



New South Wales

# Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2013

## Explanatory note

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

## Overview of Bill

The object of this Bill is to permit the exchange of personal information and health information about alleged victims (*primary persons*) and alleged perpetrators of domestic violence. In particular:

- (a) an agency that provides domestic violence support services (a *support agency*) may collect such information, without the consent of those persons if the information is lawfully disclosed to it by the NSW Police Force, or is disclosed to it by the primary person or, with the consent of the primary person, by another support agency or a non-government support service, and
- (b) a support agency may, with the consent of the primary person, use the information it has collected to provide domestic violence support services to the primary person, and
- (c) a support agency may disclose the information it has collected to another support agency or non-government support service if the primary person consents and the primary person has been referred to a support agency or non-government support service by the NSW Police Force and the disclosure is necessary for the provision of domestic violence support services to the person, and

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- (d) any such collection, use or disclosure in paragraphs (a)–(c) may be done only if the agency complies with protocols made by the Attorney General, and
  - (e) an agency may collect, use or disclose personal information or health information at any time in domestic violence cases if it reasonably believes it is necessary to do so to prevent or lessen a serious threat to the life, health or safety of a 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 a day or days to be appointed by proclamation.

## **Schedule 1      Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80**

**Schedule 1 [1]** 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.

**Proposed section 98A** sets out a number of definitions used in the proposed Part.

**Proposed section 98B** provides for what is meant by *primary person* and *associated respondent*. 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.

**Proposed section 98C** provides for certain exceptions from the requirements of the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* in cases involving domestic violence. The proposed section applies if an interim apprehended domestic violence order is made or if an apprehended domestic violence order is sought or made or if a person is charged with a domestic violence offence. The proposed section applies to the personal information and health information of each primary person and associated respondent in relation to the order or offence.

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. A support agency may also collect such information if it is disclosed to it in accordance with the proposed section by another support agency or that is disclosed to it by the primary person or by a non-government support service (with the consent of the primary person). The support agency is not

required to inform an associated respondent about its dealings with the information and it is not required to provide the associated respondent with access to the information.

A support agency may use the information collected under the proposed section to contact the primary person but must obtain the primary person's consent for use of the information to provide domestic violence support services to the person. The associated respondent's consent is not required for any such use.

A support agency must also obtain the primary person's consent for any disclosure of information collected under the proposed section (the associated respondent's consent is not required). However, even with the primary person's consent, the support agency must not disclose the information unless the primary person has been referred to a support agency or non-government support service by the NSW Police Force in respect of at least one order or charge to which the information relates. In addition, the information may be disclosed only to another support agency or to a non-government support service and only for the purposes of that other agency or service providing domestic violence support services to the primary person. Finally, any such disclosure must be reasonably necessary for the provision of those services.

An agency must comply with the domestic violence information management protocols if it collects, uses or discloses information under the proposed section. **Proposed section 98E** permits the Attorney General to make those protocols and requires that the Attorney General seek the advice of the Privacy Commissioner when making them. The protocols may also contain recommended privacy standards for non-government support services and may prohibit the disclosure of information under the proposed section to services that do not adopt those standards.

**Proposed section 98D** permits any agency to collect, use or disclose personal information or health information about a person without the consent of the person if the agency believes that the collection, use or disclosure is necessary to prevent or lessen a serious threat to the life, health or safety of any person and the threat relates to the commission or possible commission of a domestic violence offence and it is unreasonable or impractical to obtain the consent of the person to whom the information relates.

**Schedule 1 [2]** permits regulations to be made that contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act or any other Act that amends the *Crimes (Domestic and Personal Violence) Act 2007*.