



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

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

March 2018

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Chair's Preface

This report details the Committee's findings regarding its examination of the Domestic and Family Violence Amendment (Information Sharing) Bill 2017. The Bill amends the *Domestic and Family Violence Act* to provide for a new, permissive domestic and family violence information sharing regime. In doing so, the Bill aims to facilitate coordinated and timely responses to domestic and family violence.

All of the submissions received by the Committee supported the intent of the Bill and commended the Government on its aim to provide a more permissive and responsive information sharing regime. However, as summarised in the Key Findings and detailed in Chapter 3, significant concerns were raised regarding a number of key elements in the Bill. In particular, the circumstances under which consent may be overridden and the mandating of information sharing.

The Committee was also concerned to learn of the lack of consultation with frontline workers during the development of the Bill. The Committee is of the view that meaningful and accessible consultation with those that will ultimately be charged with implementing the proposed legislation is critical to ensure that it is fit for purpose. While the Committee supports the objective of the Bill, based on the evidence received, it has recommended that the Assembly not pass the Bill.

On behalf of the Committee, I would like to thank all those who made submissions or appeared before the Committee. Their input has been extremely informative and helpful. The Committee also thanks Professor Aughterson and the Department of the Attorney-General and Justice for their advice. I would also like to thank the members of the Committee for their bipartisan commitment to the legislative review process.



Ms Ngaree Ah Kit MLA

Chair

Committee Members

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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions to the inquiry or oral evidence at public hearings.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Key Findings

1. The importance of an appropriate information sharing regime for the provision of effective responses to domestic violence is widely acknowledged both by policy makers and frontline workers. The lack of consultation by the Department of the Attorney-General and Justice (the Department) with the domestic and family violence sector during the development of the Bill is, therefore, particularly concerning. To ensure that it is fit for purpose, meaningful and accessible consultation with those that will ultimately be charged with implementing the proposed legislation is critical.
2. The information sharing regime should be consent based. As drafted, the Bill does not place sufficient onus on obtaining consent as it only requires that an information sharing entity 'should make reasonable efforts' to obtain consent before sharing what is often sensitive and confidential information. By way of comparison, section 169B(a) of the *Domestic and Family Violence Protection Act 2012* (QLD) requires that consent should be obtained 'wherever it is safe, possible and practical' to do so.
3. Compared to equivalent legislation in Queensland and Victoria, the circumstances under which consent may be overridden are extremely broad. There is a lack of evidence to justify the abrogation of a person's right to privacy and confidentiality in circumstances other than where there are reasonable grounds to believe that a person fears or is experiencing domestic violence and the information may assist to assess, lessen or prevent a serious threat to a person's life, health safety or welfare.
4. Evidence suggests that the rights to privacy and confidentiality of Aboriginal women, in particular, are routinely breached by government agencies. This is not recognised in the Bill. By way of comparison, section 144J(2)(d) of the *Family Violence Protection Amendment (Information Sharing) Act 2017* (VIC) provides that the collection, use or disclosure of confidential information pertaining to a person that identifies as Aboriginal or Torres Strait Islander should be done in a manner that promotes the right to self-determination, is culturally sensitive and takes into consideration the person's familial and community connections.
5. The efficacy of information sharing relies on the accuracy of that information. To limit the potential risk to clients, uniformly applicable provisions are required to ensure that confidential information that is collected, used or disclosed by information sharing entities is accurate, complete and up to date.
6. As is the case in Victoria, the mandating of information sharing should be limited to circumstances where the disclosure of permitted information is required in order to facilitate the requesting entity's capacity to assess, lessen or prevent a serious threat to a person's life, health, safety or welfare because of domestic violence. It is not considered appropriate to compel information sharing in order to simply help the requesting entity to provide or arrange a domestic violence related service where there is no risk to a person's safety.
7. The classes of persons that may give, use or receive information, which will almost invariably be confidential and may well be obtained without consent, pursuant to

proposed section 124K is cast very broadly. Extending this authority to any persons that may be employed, engaged or appointed (including volunteers) by an information sharing entity whose duties include 'providing assistance or a domestic violence related service' (s 124K(a)(iii)), does not have sufficient regard for the rights and liberties of individuals and is an inappropriate delegation of administrative power.

8. The Bill does not provide any mechanism for key stakeholders to make comment on proposed guidelines and regulations that will accompany the legislation. As provided for under s144P of the *Family Violence Protection Amendment (Information Sharing) Act 2017* (VIC), the Chief Executive Officer should be required to invite submissions on the proposed guidelines before they are issued. Similarly, submissions should also be invited whenever substantial amendments to the guidelines are proposed.
9. The Bill does not incorporate any review provisions of the proposed Part 5A.1. Compare, for example, sections 144S and 144SA of the Victorian legislation which provide that the Minister must cause an independent review to be conducted of the operation of the Part after 2 years of operation and again after 5 years of operation. In each case the review must include consideration of any adverse effects of the Part.

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly not pass the Domestic and Family Violence (Information Sharing) Bill 2017.

Recommendation 2

The Committee recommends that the Government undertake further consultation with the domestic and family violence sector to consider and address the issues raised in this report.

1 Introduction

Introduction of the Bill

1.1 The Domestic and Family Violence (Information Sharing) Bill 2017 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, on 23 November 2017. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 13 March 2018.¹

Conduct of the Inquiry

1.2 On 24 November 2017 the Committee called for submissions by 24 January 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations. The Bill and associated Explanatory Statement was also forwarded to Professor Ned Aughterson for review of fundamental legislative principles under Sessional Order 13(4)(c).

1.3 As noted in Appendix A, the Committee received eight submissions to its inquiry. The Committee held a public briefing with the Department of the Attorney-General and Justice on 31 January 2018 and public hearings with seven witnesses in Darwin on 14 February 2018.

Outcome of Committee's Consideration

1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

- (i) whether the Assembly should pass the bill;
- (ii) whether the Assembly should amend the bill;
- (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
- (iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 All of the submissions received were very supportive of the intent of the Bill and commended the Government on its aim to promote a more permissive and responsive information sharing regime. However, as detailed in Chapter 3, witnesses raised significant concerns regarding a number of key elements in the Bill. In the absence of any detail regarding the proposed guidelines and regulations that will accompany the legislation, key stakeholders also raised concerns as to the practical implementation of the proposed provisions in the Bill.

