



# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13<sup>th</sup> Assembly

## SOCIAL POLICY SCRUTINY COMMITTEE

### Public Briefing Transcript

10.30 am, Wednesday 31 January 2018

Litchfield Room, Level 3, Parliament House, Darwin

#### INQUIRY INTO DOMESTIC AND FAMILY VIOLENCE AMENDMENT (INFORMATION SHARING) BILL 2017

**Members:**

Ms Ngaree Ah Kit MLA, Chair, Member for Karama

Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen

Ms Sandra Nelson MLA, Member for Katherine

**Witnesses:**

Greg Shanahan: Chief Executive Officer, Department of the Attorney-General and Justice

Robert Bradshaw: Director Policy Coordination, Department of the Attorney-General and Justice

Laura Berta: Policy Lawyer, Department of the Attorney-General and Justice

## DOMESTIC AND FAMILY VIOLENCE AMENDMENT (INFORMATION SHARING) BILL 2017

**Madam CHAIR:** Good morning, everyone. On behalf of the committee I welcome everyone to this public briefing on the Domestic and Family Violence Amendment (Information Sharing) Bill 2017. I acknowledge this public briefing is being held on the land of the Larrakia people and pay my respects to Larrakia elders past, present and emerging.

I ask that everybody switch their mobile phones to silent if you have not already done so.

I welcome to the table the following representatives from the Department of the Attorney-General and Justice, Greg Shanahan, Chief Executive Officer; Robert Bradshaw, Director Policy Coordination; Laura Berta, Policy Lawyer. Thank you for coming before the committee this morning. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding before the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public briefing and is webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website.

If at any time during the briefing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record and the capacity in which they will appear. I will then ask you to make a brief opening statement before proceeding to the committee's questions. Can you each state your name and the capacity in which you are appearing this morning?

**Mr SHANAHAN:** Greg Shanahan, Chief Executive Officer of the Department of the Attorney-General and Justice.

**Mr BRADSHAW:** Robert Bradshaw, Director Policy Coordination in the Department of the Attorney-General and Justice.

**Ms BERTA:** Laura Berta, Policy Lawyer at the Department of the Attorney-General and Justice.

**Madam CHAIR:** Thank you very much. Mr Shanahan, would you like to make an opening statement?

**Mr SHANAHAN:** No, I had not proposed to. I thought we would just get straight on with it and quickly.

**Madam CHAIR:** Sounds good to me. Are there any questions from the committee? Okay, I will kick it off.

Member for Araluen?

**Mrs LAMBLEY:** I would like an overview on what your thoughts are on the legislation and what you think the main issues are for us to be thinking about as a scrutiny committee.

**Mr SHANAHAN:** I will pass that to Laura. Laura has been the one doing all the work on this for us.

**Ms BERTA:** What I would propose to do is just give you a brief overview of the legislation, a practical example and then if you like, go into the background and the reasons for it.

Basically, the bill creates a new domestic and family violence information sharing regime. It designates 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 serious threats and making referrals to specialist services.

The government agencies that are proposed information sharing entities under the bill include: correctional services, child protection, community services, court services, disability, education, housing services, public health, youth justice and any other agency that may provide a domestic violence related service.

The proposed regime would provide the CEO of the agency responsible for its administration—likely to be Territory Families—with the power to determine which non-government bodies can share information and it would also give that CEO the power to prescribe a risk assessment and management framework.

Information will be able to be shared under the regime when the entity that holds information reasonably believes that a person fears or is experiencing domestic violence and the information may help another entity to assess whether there is a serious threat to a person's life, health, safety or welfare because of that domestic violence. It may also be shared to lessen or prevent a serious threat or to arrange for a domestic violence related service.

The bill contains a guiding principle that—wherever practical—reasonable efforts should be made to get the consent of the person who fears or is experiencing domestic violence before sharing information, but it makes it clear that the safety of that person—usually a woman and her children—is paramount.

The bill puts limits on information that can be shared under the regime, for example, where this has the potential to be prejudicial or have some other adverse effect.

For example, if in fact sharing information would put a person at higher risk, then the information cannot be shared under this regime. Or if it might be prejudicial to court or other legal proceedings, the information cannot be shared. It can only be shared to the extent that it is necessary to assess a threat, take action to lessen or prevent a threat or to provide a referral, and penalties apply of up to two years imprisonment or 200 penalty units.

It might be useful to provide a practical example of how this would work. A common scenario is when the partner or ex-partner is getting out of prison, and a woman is likely to be at heightened risk. A correctional service would be easily able to provide information about the perpetrator's release date and conditions around that to a women's shelter that is providing assistance to the victim. This needs to occur so her case worker can assess risk and help her plan for her safety. In turn, the women's shelter worker can provide that information to police if they believe their client will be at heightened risk. They might also inform housing services of the need to secure longer-term housing options for their client and communicate with legal services about providing further assistance to extend the term of her domestic violence order, as they often expire when a person is released from prison.

This saves the woman the trauma and heavy burden of having to tell her story repeatedly and having to make all these administrative arrangements. It is quite amazing when you see how busy a domestic violence victim is and how much work they have to deal with – their children's school, child protection services, police and case workers from different services. This takes the onus off her. It aims to support existing measures that provide integrated responses to domestic violence victims, like the Family Safety Framework which is ...

**Ms NELSON:** (inaudible) how it works for Family Safety Framework.

**Ms BERTA:** Yes.

**Ms NELSON:** I also know it is in line with the dual recognition domestic violence legislation we passed last year.

**Ms BERTA:** Yes.

**Ms NELSON:** I have a quick question. My concern, which was also addressed in the NT Legal Aid Commission submission and the other legal services, is about the privacy of the victims. What measures are there to protect the privacy of the domestic violence victim? If she does not want to share it?

