

2017

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**Domestic and Family Violence Amendment (Information
Sharing) Bill 2017**

SERIAL NO. 40

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Domestic and Family Violence Amendment (Information Sharing) Bill 2017 ('the Bill') will provide for a new domestic and family violence information sharing regime, by creating a new Chapter 5A in the *Domestic and Family Violence Act* to deal with information sharing. It will designate certain government and non-government agencies to share information for the purposes of assessing whether there is a serious threat to a person because of domestic violence, responding to threats and making referrals to specialist domestic violence services. The regime will greatly simplify decision making, by creating a permissive regime in a domestic and family violence context and protecting persons acting in good faith from liability. Furthermore, it will reduce the need for victims to constantly re-tell their stories, and facilitate coordinated and timely responses.

The regime is based on the information sharing provisions of the *Care and Protection of Children Act*, as well as the new Part 5A of the *Domestic and Family Violence Protection Act 2012 (Qld)* and the *Family Violence Protection Amendment (Information Sharing) Act (Vic)*.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short title

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Domestic and Family Violence Amendment (Information Sharing) Act 2017*.

Clause 2. Commencement

This is a formal clause which provides when the Act will commence. The Act will commence on a day fixed by the Administrator by Gazette notice.

Clause 3. Act amended

This is a formal clause that identifies that the legislation being amended is the *Domestic and Family Violence Act*.

Clause 4. Section 3 amended

This clause amends the objects of the Act as contained in section 3 of the *Domestic and Family Violence Act*. The objects of the Act as currently stated are to:

- ensure the safety and protection of all persons, including children, who experience or are exposed to domestic violence;
- ensure people who commit domestic violence accept responsibility for their conduct; and
- reduce and prevent domestic violence.

The amendment creates an extra provision, allowing for these objects to be achieved through an information sharing regime that allows information to be shared by particular agencies in order to assess threats to life, health, safety or welfare, and ensure that people who fear or experience domestic violence, or perpetrate domestic violence against another person, can be referred to appropriate services.

Clause 5. Section 4 amended

This clause inserts cross-references in the main definitions section of the *Domestic and Family Violence Act*, to refer to the new definitions, as described in clause 6, new section 124B, specific to the information sharing regime that will apply to Chapter 5A.

Clause 6. Chapter 5A inserted

This clause inserts a new Chapter 5A into the *Domestic and Family Violence Act* dealing with information sharing.

Chapter 5A Information sharing

5A.1 Preliminary matters

124B Definitions

Section 124B defines various words and expressions used in Chapter 5A. The key definitions are:

- “CEO” means the Chief Executive Officer of the agency responsible for this Chapter of the Act, which is intended to be the agency responsible for family violence and family violence services.
- “Domestic violence related service” is broadly defined to include an assistance or support service provided to persons who fear or experience domestic violence or other persons affected by that domestic violence (which could include affected children, other family members and friends), as well as persons who commit domestic violence. This may include, but is not limited to, alcohol and other drug treatment services, allied health, counselling, disability, health, housing and homelessness, legal services and sexual assault services.
- “Information” is broadly defined to include facts as well as opinions.
- “Information sharing entity” includes the CEO of the agency responsible for Chapter 5A of the Act, as well as the CEOs of agencies responsible for corrections, child protection, community services, court services, disability, education, housing, public health and youth justice, and any other agency that provides a domestic violence related services (defined earlier). It also includes the Police Commissioner, non-government school principals, and other prescribed persons or entities that provide a domestic violence

related service. As explained below, regulations will provide compliance conditions for information sharing entities, to ensure that they are properly equipped to share and receive sensitive information and respond to information and referrals appropriately, and in a manner that does not place victims and their families at further risk.

Domestic violence is already defined at section 5 of the *Domestic and Family Violence Act*, and associated sections 6-8, to include any of the following conduct committed by a person with whom the person is in a domestic relationship: causing harm, sexual or other assault, damaging property, including the injury or death of an animal, intimidation, stalking, economic abuse, or attempting or threatening to commit any of these. Domestic relationship is defined in section 9.