¹ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, pp.8-13, https://parliament.nt.gov.au/_data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf

- 1.6 Given the significance of this piece of legislation, the Committee notes its concern that frontline workers were not given an opportunity to comment on such matters prior to the Bill's introduction. Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Bill requires further work for it to be fit for purpose. For the reasons outlined in the Key Findings and detailed in Chapter 3 of this report, the Committee has, therefore, recommended that the Legislative Assembly not pass the Bill.

Recommendation 1

The Committee recommends that the Legislative Assembly not pass the Domestic and Family Violence (Information Sharing) Bill 2017.

Report Structure

- 1.7 Chapter 2 provides an overview; of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.8 Chapter 3 considers the main issues raised in evidence received.

2 Provisions of the Bill

Background to the Bill

2.1 In presenting the Bill, the Attorney-General and Minister for Justice, noted that practitioners who work with victims and perpetrators of domestic and family violence both in the Northern Territory and elsewhere have “repeatedly identified information sharing as a major obstacle in providing effective responses to domestic violence.”² Recent inquiries in other Australian jurisdictions and nationally have found that:

privacy and information laws can discourage or prevent government and non-government agencies from sharing information with terrible consequences. Tragic cases, such as the death of Luke Batty, illustrate how poor information sharing can place victims and their children at serious risk.³

2.2 With victimisation rates for domestic and family violence assaults in the Northern Territory approximately four times the national average, the Bill seeks to address this issue, thereby:

ensuring the justice system and frontline services are responsive to the needs of domestic violence victims, promote accountability of perpetrators and are able to help families in need.⁴

Purpose and Overview of the Bill

2.3 As noted in the Explanatory Statement, the purpose of the Domestic and Family Violence Amendment (Information Sharing) Bill is to amend the *Domestic and Family Violence Act* to provide for a new, permissive domestic and family violence information sharing regime.⁵

2.4 Based on the information sharing provisions of the *Care and Protection of Children Act* (NT) and the recently introduced information sharing provisions of the *Domestic and Family Violence Protection Act 2012* (QLD) and the *Family Violence Protection Amendment (Information Sharing) Act 2017* (VIC), the new regime 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;
- simplify decision making by creating a permissive regime in a domestic and family violence context and protecting persons acting in good faith from liability;

² Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, https://parliament.nt.gov.au/_data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf, p.9

³ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, https://parliament.nt.gov.au/_data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf, p.9

⁴ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, https://parliament.nt.gov.au/_data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf, p.13

⁵ Explanatory Statement, *Domestic and Family Violence Amendment (Information Sharing) Bill 2017* (Serial No. 40), <https://parliament.nt.gov.au/committees/spsc/DFV>, p.1

- reduce the need for victims to constantly re-tell their stories; and
- facilitate coordinated and timely responses.⁶

⁶ Explanatory Statement, *Domestic and Family Violence Amendment (Information Sharing) Bill 2017 (Serial No. 40)*, <https://parliament.nt.gov.au/committees/spsc/DFV> , p.1

3 Examination of the Bill

Introduction

- 3.1 As highlighted previously, all of the submissions supported the intent of the Bill. However, significant concerns were raised regarding a number of key elements in the Bill. The following discussion considers the primary issues of concern raised in submissions and oral evidence to the Committee, and responses to the Committee's written questions provided by the Department of the Attorney-General and Justice (the Department).

Development of the Bill

- 3.2 A common concern expressed by witnesses that provided submissions or appeared before the Committee was the lack of consultation by the Department of the Attorney-General and Justice with the domestic and family violence sector during the development of the Bill. In many instances organisations noted that they were unaware that the Bill had been introduced until they received the Committee's call for submissions.

- 3.3 While the Committee understands that the Department undertook consultation with the sector in 2015, this was in relation to the *Domestic and Family Violence Act* as a whole. Although information sharing was briefly considered as an issue arising out of the consultation, the only comment made by the Department at the time was that it was:

considering options, as part of its administration of the *Information Act*, for improving or (at least clarifying) capacities regarding the sharing of information.⁷

- 3.4 Noting that Government agencies have had an opportunity to comment on all key aspects of the Bill through the Cabinet process which commenced in May 2017, the Department advised that:

In developing the proposals for the legislation, the Department had anticipated releasing for comment an exposure draft of the legislation prior to introduction. However, as part of the Government's commitment to domestic violence reforms the decision was made that the legislation should be formally introduced into Parliament as quickly as possible.

This was done having regard to the fact that the Scrutiny Committee process would provide a meaningful opportunity for public consultation involving both the Committee's own processes and those of the Department ...

The Department has engaged in consultation subsequent to the Bill's introduction and stakeholders have been provided with information about the Bill and invited to request meetings with the Department. Interest in further consultations/explanations has been relatively limited. The main interest has focussed on how the legislation will work in practice and how it will be implemented. The Department plans to hold information sessions on the Bill in Katherine, Alice Springs and Darwin over the next few weeks.

⁷ Department of the Attorney-General and Justice, *Report on Consultation: Review of the Domestic and Family Violence Act*, Northern Territory Government, Darwin NT, July 2016, p.84

Further consultation will take place in the drafting of regulations and Guidelines which are intended to provide much of the relevant detail.⁸

- 3.5 In addition to the issues raised regarding specific provisions in the Bill, concerns were also raised about a range of associated issues with the sharing of information between government agencies and the non-government sector. For example, overcoming attitudinal barriers, obtaining information in a timely manner, professional development and an under-resourced police service and Domestic Violence Unit were all noted as on-going issues of concern.⁹

Committee's Comments

- 3.6 Given the nature and importance of the proposed legislation, the Committee was concerned to learn of the lack of consultation with frontline workers. The Committee notes that its consultation process is focussed very much on reviewing rather than developing the provisions of the Bill. The Committee reinforces that the Scrutiny Committee process should not be considered as a substitute for Departmental consultation with relevant stakeholders on the development of a Bill.
- 3.7 Similarly, information sessions provided subsequent to a Bill's introduction that disseminate information to stakeholders, as opposed to seeking comment on the development of a Bill, should not be considered analogous to consultation. Further, the Committee notes that it is important to ensure that consultation is not only meaningful but accessible.
- 3.8 The Committee is also of the view that the associated issues of concern raised by witnesses should be considered and, where possible, addressed during further consultation on the Bill and the development of operational guidelines and regulations that will accompany the legislation.

Recommendation 2

The Committee recommends that the Government undertake further consultation with the domestic and family violence sector to consider and address the issues raised in this report.

