

**NORTHERN TERRITORY OF AUSTRALIA**

**DOMESTIC AND FAMILY VIOLENCE AMENDMENT (INFORMATION SHARING) ACT 2018**

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**Act No. 21 of 2018**

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 21 of 2018

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An Act to amend the *Domestic and Family Violence Act* and the *Information Act*

[Assented to 8 November 2018]

[Introduced 23 November 2017]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Domestic and Family Violence Amendment (Information Sharing) Act 2018*.

### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

## Part 2 Amendment of Domestic and Family Violence Act

### 3 Act amended

This Part amends the *Domestic and Family Violence Act*.

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**4 Section 3 amended**

(1) Section 3(2)(c)

*omit*

orders.

*insert*

orders;

(2) After section 3(2)(c)

*insert*

(d) the enabling of particular entities to share information so that:

- (i) assessments can be made about threats to the life, health, safety or welfare of people because of domestic violence; and
- (ii) responses can be made to threats mentioned in subparagraph (i); and
- (iii) people who fear or experience domestic violence, or people who commit domestic violence, can be referred to appropriate providers of domestic violence related services.

**5 Section 4 amended**

Section 4(1)

*insert (in alphabetical order)*

**CEO**, for Chapter 5A, see section 124B.

**domestic violence related service**, for Chapter 5A, see section 124B.

**information**, for Chapter 5A, see section 124B.

**Information Commissioner** means the person appointed under section 85 of the *Information Act*.

**information sharing entity**, for Chapter 5A, see section 124B.

**information sharing guidelines**, for Chapter 5A, see section 124B.

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**6 Chapter 5A inserted**

After section 124A

*insert*

**Chapter 5A Information sharing****Part 5A.1 Preliminary matters****124B Definitions**

In this Chapter:

**CEO** means the Chief Executive Officer of the Agency.

**domestic violence related service** means an assistance or support service provided to any of the following:

- (a) persons who fear or experience domestic violence;
- (b) other persons affected by that domestic violence;
- (c) persons who commit domestic violence.

*Examples for definition domestic violence related service*

*Alcohol and other drug treatment services, allied health services, counselling, disability services, health services, housing and homelessness services, legal services and sexual assault services.*

**information** includes facts and opinions.

**information sharing entity** means each of the following:

- (a) the CEO;
- (b) the Chief Executive Officer of an Agency that is responsible for the following:
  - (i) adult correctional services;
  - (ii) child protection services;
  - (iii) community services;
  - (iv) disability services;
  - (v) education services;

- (vi) housing services;
- (vi) public health services;
- (viii) youth justice services;
- (c) the Chief Executive Officer of any other Agency that provides a domestic violence related service;
- (d) the Commissioner;
- (e) the principal, as defined in section 5 of the *Education Act*, of a non-government school registered under that Act;
- (f) a court or tribunal;
- (g) any other person who, or entity that:
  - (i) provides a domestic violence related service; and
  - (ii) is prescribed by regulation for this definition.

***information sharing guidelines*** means the guidelines made under section 124N.

#### **124C Information sharing principles**

- (1) The principles set out in this section should be used for guidance in relation to the collection, use or disclosure of information that is authorised or required to be collected, used or disclosed under this Chapter.
- (2) An information sharing entity should obtain the consent of a person who fears or experiences domestic violence before sharing information about the person unless it is not safe, possible or practical to do so.
- (3) However, the safety, protection and wellbeing of a person who fears or experiences domestic violence are paramount.
- (4) In disclosing information about a person, an information sharing entity should consider whether disclosing the information is likely to adversely affect the safety of the person or another person.
- (5) An information sharing entity should only collect, use or disclose information to the extent that it is necessary to assess and manage risk to a person's safety because of domestic violence.