124C Information sharing principles

Section 124C creates a set of information sharing principles to guide the collection, use and disclosure of information under this Chapter. This includes the principle that wherever practical, reasonable efforts should be made to obtain the consent of a person who fears or experiences domestic violence prior to the sharing of domestic violence information, but the safety of a person who fears or is experiencing domestic violence is paramount in determining whether such information can be shared. Consistent with this principle, in disclosing information an information sharing entity should consider any adverse consequences to the safety of the person who fears or experiences domestic violence or another person. The section notes that this is not intended to create any legal right or cause of action, or affect the interpretation of any Act or other law in the Territory.

124D Application of this Chapter to courts

Section 124D excludes the application of this Chapter to courts and tribunals in relation to the exercise of judicial or quasi-judicial functions.

5A.2 Information sharing

124E Sharing information for assessing or preventing domestic violence threat

Section 124E explains when an information sharing may give information to another information sharing entity. Information can be shared when the entity that holds the information reasonably believes that a person fears or is experiencing domestic violence, and the information may help the entity to assess whether there is a serious threat to a person's life, health, safety or welfare because of domestic violence, or lessen or prevent a serious threat, or arrange for the provision of a domestic violence related service.

124F Police may share certain information with information sharing entities

Section 124F provides that police may give information about a person to a domestic violence related service, if they reasonably believe that the person fears or is experiencing domestic violence and is in threat, or that a person has committed domestic violence. This allows police to provide referral information to a service provider, including a person's name, contact details, the basis for the belief, and any other information reasonably necessary to enable the provision of the service. Any risks will be mitigated by regulations or Guidelines providing for conditions that providers must comply with in approaching individuals where a referral has been made without a person's consent.

124G Limits on information that may be shared

Section 124G places limitations on information that will be shared under the regime, where this has the potential to be prejudicial or have some other adverse effect. This includes prejudice to a legal process, contravention of any legal professional or client privilege, endangering a person's life or physical safety, or otherwise intervening with law enforcement activities. Information cannot be shared where this is prohibited under the *Criminal Records (Spent Convictions) Act*, or any other prescribed Act, which cannot include the *Information Act*. These bases are analogous to section 293E(5) of the *Care and Protection of Children Act*.

124H Obligations to disclose for family violence assessment or protection purpose

Section 124H creates a positive obligation to disclose information for a family violence assessment or protection purpose that is permitted to be disclosed, where the information would help the information sharing entity that requested the information to:

- assess whether there is a serious threat to a person’s life, health, safety or welfare because of domestic violence;
- lessen or prevent such a threat; or,
- provide or arrange a domestic violence related service to or for a person.

This requirement is consistent with the Victorian legislation, and ensures that the regime is based on an actionable duty to share information rather than being reliant on the voluntary participation and goodwill of agencies. The provision does not create an offence for any failure to disclose information.

5A.3 Confidentiality protections

124J Permitted uses of shared information

Section 124J defines that an information sharing entity can use information obtained under this Chapter to assess whether there is a serious threat to a person’s life, health, safety or welfare because of domestic violence, to lessen or prevent such a threat (including by contacting the person), or to provide assistance or a domestic violence related service. This section safeguards privacy by ensuring that information that is shared is not used for purposes other than assessing or responding to threats of domestic violence.

124K Who may give or receive information on behalf of information sharing entity

Section 124K provides that only persons employed, engaged or appointed by an information sharing entity whose duties include assessing or responding to threats (including through the provision of domestic violence related services) may give, receive or use the information. The information sharing entity is also able to specifically authorise certain persons to give, receive or use information, which may

include persons engaged to assist with the process in an administrative capacity.

124L Unauthorised disclosure of confidential information

Section 124L makes it an offence to disclose information obtained under this Chapter with a maximum penalty of 200 penalty units (\$30,800) or two years imprisonment. The offence is one of strict liability, which means that the person does not need to be specifically aware that the information was acquired pursuant to the information regime established by this Chapter.