Information Sharing and Consent

- 3.9 Proposed section 124C(2) provides that information sharing entities 'should make reasonable efforts to obtain the consent of a person who fears or experiences domestic violence before sharing information about the person.' However, proposed section 124E provides that consent may be overridden where it is believed on reasonable grounds that:

- (a) a person fears or is experiencing domestic violence; and

⁸ Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>, pp.12-13

⁹ Ms Annabel Pengilly, Committee Transcript, 14 February 2018, pp.1-2; Ms Janet Taylor, Committee Transcript, 14 February 2018, p. 12; Ms Alex Richmond, Committee Transcript, 14 February 2018, p.15

- (b) the information may help the entity receiving the information to:
 - (i) assess whether there is a serious threat to a person's life, health, safety or welfare because of domestic violence; or
 - (ii) lessen or prevent a serious threat to a person's life, health, safety or welfare because of domestic violence; or
 - (iii) provide or arrange a domestic violence related service to or for a person.

3.10 The evidence received by the Committee emphasised the importance of ensuring that the information sharing regime is consent based. Witnesses also noted that there should be safeguards in place to limit the circumstances of information sharing to the assessment or management of risk to a person's life, health, safety or welfare. That is, the threshold for when confidential information may be shared without consent should be consistent with that provided for in the Queensland and Victorian legislation.¹⁰

3.11 The Committee heard that a consent based information sharing regime was integral to the provision of domestic and family violence related services. However, how, when and why agencies share was also considered to be particularly important. As Ms Annabel Pengilley (Managing Solicitor: Domestic Violence Legal Service) pointed out:

When our victims sign our consent form, we always say, 'it is just to show other people. But it is not a blank cheque. We will only ever use your authority with your specific permission for a specific purpose.'¹¹

3.12 As currently drafted, the NT Legal Aid Commission considered that the Bill is a "disproportionate erosion of the rights of victims and respondents to privacy and confidentiality"¹² and may well inhibit them from seeking help. As Ms Pengilley noted, proposed section 124E provides that:

you can share someone's really personal information without their consent simply to refer them to a service to get an assessment about whether or not they might be a victim of domestic violence or they might need some help. It is just an incredible overreach – it [the Bill] is a good aim but the mechanism here goes way too far, and the concern is that victims are going to come to services and not have confidence. In particular for Indigenous victims – often they have such a sense of powerlessness ... They feel like they have little power and little rights and little ability to control what is happening in their lives ... there is nothing in the bill that respects the person this information is about ... having shared that information, there is no requirement to inform the person whose information it is, who shared it, who they shared it with and what they shared it for.¹³

3.13 With regards to Aboriginal women, the Committee also heard that service providers were particularly concerned that their rights to privacy and confidentiality are already

¹⁰ See for example, Northern Territory Legal Aid Commission, Submission No. 2; Central Australian Women's Legal Service, Submission No. 5; Domestic and Family Violence Network, Submission No. 7; *Domestic and Family Violence Protection Act 2012* (QLD), ss 169D and 169E; *Family Violence Protection Amendment (Information Sharing) Act 2017* (VIC), s 144J(c), Division 2 and Division 3; Committee Transcript, 14 February 2018

¹¹ Ms Annabel Pengilley, Committee Transcript, 14 February 2018, p.8; see also Ms Janet Taylor, Committee Transcript, 14 February 2018, pp.12-13

¹² Northern Territory Legal Aid Commission, Submission No. 2, p.2

¹³ Ms Annabel Pengilley, Committee Transcript, 14 February 2018, p.2

routinely breached by current information sharing practices within the government sector:

The experience of Aboriginal people in the Northern Territory is they do not have privacy, that people just come in, know their business, get involved and so there is no sense of that privacy and that really erodes trust in the organisations, the systems, in police, in Territory Families, in the support organisations, because there is the sense that, 'Everyone is talking about me behind my back and everyone is coming into my house without me knowing what is going on.'¹⁴

- 3.14 The Statement of Compatibility with Human Rights accompanying the Bill claims that it is compatible with Article 3 of the *Convention on the Elimination of All Forms of Discrimination against Women* which provides that appropriate measures, including legislatively, are to be taken to guarantee women 'the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.'¹⁵ However, as highlighted by the comments of the Commissioner for Information and Public Interest Disclosures, the extent to which the Bill achieves this is questionable:

Many health professionals rely on practices involving promises of not only privacy protection but also confidentiality. These are important ingredients in ensuring people access health and support services, share full and accurate information with persons who can assist them and retain control of their dignity and reputation ...Further, the sharing of a person's status as a domestic violence victim may have unintended consequences for them personally. In fact, the NT Anti-Discrimination Commission is considering a proposal for domestic violence to be considered an attribute under the *Anti-Discrimination Act* because of the discrimination that victims can face in areas such as employment and housing once their personal circumstances are known.¹⁶

- 3.15 While the Statement also claims the Bill is compatible with Article 17 of the *International Covenant on Civil and Political Rights*, the NT Legal Aid Commission submitted that:

The International Covenant on Civil and Political Rights ('ICCPR') provides that 'no one shall be subjected to arbitrary, or unlawful interference with his or her privacy, family, home or correspondence ...' Without sufficient protections and analysis to determine whether information may be shared, this Bill enables circumstances in which there is an 'arbitrary interference with privacy' which is inconsistent with the ICCPR. The Bill is not compatible with human rights as it does not balance the rights to privacy of the individual in the ICCPR with the right to safety and protection. It does not place sufficient emphasis on the need to obtain consent to share information from a person who fears or is experiencing domestic violence wherever possible. The Bill does not have a sufficiently high threshold to be applied by the persons and entities which are able to share and receive information.¹⁷

- 3.16 The Central Australian Women's Legal Service expressed a similar view, noting that:

Information sharing must be balanced with the need to empower clients to make decisions in relation to their own safety. It is also important that clients' trust in their legal representative be maintained. While streamlining information sharing has clear benefits, we are concerned to ensure that this is not at the expense of

¹⁴ Ms Alex Richmond, Committee Transcript, 14 February 2018, pp. 14-15

¹⁵ Statement of Compatibility with Human Rights, *Domestic and Family Violence Amendment (Information Sharing) Bill 2017 (Serial No. 40)*, <https://parliament.nt.gov.au/committees/spsc/DFV>, p.1

¹⁶ Commissioner for Information and Public Interest Disclosures, Submission No. 1, p.3

¹⁷ Northern Territory Legal Aid Commission, Submission No. 2, p.3

a client's trust in their lawyer and does not prevent clients from seeking legal assistance for fear that their information will be widely shared.¹⁸