- (6) An information sharing entity that collects, uses or discloses the information of an Aboriginal person should do so in a manner that:
  - (a) promotes cultural safety; and
  - (b) is culturally sensitive; and
  - (c) considers the person's familial and community connections.
- (7) An information sharing entity should have regard to a person's:
  - (a) cultural, sexual and gender identity; and
  - (b) religious faith (if any).
- (8) These principles are not intended to:
  - (a) create in any person any legal right or give rise to any civil cause of action; or
  - (b) affect in any way the interpretation of any Act or other law in force in the Territory.

#### **124D Application of this Chapter to courts**

If any of the following persons or bodies is an information sharing entity, nothing in this Chapter applies to the disclosure of information by that person or body in relation to, or for the purposes of, its judicial or quasi-judicial functions:

- (a) a court or tribunal;
- (b) the holder of a judicial or quasi-judicial office or other office pertaining to a court or tribunal in their capacity as the holder of that office;
- (c) a registry or other office of a court or tribunal;
- (d) the staff of such a registry or other office in their capacity as members of that staff.

## **Part 5A.2 Information sharing**

### **124E Sharing information for assessing or preventing domestic violence threat**

An information sharing entity may give information to another information sharing entity if the entity that holds that information believes on reasonable grounds that:

- (a) a person fears or is experiencing domestic violence; and
- (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, including by providing or arranging a domestic violence related service to or for a person.

### **124F Police may share certain information with information sharing entities**

- (1) A police officer may give the information about a person that is mentioned in subsection (2) to an information sharing entity that provides a domestic violence related service if the police officer believes 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 domestic violence; or
  - (b) the person has committed domestic violence against another person.
- (2) The information a police officer may give an information sharing entity is the following:
  - (a) the person's name;
  - (b) the person's contact details;
  - (c) details of the basis for the belief;



- (d) any other information that is, in the police officer's opinion, reasonably necessary to assist the information sharing entity to provide a domestic violence related service to the person.

### **124G Limits on information that may be shared**

- (1) Despite sections 124E and 124F, information must not be shared under this Chapter if:
  - (a) the information sharing entity that holds the information believes on reasonable grounds that giving the information could:
    - (i) prejudice the investigation of a contravention (or possible contravention) of a law in force in the Territory; or
    - (ii) prejudice a coronial inquest or inquiry; or
    - (iii) prejudice any proceeding in a court or tribunal; or
    - (iv) contravene any legal professional or client legal privilege; or
    - (v) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained; or
    - (vi) endanger a person's life or physical safety; or
    - (vii) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law of the Territory; or
  - (b) sharing of the information is prohibited by or under:
    - (i) the *Criminal Records (Spent Convictions) Act*; or
    - (ii) any other Act prescribed by regulation.
- (2) The *Information Act* must not be prescribed under subsection (1)(b)(ii).

**124H      Obligation to disclose for domestic violence assessment or protection purpose**

An information sharing entity must disclose any information that is permitted to be disclosed under this Chapter to another information sharing entity that has requested the information in order to help the requesting entity to:

- (a) assess whether there is a serious threat to a person's life, health, safety or welfare because of domestic violence; or
- (b) lessen or prevent a serious threat to a person's life, health, safety or welfare because of domestic violence.

**Part 5A.3      Confidentiality protections****124J      Permitted uses of shared information**

Information shared under this Chapter may be used to do the following:

- (a) assess whether there is a serious threat to a person's life, health, safety or welfare because of domestic violence;
- (b) lessen or prevent a serious threat to a person's life, health, safety or welfare because of domestic violence, including by:
  - (i) contacting, or attempting to contact, the person or another person; or
  - (ii) providing assistance or a domestic violence related service to a person.

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

A requirement of this Chapter for an information sharing entity to give, receive or use information may only be carried out by:

- (a) a person (who may be a police officer) who is employed, engaged or appointed by that entity or provider and whose duties include:
  - (i) assessing threats to life, health, safety or welfare because of domestic violence; or

- (ii) taking action to lessen or prevent threats to life, health, safety or welfare because of domestic violence, including by providing or arranging a domestic violence related service to or for a person; or
- (b) a person otherwise authorised by the entity or provider to give, receive or use the information.