Section 124L(3) provides that the offence provision will not apply to:

- a disclosure required or authorised by this Chapter (for example, under 124E, 124F or 124H);
- a disclosure or use for research relating to the purpose of this Chapter, a formal inquiry or investigation, or any other prescribed purpose authorised by the Minister;
- a disclosure to a court or tribunal;
- a disclosure that is in compliance with the Information Privacy Principles or the National Privacy Principles, whether or not the person who makes the disclosure or uses the information, or the entity that employs or engages the person, is bound by those principles (which is intended to cover circumstances where, for example, an entity is not covered by the Information Privacy Principles, such as a non-government agency, but is nonetheless acting consistently with them) or,
- a disclosure or use otherwise required or authorised by law.

This subsection ensures that this Chapter does not interfere with other legal processes.

124M Police use of confidential information

Section 124M provides that police should not use information disclosed under these provisions for the investigation of an offence, or for proceeding with an offence, unless the officer has consulted with the entity that provided the information, and, taking that consultation into account, the officer considers it is in the best interests of the person experiencing the domestic violence. This reflects section 169L of the Queensland legislation. It does not apply to the extent that the officer is required to respond urgently in the performance of their functions.

The provision is intended to promote good practice and cooperative The relationships between police and information sharing entities. There is no criminal penalty attached to a breach of this provision, and any incidents would be dealt with as an internal police matter.

5A.4 Guidelines

124N CEO to make and publish guidelines

Section 124N requires the CEO of the agency responsible for the administration of this Chapter to publish administrative guidelines within 56 days of the Chapter's commencement. This could include, but is not limited to, circumstances in which an information sharing authority should consider obtaining the consent of a person before giving information about the person, and the manner for requesting, sharing, using, refusing to disclose and storing information.

The CEO must ensure the guidelines are published on the internet as well as by any other manner determined appropriate, which could include information brochures and distribution to relevant networks. In conjunction with education and training of relevant staff, this aims to ensure that the requirements of the information sharing regime are easily accessible.

The CEO must consult with the Information Commissioner prior to making the guidelines, which is intended to ensure that relevant expertise is utilised and any concerns or suggestions as to best practice are addressed.

5A.5 Risk assessment and risk management framework

124P CEO may approve framework

Section 124P provides that the CEO responsible for this Chapter may approve (and amend) a framework for family violence risk assessment and risk management. This will be published on the internet and in any other manner determined by the CEO.

124Q Obligation to align with approved framework

Section 124Q includes an obligation for prescribed entities to ensure that their policies and procedures align with the approved framework. This reflects sections 189 and 190 of the Victorian legislation, and is aimed to maximise consistency in the assessment of risk across prescribed entities.

The provisions will ensure that agencies have a common understanding of risk and are able to provide consistent responses to domestic and family violence by utilising the shared framework, which will have the additional benefit of strengthening the effectiveness of integrated responses.

5A.6 Miscellaneous

124R Protection of persons giving information

Section 124R protects persons acting in good faith from liability. A person is not liable for giving information if they were acting honestly and gave the information in accordance with the legislative requirements. It does not prevent the Territory being liable on a different basis. This reflects section 293F of the *Care and Protection of Children Act*.

Section 124S explains that this Chapter has effect despite the operation of any other law of the Territory that contains a power or obligation to give information, or prohibits or restricts the disclosure of information. This means that this Chapter is not constrained by other laws so long as the use of the information complies with the requirements of this Chapter. It also provides that this Chapter does not limit a power or obligation under another Act to give information or waive privilege.

Clause 7. Section 127 amended

This clause amends the regulation making power under section 127 of the *Domestic and Family Violence Act*, to specifically provide that regulations may be made in relation to compliance conditions for information sharing entities, and policies that information sharing entities are required to have in place. This may include that a provider must have in place information sharing policies and procedures that have appropriate regard to cultural sensitivities, the safety of victims and any other matters considered necessary. This provision would ensure that prescribed service providers are properly equipped to share and receive

sensitive information and respond to information and referrals appropriately, and in a manner that does not place victims and their families at further risk.

It also provides that regulations can prescribe which entities are not subject to the risk assessment and management framework under section 124P, and any prescribed forms or templates relevant to it.

Clause 8. Repeal of Act

This is a standard clause which provides that the amending Act is repealed on the day after it commences.