the provision of those services. These two last conditions place significant limits on an agency seeking to disclose personal and health information. Given that this information is disclosed without the consent of the associated respondent, it is necessary for the support service disclosing the information to consider why and how that disclosure is required for the provision of support services.

This limits the potential for irrelevant personal and health information about an alleged perpetrator being shared between agencies and non-government support services. A support agency may use the information collected under the new section to contact the primary person to seek the primary person's consent to use or disclose that information. It may also use the information to provide domestic violence support services to the person once that consent has been obtained. The associated respondent's consent is not required for any such use.

New section 98C is not intended to be an exhaustive statement of the ways that information relevant to a primary person or associated respondent may be disclosed. New section 98C (9) clarifies that nothing in the section would restrict or prevent the disclosure of information under any other Act or law. This would ensure, for example, that disclosures required for the protection of the safety, welfare or wellbeing of children or young persons under part 16A of the Children and Young Persons (Care and Protection) Act 1998 will be unaffected by any restrictions set out in new section 98C. New section 98D permits the collection, use and disclosure of personal information or health information in cases where there is a serious threat to the life, health or safety of a person.

As noted above, collection, use or disclosure in the circumstances of a serious threat requires that the agency believes on reasonable grounds that the collection, use or disclosure of the information is necessary to prevent or lessen a serious threat to the life, health or safety of a person, it is unreasonable or impracticable to obtain the consent of the person to whom the information relates and the threat relates to the commission or possible commission of a domestic violence offence.

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This is a new exception to the limits placed on the collection, use and disclosure of personal information or health information in the Privacy and Personal Information Protection Act 1998 and the Health Records and Information Protection Act 2002. It responds to a recommendation of the Australian and New South Wales law reform commissions in their joint report titled "Family Violence – A National Legal Response", which was finalised in 2010. It will allow agencies to respond appropriately to domestic violence cases when a serious threat to an individual has been identified but when, in the circumstances, it is not possible to obtain consent for the collection, use or disclosure of that information.

New section 98E in item [1] of schedule 1 to the bill permits the Attorney General to make it information management protocols, and requires the Attorney General to seek the advice of the Privacy Commissioner when making them. Agencies who collect, use or disclose information under new section 98C must comply with the protocols. The protocols also will contain recommended privacy standards for non-government support services and will prohibit the disclosure of information to services that do not adopt those standards. The imposition of the privacy protocols on non-government support services that receive information from government agencies under these provisions is required as a safeguard of that information. Non-government organisations, which are not subject to New South Wales privacy legislation, need to be able to protect adequately the personal information of both primary persons and associated respondents.

The protocols will deal with matters such as procedures for gaining consent from the primary person, the handling and storage of information, the sharing of information between agencies and non-government support services, a complaints handling procedure, if any of the required privacy standards are breached, and compliance audits. The protocols will be developed in consultation with the public sector agencies that provide domestic violence support services as well as relevant non-government support services. The amendments that will be effected by the bill provide a framework for sharing vital information relating to victims and alleged perpetrators of domestic violence. They will allow agencies and non-government support services to collaborate and respond appropriately to the needs of victims of domestic violence in New South Wales. I commend the bill to the House.