3.17 As noted in the Department's 2016 report *Improving Court Responses to Domestic and Family Violence Matters in Alice Springs*, stakeholders noted that:

it is important to balance reforms that aim to facilitate information sharing against an individual's right, and, in particular, possible adverse consequences for vulnerable domestic violence victims, their families and offenders. Given the number of agencies that may be involved with a family, there is potential for extensive sharing of information ... this may present a deterrent for parties to seek assistance and the high levels of distrust felt by Aboriginal people towards agencies may be exacerbated. For these reasons, some stakeholders maintained that it is essential to seek a person's consent to share their personal information unless the threat is imminent, and the focus ought to be on better identifying risk and developing stronger processes for obtaining consent at an early point in time.¹⁹

3.18 The Committee also heard that additional privacy concerns come into play in smaller centres where it is often the case that:

victims have family and friends, or family and friends of the perpetrator working in the same services they are accessing. Again, the low threshold for those sharing and receiving information, may create a perception, and a reality, that people's business will not be kept private by the organisations and individuals that should be supporting them.²⁰

3.19 In light of the range of comments in the preceding discussion, witnesses questioned the justification for extending the circumstances under which consent can be overridden, beyond what is provided for in equivalent legislation in Queensland and Victoria. As the NT Legal Aid Commission pointed out:

The provisions of the Bill are a disproportionately broad response to the intention of the Bill where this objective could be achieved through the consent of the person whose information is shared where there is no serious threat to an individual's life, health, safety or welfare ... [Given] the very wide definition of Domestic Violence in the NT Act (such as economic abuse) it is an unreasonably broad and disproportionate removal of the victim's right to privacy.²¹

3.20 In contrast to section 124E, the Committee notes that proposed section 124F is consistent with the Queensland legislation and provides that police may only share information without consent where it is believed on reasonable grounds that:

- (a) the person fears or is experiencing domestic violence and there is a threat to the person's life, health, safety or welfare because of the domestic violence; or
- (b) the person has committed domestic violence against another person.

3.21 As noted by the Department, this provision is designed to ensure that police have the capacity to make timely referrals to service providers given that it is not always practicable at the time of an incident to obtain the victim's consent:

In the Northern Territory, there are particular obstacles in obtaining the consent of victims. Police provide the primary response in domestic violence situations.

¹⁸ Central Australian Women's Legal Service, Submission No. 5, p.2

¹⁹ Department of the Attorney-General and Justice, *Improving Court Responses to Domestic and Family Violence Matters in Alice Springs*, Northern Territory Government, Darwin NT, December 2016, pp.60-61

²⁰ Domestic and Family Violence Network, Submission No. 7, p.3

²¹ Northern Territory Legal Aid Commission, Submission No. 2, p.5

Many victims refuse to provide their consent to police. Decisions about consent are influenced by a range of reasons including language and cultural reasons, as well as by mistrust and misunderstanding of the purpose and utility of sharing information.²²

- 3.22 The Committee notes that this provision was generally supported by stakeholders. As the NPY Women's Council's Domestic and Family Violence Service stated:

It is hoped that the changes are able to foster an environment whereby police are able to quickly advise domestic violence services when there has been police attendance at a domestic incident. In the experience of this service, not only does this ensure that the appropriate social and emotional support is able to be offered in a timely manner, but also that women are supported to continue to interact with the criminal justice system, beyond the initial response. Under the current legislative environment, this is dependent on women providing express consent and SupportLink being used as the mechanism to refer. In the experience of this service, it is very, very rare for our clients to consent to a referral when being asked by police. Aboriginal women are much more likely to consent to assistance if approached by NPY Women's Council staff.²³

- 3.23 Professor Aughterson questioned the use of the definite article 'the' in proposed subsection 124F(1)(a):

The use of the definite article 'the' in 'because of the domestic violence' suggests actual domestic violence and does not take account of 'fear' of violence. The word 'the' could be deleted, or the subsection could be rephrased (after 'because') to refer to actual or potential domestic violence.²⁴

- 3.24 Despite sections 124E and 124F, proposed section 124G places limits on information that may be shared under the regime. The NT Legal Aid Commission noted that pursuant to section 55 of the *Legal Aid Act* (NT), all employees of the Commission are bound by secrecy provisions regarding the confidential information of clients. However, the Committee heard that:

While 124G provides that information must not be shared if it would contravene Legal Professional Privilege, not all employees are covered by *Legal Professional Privilege*, for example Social Support Workers, Administrative Staff, Helpline Operators and Community Legal Educators. We are concerned that these provisions do not exempt all legal aid staff who are also bound by s 55 in relation to non-client information.²⁵

- 3.25 The Department advised that it was of the view that section 55 of the *Legal Aid Act* should operate subject to the provisions in the Bill:

Section 55 operates subject to the general principles of criminal responsibility in force under the *Criminal Code*. For offences under the *Legal Aid Act* sections 23-25 of the *Criminal Code* operate so that a person who shares information in accordance with the proposed provision would not be guilty of a breach of section 55. In addition, section 124S of the Bill provides that the Chapter has effect despite the operation of any other law in the Territory that prohibits or restricts the disclosure of information.

The various limitations listed in section 124G on information that can be shared provide sufficient safeguards for information held by the NT Legal Aid

²² Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>, pp.5-6

²³ Domestic and Family Violence Service – NPY Women's Council, Submission No. 3, p.1

²⁴ Professor Ned Aughterson, *Review of the Domestic and Family Violence Amendment (Information Sharing) Bill 2017*, (unpublished), 23 January 2018, p1.

²⁵ Northern Territory Legal Aid Commission, Submission No. 2, p.4

Commission that it would not want to disclose because it could prejudice their client's legal case or relationship with the service. These include limitations on information that would contravene legal professional or client legal privilege, and information that would prejudice any court or tribunal proceedings ...

If it were prescribed as an information sharing entity, the NT Legal Aid Commission, would, like any other information sharing entity, be entitled to refuse to share information that contravenes legal professional or client legal privilege, places a client in danger, or prejudices their client's legal proceedings.²⁶

- 3.26 Noting that Information Privacy Principle 2.1(d)(ii) (IPP) in the *Information Act* is often cited as a “stumbling block to the sensible sharing of information about domestic violence”²⁷, the Commissioner for Information and Public Interest Disclosures proposed that it should be amended as part of the current reform of the *Domestic and Family Violence Act*:

IPP 2.1(d)(ii) allows a public sector organisation to use or disclose information where the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent ‘a serious and imminent threat to the individual's or another individual's life, health or safety.’

For many years, this Office has held the view that this test in the IPPs should be amended so that the threat to an individual should not need to be both ‘serious and imminent’ but either ‘serious or imminent’. The new test should apply not just in domestic violence cases but on all occasions where there is a relevant threat to a person. Such an amendment would be more in line with the Commonwealth legislation.