**Ms BERTA:** The first principle is to get her consent wherever possible. If a person has made it clear that they do not want their information shared, then the service needs to think about whether it is necessary to share the information. It can only do so for one of the purposes provided for in the Act, which is to assess serious risk, to respond to a serious risk or to provide a service. They can only share information to the extent that it is relevant to one of those purposes.

**Ms NELSON:** Okay.

**Madam CHAIR:** Laura, I also have a question following on from that. You mentioned that with the upcoming release of the perpetrator that information about the upcoming release can be shared with the women's shelter which might be supporting a victim. What if the victim is not being supported by a current service? Are they still able to be notified that the person who perpetrated the violence against them is coming up for release soon and they should have their heads up and prepare themselves?

**Ms BERTA:** Yes, absolutely. An important link there is the police will also be able to provide a referral directly to a service to make sure she is supported during that time.

**Madam CHAIR:** Good.

**Mrs LAMBLEY:** What is wrong with the current system?

**Ms BERTA:** Currently, the information privacy principles under the *Information Act* apply. They state that information can only be shared without consent where a person is at serious and imminent risk. This creates a lot of practical difficulties because people interpret 'serious' and 'imminent' very differently. One of the key issues is that different agencies hold different bits of information about a person's life. If you look at them singularly they might not tell you much, but when you put them all together they can paint quite a horrific story.

This is why the Victorian Royal Commission in looking at the case of Luke Batty thought this was one of the critical reforms that need to be made. Ms Batty had been to so many different places but they did not join the dots together. These are things that have happened in the NT as well.

**Mrs LAMBLEY:** It sounds like we have gone the full circle. I became a social worker over 30 years ago and we had no restrictions really, apart from our own professional judgement and integrity around how we shared information about clients. This is really quite fascinating. Similar legislation was put through to allow sharing of information about children a few years ago.

**Ms°BERTA:** I think the key here is—as well it really relies on professional judgement. It does not take that away at all. People need to use their professional judgement in assessing what is relevant to share and whether it is relevant to share at any given instance.

**Madam°CHAIR:** I have two questions. One is, how long has the department been drafting this legislation and working on it? Number two is who has been consulted, which stakeholders have been consulted in the development of this draft bill?

**Ms°BERTA:** The department has been undertaking a review of the *Domestic and Family Violence Act* since 2015. We released two consultation papers since that time and they dealt with the whole of the *Domestic and Violence Act*. There was a report on summarising the outcomes of that consultation, which dealt with information sharing issues and there were some strong submissions, in particular from the Alice Springs Women's Shelter, police and Department of Education—I cannot quite remember who else—supporting a specialist regime.

In the second half of 2016 the department conducted a detailed consultation on improving the way the Alice Springs Local Court deals with domestic violence matters, and throughout those consultations information sharing was repeatedly raised. There were many different stakeholders involved in those workshops, they include the Tangentyere Council, including the Women's Committee Family Safety group; the women's shelters; the Central Australia Women's Legal Service; the NPY Women's Council; the Central Australian Aboriginal Family Legal Unit; Legal Aid; and the former CAALAS. Although those consultations focussed on Alice Springs there were also stakeholders consulted in Katherine and Darwin, including the Domestic Violence Legal Service, the Katherine Women's Information Legal Service, and NAAJA.

I guess the impetus for drafting the legislation really came after those consultations in late 2016 and—when did we start actually drafting it?

**Mr°BRADSHAW:** In about March.

**Ms°BERTA:** Yes, March last year. Since introduction of the bill we have sent out letters to a very broad range of stakeholders, including all the government agencies, Aboriginal health and support services, women's shelters, DV and sexual violence services, counselling, all major social support services, legal services, the Law Society, the judiciary, regional councils, Victims of Crime Services, NTCOSS.

We have offered them an opportunity to provide further information about the bill and we have already received a number of requests for information sessions. It is also important to say that there will be regulations that accompany this bill and there is a lot of scope for input into that process. The regulations will cover the sorts of compliance conditions that information sharing entities will need to comply with, which non-government agencies are prescribed as information-sharing entities and the risk assessment framework that is prescribed under the scheme.

**Mrs LAMBLEY:** I support this legislation. It makes perfect sense. The only practical problem I can see is in smaller communities throughout the Northern Territory there is not much in the way of confidentiality—word spreads. Some people who work in organisations do not necessarily have that professional training about ethics and conduct that professional people have.

On a practical level, how do you deal with the fact that the bush telegraph works overtime in small towns? If the word gets out too broadly then you have lost control of that woman's right to privacy.

**Ms BERTA:** That is right.

**Mrs LAMBLEY:** It is a real risk, is it not?

**Madam CHAIR:** She might not come back the next time to report.

**Ms BERTA:** Yes. It is a risk that exists now, particularly in small communities, that prevents people from coming forward.

We will be proposing a fairly major training package that accompanies this to work on both ends of the problem—the end that prevents information sharing because of professional cultures that guard very closely against that and on the other end, sharing information too freely that is not relevant or not for a very specific purpose of assessing to risk, responding to risk or providing a service.

Like you say, nothing will take away that professional judgment.

**Madam CHAIR:** Are there any further questions? No further questions from the committee. Thank you very much for taking the time to brief us today. It has been very helpful. Have a good day. We will have a five minute break and then come back for our next bill.

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The committee suspended.

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