



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

- (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*.



New South Wales

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New South Wales

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

No. , 2013

A Bill for

An Act to amend the *Crimes (Domestic and Personal Violence) Act 2007* 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 Name of Act

This Act is the *Crimes (Domestic and Personal Violence) Amendment
(Information Sharing) Act 2013*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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

[1] Part 13A

Insert after Part 13:

Part 13A Information sharing

98A Definitions

In this Part:

agency means:

- (a) a public sector agency within the meaning of the *Privacy and Personal Information Protection Act 1998*, or
- (b) an organisation within the meaning of the *Health Records and Information Privacy Act 2002* to which that Act applies.

associated respondent—see section 98B.

domestic violence support services means services (including welfare, health, counselling, housing and accommodation and legal assistance services) provided to persons in relation to the commission or possible commission of domestic violence offences against those persons.

health information has the same meaning that it has in the *Health Records and Information Privacy Act 2002*.

non-government support service means a person or body (other than an agency) that provides domestic violence support services but does not include an individual.

Note. The *Interpretation Act 1987* defines person to include an individual, a corporation and a body corporate or politic.

personal information has the same meaning that it has in the *Privacy and Personal Information Protection Act 1998*.

primary person—see section 98B.

support agency means an agency that provides domestic violence support services.

98B	Meaning of “primary person” and “associated respondent”	1
	In this Part:	2
	(a) the <i>primary person</i> is:	3
	(i) in relation to an apprehended domestic violence order, the person for whose protection the order is sought or made, or	4
	(ii) in relation to a charge for a domestic violence offence, the person who is alleged to be the victim of the offence, and	5
	(b) the <i>associated respondent</i> is:	6
	(i) in relation to a primary person protected or sought to be protected by an apprehended domestic violence order—the person against whom the order is sought or made, or	7
	(ii) in relation to a primary person who is a victim, or an alleged victim, of a domestic violence offence for which a person has been charged—the person so charged.	8
98C	Permitted dealings with personal and health information	9
	(1) This section applies in each of the following circumstances:	10
	(a) an interim apprehended domestic violence order has been made,	11
	(b) an apprehended domestic violence order has been sought (by the making of an application) or made,	12
	(c) a person has been charged (within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i>) with a domestic violence offence,	13
	and in those circumstances it applies to the personal information and health information of each primary person and associated respondent in relation to the relevant order or charge.	14
	(2) Collection by support agencies	15
	A support agency may collect personal information or health information about a primary person and any associated respondent without the consent of the person or respondent if the information is lawfully disclosed to the agency by the NSW Police Force for the purpose of the agency providing domestic violence support services to the primary person.	16

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| (3) | A support agency may also collect personal information or health information about a primary person and any associated respondent without the consent of the respondent if the information is disclosed to the agency: | 1 |
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| | (a) by the primary person, or | 5 |
| | (b) by another support agency in accordance with this section, or | 6 |
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| | (c) by a non-government support service with the consent of the primary person. | 8 |
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| (4) | No access to information by associated respondent | 10 |
| | A support agency is not required to take any steps to make an associated respondent aware of any matter about any information collected under this section and it is not required to provide the associated respondent with any access to the information. | 11 |
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| (5) | Use of information by support agencies | 15 |
| | A support agency may use information collected under this section to contact the primary person and to seek the person's consent for use and disclosure of the information and may, with the consent of the person and without the consent of the associated respondent, use the information to provide domestic violence support services to the person. | 16 |
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| (6) | Disclosure by support agencies | 22 |
| | A support agency may disclose information collected under this section 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: | 23 |
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| | (a) the primary person consents to the disclosure (no consent is required from the associated respondent), and | 28 |
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| | (b) the primary person has been referred to a support agency or non-government support service by the NSW Police Force in relation to at least one order or charge to which the information relates, and | 30 |
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| | (c) it is reasonably necessary to disclose the information to the other agency or service for the provision of those services. | 34 |
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| (7) | Subsections (2)–(6) have effect despite any provision of the <i>Privacy and Personal Information Protection Act 1998</i> or the <i>Health Records and Information Privacy Act 2002</i> . | 36 |
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- (8) An agency must comply with any protocols made by the Minister under section 98E if the agency collects, uses or discloses information under this section. 1
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- (9) Nothing in this section restricts or prevents the disclosure of information under any other Act or law, including under the *Government Information (Public Access) Act 2009*. 4
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- 98D Dealings if serious threat to life, health or safety 7**
- Despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*, an agency may collect, use or disclose personal information or health information about a person without the consent of the person if: 8
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- (a) 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 the person or of another person, and 13
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- (b) the threat relates to the commission or possible commission of a domestic violence offence, and 17
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- (c) it is unreasonable or impractical to obtain the consent of the person to whom the information relates. 19
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- 98E Domestic violence information management protocols 21**
- (1) The Minister may, by order, make protocols dealing with any matter relating to the collection, use or disclosure by an agency of personal information or health information about a primary person or an associated respondent, including the following: 22
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- (a) procedures for seeking consent from a primary person, 26
- (b) procedures for sharing information between agencies and between agencies and non-government support services, 27
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- (c) complaint handling procedures, 29
- (d) compliance audits. 30
- (2) The protocols may contain recommended privacy standards for non-government support services and may prohibit the disclosure of information under section 98C (6) to services that do not adopt those standards. 31
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- (3) The Minister is to seek the advice of the Privacy Commissioner when making protocols. 35
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Crimes (Domestic and Personal Violence) Amendment (Information
Sharing) Bill 2013

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

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

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