It is submitted that this amendment to the *Information Act* should ideally be made as part of the current domestic violence reforms. There is precedent for such an amendment. In 2012 when the *Care and Protection of Children Act* was amended by the addition of Part 5.1A to facilitate information sharing for the safety and wellbeing of children, an amendment was made to IPP 2.1(d)(ii) in the *Information Act* to provide that the test for children be amended to include ‘a serious or imminent threat of harm to, or exploitation of, a child.’ Noting that the proposed domestic violence reforms are modelled on the 2012 reforms to protect children, it makes sense to amend IPP 2.1(d)(i) of the *Information Act* so that the relevant ‘threat’ tests remain consistent and are easily accessible within the one Act.²⁸

- 3.27 The Committee notes that the Department of Health also supported the Commissioner's recommendation in this regard.²⁹ The Committee also notes that this was raised as an issue of concern in the Department's 2016 report *Improving Court Responses to Domestic and Family Violence Matters in Alice Springs*³⁰, and Territory Families' 2017 *Review of the Family Safety Framework in the Northern Territory 2016-2017*³¹. As mentioned previously, the Department's 2016 *Report on Consultation: Review of the Domestic and Family Violence Act* noted that as part of

²⁶ Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>, pp.8-9

²⁷ Commissioner for Information and Public Interest Disclosures, Submission No. 1, p.1

²⁸ Commissioner for Information and Public Interest Disclosures, Submission No. 1, pp.1-2

²⁹ Department of Health, Submission No. 8, pp. 1-2

³⁰ Department of the Attorney-General and Justice, *Improving Court Responses to Domestic and Family Violence Matters in Alice Springs*, Northern Territory Government, Darwin NT, 9 December 2016, p.60

³¹ Territory Families, *Review of the Family Safety Framework in the Northern Territory 2016-2017: Summary of Findings and Recommendations*, Northern Territory Government, Darwin NT, 29 November 2017, p.11

its administration of the Information Act, it was considering options “for improving or (at least clarifying) capacities regarding the sharing of information.”³²

- 3.28 While noting that not the IPPs only affect Northern Territory public sector organisations and do not cover non-government organisations, the Department advised that it was proposing to support the Commissioner’s proposal as part of a wider consideration of the *Information Act*:

The Information Commissioner’s suggestion is one that should be given serious consideration as part of a broader review of the Information Act, as well as to complement the regime proposed by the Bill. The Department anticipates developing options in the course of the proposals for the amendments to the *Information Act* regarding pro-disclosure reforms and other significant problems with the Act, including IPP 2.1(d)(i). It is important that there be an appropriate degree of consultation with the community on this issue. This would not occur if the amendment were to be included as a last minute addition to this Bill.³³

Committee’s Comments

- 3.29 The Committee acknowledges the extent of the concerns raised by witnesses, and considers that the Bill should place more onus on obtaining consent. As drafted, the Bill only requires that an information sharing entity ‘should make reasonable efforts’ to obtain consent before sharing information. It is suggested that section 169B(a) of the *Domestic and Family Violence Protection Act 2012* (QLD) is more appropriate as it makes it clear that consent should be obtained ‘whenever it is safe, possible and practical’ to do so.
- 3.30 To clarify the information sharing circumstances under which consent may be overridden, the Committee is of the view that consideration should be given to further amending the information sharing principles at section 124C to incorporate a provision similar to subsection 144J(2)(c) of the *Family Violence Protection Amendment (Information Sharing) Act 2017* (VIC). This subsection provides that information sharing entities should only collect, use or disclose confidential information to the extent that it is necessary to assess or manage risk to a person’s safety because of domestic violence.
- 3.31 In light of the comments made regarding the impact of information sharing on the rights to privacy and confidentiality of Aboriginal women, and the additional privacy concerns that arise in smaller communities, the Committee considers that the information sharing principles should also incorporate a provision similar to subsection 144J(2)(d) of the Victorian legislation. This subsection provides that the collection, use or disclosure of confidential information pertaining to a person that identifies as Aboriginal or Torres Strait Islander should be done in a manner that promotes the right to self-determination, is culturally sensitive and takes into consideration the person’s familial and community connections.

³² Department of the Attorney-General and Justice, *Report on Consultation: Review of the Domestic and Family Violence Act*, Northern Territory Government, Darwin NT, July 2016, p.84

³³ Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>, p.2

- 3.32 The Committee considers that there is a lack of evidence to justify the abrogation of a person's right to privacy and confidentiality by overriding consent in circumstances other than where there are reasonable grounds to believe that a person fears or is experiencing domestic violence and the information may assist to assess, lessen or prevent a serious threat to a person's life, health, safety or welfare.
- 3.33 To permit the sharing of confidential information without consent on the basis that it *may* help the entity receiving the information to provide or arrange a domestic violence related service (section 124E(b)(iii)) is considered to be both inappropriate and inconsistent with equivalent legislation in Queensland and Victoria. Similarly, it is proposed that section 124J, 'Permitted Uses' also be amended to align with the Queensland legislation by incorporating subsection (c) into subsection (b); thereby acknowledging that providing assistance or a domestic violence related service is an aspect of lessening or preventing risk to a person's life, health, safety or welfare.

Accuracy of Information

- 3.34 Noting that the 'efficacy of information sharing relies on the accuracy of that information'³⁴, the Central Australian Women's Legal Service was concerned that the Bill does not include a mechanism for victims or defendants to correct information that is inaccurate.

Evidence shows that statements given by victims affected by trauma may provide a different story in a heightened state to when they have calmed down and can provide clarity around the incident.³⁵

Ensuring the accuracy of information was seen to be particularly problematic where information is shared without the consent or knowledge of the client:

Once the information is out there it is very hard to retract, there is no mechanism there. That is it. Agencies will take that at face value, particularly if it is coming from the police or other agencies they trust ... misinformation has jeopardised the safety of clients. We have had clients who have believed they have had DVO's in place – that the police have communicated back to the shelter or ourselves that an order is in place but has in fact expired, putting clients at risk.³⁶

- 3.35 The Committee also heard that ensuring the accuracy of information is particularly important given that there is not always a clear line between who is the victim and whose is the perpetrator:

Perpetrators are quite famous for their ability to use the legal system, the Territory Families system and the child protection system as a vehicle to further intimidate and harass a victim. That means that a perpetrator will often allege that the victim is the perpetrator, make many claims about the woman having mental issues, drug issues, beating the children and being violent – make many allegations that the victim is the perpetrator.³⁷

³⁴ Central Australian Women's Legal Service, Submission No. 5, p.1

³⁵ Central Australian Women's Legal Service, Submission No. 5, p.1

³⁶ Ms Janet Taylor, Committee Transcript, 14 February 2018, pp.10-11

³⁷ Ms Annabel Pengilley, Committee Transcript, 14 February 2018, p.2

- 3.36 As Ms Taylor explained to the Committee, in the absence of appropriate mechanisms to ensure the accuracy of the information, situations such as this may well compromise a client's safety:

In the past five years our practice has changed significantly to one where a number of our women are now defendants to police DV orders. On further inquiry into their circumstances they are actually in fact the primary victim of domestic violence where the primary aggressor is her partner or ex-partner and who is the person the police initially assess as being the person in need of protection from their records.

These circumstances are getting more common in our experience and is occurring in other services who represent women victims too. We have serious concerns about the impacts of the information sharing provisions that relate to those women defendants to domestic violence orders where it has not been correctly assessed and that information is not wholly accurate around the circumstances creating that domestic violence order and the history behind that.³⁸

- 3.37 In response to these concerns, the Department advised that it considered that:

the IPP's [Information Privacy Principles] are adequate to deal with this issue. Information sharing entities will be required to utilise professional skills and judgment to ensure that they share accurate information, and to ensure that any sharing of information does not place victims at further risk ... The Guidelines published under section 124N are likely to include guidance with regards to ensuring that information that is shared under the regime is accurate and does not place victims at increased risk. The mechanisms established under the IPP's and the APP's [Australian Privacy Principles] will continue to apply in relation to the correction of personal information.³⁹

Committee's Comments

- 3.38 While it is acknowledged that the Northern Territory Information Privacy Principles (IPPs) and the Australian Privacy Principles (APPs) establish appropriate mechanisms for ensuring the accuracy of information, the Committee is mindful of the fact that the Department also noted that:

the IPP's apply only to NT public sector organisations. Across the sector, there is a myriad of requirements that apply differently depending on the type of organisation. For example, some NT non-public sector organisations are bound by Commonwealth law. The Australian Privacy Principles (APP's) generally apply to organisations with an annual turnover of \$3 million or more, as well as health service providers and contracted service providers, under a Commonwealth contract. Smaller non-government organisations (NGO's) may not be covered by the APP's or IPP's.⁴⁰

In light of the above, the Committee considers that to limit the potential risk to clients, uniformly applicable provisions should be incorporated into the Bill, regulations or guidelines to ensure that confidential information that is collected, used or disclosed by information sharing entities is accurate, complete and up to date.

³⁸ Ms Janet Taylor, Committee Transcript, 14 February 2018, p.10

³⁹ Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>, p.7

⁴⁰ Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>, p.1

Obligation to Disclose Information

3.39 Proposed section 124H compels information sharing between information sharing entities in order to assist the requesting entity to assess or lessen a serious threat to a person's life, health, safety or welfare because of domestic violence; or provide or arrange a domestic violence related service for a person. As with the issue of consent, witnesses raised significant concerns as to the justification for mandating information sharing and the extent of the circumstances under which information must be disclosed. As NT Legal Aid Commission noted:

We object to services being compelled to share any information that comes into their possession without the consent of their client beyond what is already provided for under mandatory reporting.⁴¹

3.40 As highlighted in the Explanatory Statement, the Bill is based on the information sharing provisions of the *Care and Protection of Children Act* (NT) and equivalent legislation in Queensland and Victoria.⁴² However, information sharing is only mandated in the latter and is specifically limited to assessment and protection purposes and does not extend to the provision or arranging of domestic violence related services.⁴³

3.41 The mandating of information sharing was not supported by witnesses that appeared before the Committee. Some witnesses were of the view that in light of the existing mandatory reporting requirements, mandating information sharing was not necessary.⁴⁴ However, as the Department pointed out:

Section 124A of the *Domestic and Family Violence Act* requires the mandatory reporting of domestic violence in the Territory. An adult commits an offence if they fail to report to a police officer that they have formed a belief, on reasonable grounds, that a person has, or is likely, to cause harm to another person with whom they are in a domestic relationship; or, the life or safety of a person is under 'serious or imminent threat' because domestic violence has been, is being or is about to be committed.

Mandatory reporting creates an obligation to report actual, suspected or potential instances of domestic violence to police, but it does not facilitate information sharing between agencies for the purposes of assessing or responding to domestic violence.⁴⁵

3.42 Although the *Care and Protection of Children Act* does not compel information sharing, the Department noted that:

It was considered that this regime should build on the child protection provisions, and provide further impetus for improving cultures of information sharing where there is a defined need to share information. However, there are no penalties or legal causes of action for failing to share information.⁴⁶

⁴¹ Northern Territory Legal Aid Commission, Submission No. 2, p.4

⁴² Explanatory Statement, *Domestic and Family Violence Amendment (Information Sharing) Bill 2017 (Serial No. 40)*, <https://parliament.nt.gov.au/committees/spsc/DFV>, p.1

⁴³ *Family Violence Protection Amendment (Information Sharing) Act 2017* (VIC), Divisions 2 and 3

⁴⁴ See for example, Northern Territory Legal Aid Commission, Submission No. 2, p.3; Darwin Domestic Violence Network, Submission No. 7, p.5

⁴⁵ Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>, p.10

⁴⁶ Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>, p.10

- 3.43 However, given the comments made previously regarding consent, the Commissioner for Information and Public Interest Disclosures noted that requiring service providers to:

share their client's confidential information may not in fact create the desired practical change unless those professionals are satisfied that the new scheme is appropriately respectful of an individual's rights to privacy.⁴⁷

- 3.44 Furthermore, noting that this requirement may well stem from the lack of trust that often exists between various government and non-government agencies working in the domestic and family violence area, the Commissioner also pointed out that:

The risk is that requiring external bodies to share personal client information without addressing their trust concerns may actually make them more concerned that the information about their vulnerable patients/clients may be more widely and inappropriately shared by others.⁴⁸

- 3.45 In the absence of any evidence to support mandatory reporting, witnesses questioned the justification for compelling information sharing. As Ms Alex Richmond (Facilitator: Domestic and Family Violence Network) noted:

I do not think there has been any kind of formal review of the effectiveness of mandatory reporting and how that impacts on people's work ... We know mandatory reporting does prevent some people from seeking help. That is a fact. There is concern that this broader legislation could really inhibit people from seeking help.⁴⁹

- 3.46 The NT Legal Aid Commission also pointed out that while there is no penalty for 'breaching' an obligation to disclose information:

This does not warrant mandatory information sharing provisions. Regardless of there being no penalty for breaching, the provisions compelling information sharing are more likely to be followed than breached, eroding the privacy of those whose information is shared.⁵⁰

- 3.47 The NT Legal Aid Commission recommended that all provisions compelling information sharing should be removed from the Bill and noted that:

while the intention of this obligation may be to provide a stronger impetus for sharing information and to improve information sharing cultures that will improve the safety of victims and children, we submit that this is a matter that can be dealt with through internal procedures and training and does not warrant mandatory information sharing provisions.⁵¹

Alternatively, it was recommended that the application of provisions which compel information sharing should be consistent with the Victorian legislation.⁵²

Committee's Comments

- 3.48 While the Committee acknowledges the concerns raised by witnesses, it is of the view that, as is the case in the Victorian legislation, requiring an information sharing

⁴⁷ Commissioner for Information and Public Interest Disclosures, Submission No. 1.p.3

⁴⁸ Commissioner for Information and Public Interest Disclosures, Submission No. 1.p.2

⁴⁹ Ms Alex Richmond, Committee Transcript, 14 February 2018, p.16; see also Ms Annabel Pengilley, Committee Transcript, 14 February 2018, p.5

⁵⁰ Northern Territory Legal Aid Commission, Submission No. 2, p.4

⁵¹ Northern Territory Legal Aid Commission, Submission No. 2, p.7

⁵² Northern Territory Legal Aid Commission, Submission No. 2, p.7

entity to disclose permitted information in order to facilitate the requesting entity's capacity to assess, lessen or prevent a serious threat to a person's life, health, safety or welfare because of domestic violence is appropriate. However, the Committee does not consider that it is appropriate to compel information sharing in order to simply help the requesting entity provide or arrange a domestic violence related service where there is no risk to a person's safety.

- 3.49 Given the issues that have been raised with the Committee regarding operation of the proposed Chapter 5A, in particular issues associated with consent and the obligation to disclose information, the Committee is of the view that the Bill should include 'review' provisions in the same terms as that provided for under Division 10, sections 144S and 144SA of the *Family Violence Protection Amendment (Information Sharing) Act 2017* (VIC).

Confidentiality Protections

- 3.50 Professor Aughterson, raised concerns that the persons that may give or receive information pursuant to proposed section 124K is cast very broadly. Given that the information will almost invariably be confidential and may well be obtained without consent of the parties affected, it is noted that subsection 124K(a)(iii) includes any person (employed, engaged, or appointed by the information sharing entity or provider) whose duties include 'providing assistance or a domestic violence related service to a person'. As Professor Aughterson pointed out:

Leaving aside the question of what is meant by 'providing assistance' (it could be interpreted very broadly), there is a question of whether such authority should be given to a person who is not primarily involved in assessing threats or taking action and has not been allocated the role of giving or receiving information by the entity in question. It might be that the person is not considered by the entity to be an appropriate person to receive or give the information in question. There does not appear to be a similar provision under the Victorian legislation. An analogous provision is at s 169H of the Queensland *Domestic and Family Violence Protection Act*. However, that is more limited; being confined to persons employed or engaged by the entity and whose duties include assessing threats to life etc. or taking action to lessen or prevent such threats. That is equivalent to the provisions at s 124K(a)(i) and (ii) of the NT legislation, but not the broader provision at s 124K(a)(iii).⁵³

- 3.51 The Northern Territory Legal Aid Commission also submitted that section 169H of the Queensland legislation was a more applicable provision.⁵⁴ Ms Janet Taylor (Managing Principal Solicitor: Central Australian Women's Legal Service) raised a similar concern, noting the importance of ensuring that access to information is limited to those that have the relevant security clearances within an organisation.⁵⁵ Ms Richmond also pointed out that, given the skills base of many people employed or engaged to 'provide assistance' in domestic and family violence services, it would

⁵³ Professor Ned Aughterson, *Review of the Domestic and Family Violence Amendment (Information Sharing) Bill 2017*, (unpublished), 23 January 2018, pp.1-2

⁵⁴ Northern Territory Legal Aid Commission, Submission No. 2, p.3

⁵⁵ Ms Janet Taylor, Committee Transcript, 14 February 2018, p.10

not necessarily be pertinent for them to give, receive or use information concerning a client.

We have a high staff turnover. It is poorly paid work and difficult work. It is often people with a pretty low skill base doing that work. That is a consideration too when you are thinking about this because those are the people who might get an understanding from the legislation, 'I am mandated to share the information so if someone asks me for something I will give it because I am mandated to share information now'. That of course, has safety implications for clients.⁵⁶

3.52 The Commissioner for Information and Public Interest Disclosures cited similar concerns noting that:

While keeping victims and their families safe is the prime objective, people dealing with and sharing their personal information must be well trained and equipped so that unintended consequences are minimised.⁵⁷

3.53 The Department advised that it considered that:

the current provisions are an adequate regime to govern the sharing of information ... The Guidelines should make it clear that the purpose for sharing or requesting information should generally relate to that person's duties. For example, if a person is employed to provide domestic violence related services, but those services do not include taking action to assess or respond to domestic violence threats, that person could only receive a narrow range of information that relates to providing their specific service. They will not generally be able to disclose or request information relevant to assessing or responding to threats.

However, this general principle should not, for example, constrict cross-agency meetings and information sharing where a victim's case is being managed by a number of services with different roles in assessing risk, responding to risk and providing services. Such a requirement would affect how Family Safety Framework meetings currently operate, by requiring information to be discussed in a complicated manner to delineate the different roles of services (which are likely to overlap).

Committee's Comments

3.54 While the Committee acknowledges the Department's comment that the guidelines should make it clear that disclosing or requesting information should generally relate to that person's duties, this does not address the issue of how information sharing entities ensure that information is only received and used by the appropriate person; especially where the information in question is not specific to a particular person's duties. While guidelines are not generally enforceable, the Committee notes that pursuant to section 144P(5) of the *Family Violence Protection Amendment (Information Sharing) Act 2017* (VIC), information sharing entities must comply with any guidelines issued when handling confidential information.

3.55 Given that 'providing assistance' may well extend to a person with little or no formal training in, or responsibility for assessing risk, responding to risk or providing a domestic violence related service, the Committee is of the view that subsection

⁵⁶ Ms Alex Richmond, Committee Transcript, 14 February 2018, p.15

⁵⁷ Commissioner for Information and Public Interest Disclosures, Submission No. 1, p.3

124K(a)(iii) does not have sufficient regard for the rights and liberties of individuals and is an inappropriate delegation of administrative power.⁵⁸

- 3.56 As highlighted by Professor Aughterson, the Committee notes that proposed subsection 124K(b) provides that information sharing may also be carried out by ‘a person otherwise authorised by the entity or provider to give, receive or use the information.’ It is the Committee’s view that implementation of this provision will serve to ensure that cross-agency meetings and information sharing where a victim’s case is being managed by a number of services with different roles in assessing risk, responding to risk and providing services are in no way constricted.

Guidelines and Regulations

- 3.57 As provided for under proposed section 124N, the CEO must make administrative guidelines for the operation of the Bill within 56 days after the commencement of this section. According to subsection 124N(3), the guidelines may provide for the following:

- (a) procedures for the requesting, sharing and use of, and the refusal to share or disclose, information;
- (b) procedures for storage of information; and
- (c) circumstances under which an information sharing entity should obtain the consent of a person before sharing information about that person.

- 3.58 Subsection 124N(2) requires that before making the guidelines, the CEO must consult with the Information Commissioner. However, given the critical significance of the guidelines for frontline workers that will ultimately be charged with implementation of the legislation, witnesses impressed on the Committee the need to ensure that the sector is consulted and given the opportunity to provide considered feedback.

- 3.59 On behalf of the NT Health Domestic Family and Sexual Violence Advisory Group (including managers of the Sexual Assault Referral Centres) and NT Health Information and Privacy Officers, the Department of Health recommended that:

The Committee note that when the Bill is passed, a high level group of key government and non-government stakeholders will be convened to ensure subordinate legislation related to the legislative amendment meets the intention of improving information sharing while safeguarding individual privacy and wellbeing.⁵⁹

- 3.60 Similarly, as submitted by the Central Australian Women’s Legal Service:

We would strongly recommend that prior to the passing of this legislation, stakeholders are provided with a copy of the administrative guidelines to enable a more robust discussion around the practical operation of the proposed legislation.⁶⁰

⁵⁸ Social Policy Scrutiny Committee Terms of Reference (4)(c)(iii)(C), <https://parliament.nt.gov.au/committees/spsc#ToR>

⁵⁹ Department of Health, Submission No. 8.p.2

⁶⁰ Central Australian Women’s Legal Service, Submission No. 5, p.2

3.61 The Department advised that in mandating an obligation to consult with the Information Commissioner, proposed section 124N is not intended to suggest that consultation would be limited to the Commissioner. The Committee was further advised that:

the Department does not see any problem in providing a statutory obligation for wider consultation ... it is anticipated that the relevant agency will consult broadly across the domestic and family violence sector on the draft Guidelines.⁶¹

⁶¹ Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>, p.12

Committee's Comments

- 3.62 In light of the comments made in relation to consultation on the development of the Bill, and the importance of the guidelines with regards to the overall operation of the legislation, the Committee is of the view that the Bill should incorporate a provision similar to that of section 144P of the *Family Violence Protection Amendment (Information Sharing) Act 2017* (VIC). This section provides that before guidelines can be issued, a draft of the proposed guidelines must be published on the internet along with a notice inviting submissions. Similarly, where significant or substantial amendments are proposed, the revised draft must be publicised and submissions again called for.
- 3.63 The Committee considers that a provision of this nature will ensure that, in addition to having input into the development of the guidelines through the proposed consultation process, stakeholders will have an opportunity to comment on both the draft guidelines and any future substantial amendments that may be proposed.

Appendix A: Submissions Received, Public Briefing and Public Hearings

Submissions Received

1. Commissioner for Information and Public Interest Disclosures
2. Northern Territory Legal Aid Commission
3. Domestic and Family Violence Service – NPY Women’s Council
4. Northern Territory Council of Social Services
5. Central Australian Women’s Legal Service
6. Top End Women’s Legal Service
7. Domestic and Family Violence Network
8. Department of Health

Public Briefing – Wednesday, 31 January 2018

Department of Attorney-General and Justice

- Mr Greg Shanahan: Chief Executive Officer
- Mr Robert Bradshaw: Director Policy Coordination
- Ms Laura Berta: Policy Lawyer

Public Hearing – Wednesday, 14 February 2018

- Ms Fiona Hussin: Deputy Director, Northern Territory Legal Aid Commission
Ms Annabel Pengilley: Managing Solicitor, Domestic Violence Legal Service
- Ms Janet Taylor: Managing Principal Solicitor, Central Australian Women’s Legal Service
- Ms Alex Richmond: Facilitator, Domestic and Family Violence Network
Ms Annabel Pengilley: Managing Solicitor, Domestic Violence Legal Service
- Mr Robert Bradshaw: Director Policy Coordination, Department of the Attorney-General and Justice
Ms Laura Berta: Policy Lawyer, Department of the Attorney-General and Justice

Note: Copies of submissions, hearing transcripts and tabled papers are available at: <https://parliament.nt.gov.au/committees/spsc/DFV>

Bibliography

Department of the Attorney-General and Justice, *Report on Consultation: Review of the Domestic and Family Violence Act*, Northern Territory Government, Darwin NT, July 2016

Department of the Attorney-General and Justice, *Improving Court Responses to Domestic and Family Violence Matters in Alice Springs*, Northern Territory Government, Darwin NT, December 2016

Department of the Attorney-General and Justice, *Answers to Written Questions*, 13 February 2018, <https://parliament.nt.gov.au/committees/spsc/DFV#TP>

Domestic and Family Violence Act (NT)

Domestic and Family Violence Amendment (Information Sharing) Bill 2017 (Serial No. 40), <https://parliament.nt.gov.au/committees/spsc/DFV>

Domestic and Family Violence Protection Act 2012 (QLD)

Explanatory Statement, *Domestic and Family Violence Amendment (Information Sharing) Bill 2017* (Serial No. 40), <https://parliament.nt.gov.au/committees/spsc/DFV>

Family Violence Protection Amendment (Information Sharing) Act 2017 (VIC)

Legal Aid Act (NT)

Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, https://parliament.nt.gov.au/_data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf

Professor Ned Aughterson, *Review of the Domestic and Family Violence Amendment (Information Sharing) Bill 2017*, (unpublished), 23 January 2018

Statement of Compatibility with Human Rights, *Domestic and Family Violence Amendment (Information Sharing) Bill 2017* (Serial No. 40), <https://parliament.nt.gov.au/committees/spsc/DFV>

Territory Families, *Review of the Family Safety Framework in the Northern Territory 2016-2017: Summary of Findings and Recommendations*, Northern Territory Government, Darwin NT, 29 November 2017