#### **124L Unauthorised disclosure of confidential information**

- (1) A person commits an offence if:
  - (a) the person acquires information under this Chapter; and
  - (b) the person intentionally engages in conduct that results in the disclosure of the information and the person is reckless in relation to that result.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) However, a person does not commit an offence against subsection (1) by:
  - (a) disclosing or using the information as required or authorised by this Chapter; or
  - (b) disclosing or using the information for any of the following purposes authorised by the Minister:
    - (i) research relating to the purpose of this Chapter;
    - (ii) an inquiry or investigation conducted by a coroner, the police force or another law enforcement agency;
    - (iii) any other purpose prescribed by regulation; or
  - (c) disclosing the information to a court or tribunal; or
  - (d) disclosing or using the information in compliance with the Information Privacy Principles or the National Privacy Principles, whether or not the person, or the entity that employs or engages the person, is bound by those Principles; or
  - (e) making a disclosure or use that is otherwise required or authorised by law.

(4) A failure to comply with the information sharing guidelines does not of itself constitute an offence against subsection (1).

(5) In this section:

**Information Privacy Principles** means the principles set out in Schedule 2 to the *Information Act*.

**National Privacy Principles** means the principles set out in Schedule 3 to the *Privacy Act 1988* (Cth).

#### **124M Police use of confidential information**

(1) A police officer who receives information under this Chapter, and any other police officer to whom the information is disclosed, may:

(a) subject to subsection (2), use the information to the extent necessary to perform the officer's functions as a police officer; or

(b) use the information immediately to the extent necessary and without complying with subsection (2) because, in the opinion of the police officer, urgent circumstances require immediate use of the information in order to perform the officer's functions as a police officer.

(2) A police officer must not use information received under this Chapter for an investigation or for a proceeding for an offence unless:

(a) the police officer, or another police officer, has consulted with the information sharing entity that gave the information about the proposed use; and

(b) taking that consultation in account, the police officer has determined that the proposed use of the information is in the best interests of a person who is experiencing domestic violence.

(3) In this section:

**use**, in relation to information, includes:

(a) disclose the information to someone else; and

(b) give someone else access to the information.

## **Part 5A.4 Guidelines**

### **124N Minister to make and publish guidelines**

- (1) The Minister must make administrative guidelines for the operation of this Chapter.
- (2) Before making or amending the guidelines, the Minister must consult with the following:
  - (a) the Information Commissioner;
  - (b) information sharing entities;
  - (c) any other Agency affected by the guidelines.
- (3) Without limiting subsection (1), the guidelines may provide for the following:
  - (a) procedures for the requesting, sharing and use of, and the refusal to share or disclose, information under this Chapter;
  - (b) procedures for the storage of information under this Chapter;
  - (c) circumstances under which an information sharing entity should obtain the consent of a person before sharing information about that person;
  - (d) processes for ensuring that confidential information shared is accurate and complete.
- (4) The guidelines:
  - (a) must be published on the Internet; and
  - (b) may be published in any other manner decided by the Minister.

### **124P Information sharing entities to comply with guidelines**

An information sharing entity must comply with the information sharing guidelines.

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## **Part 5A.5 Risk assessment and risk management framework**

### **124Q CEO may approve framework**

- (1) The CEO may approve a framework for family violence risk assessment and family violence risk management.
- (2) The CEO may approve an amendment to an approved framework.
- (3) The framework:
  - (a) must be published on the Internet; and
  - (b) may be published in any other manner decided by the CEO.

### **124R Obligation to align with approved framework**

An information sharing entity must ensure that its policies, procedures, practice guidance and tools relevant to the sharing of information under this Chapter align with the framework approved under section 124Q.

## **Part 5A.6 Miscellaneous**

### **124S Protection of persons giving information**

- (1) A person is not civilly or criminally liable for the act of giving information in good faith in the exercise of a power or function as an information sharing entity.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act.

### **124T Interaction with other laws**

- (1) This Chapter has effect despite the operation of any other law of the Territory that:
  - (a) contains a power or obligation to give information; or
  - (b) prohibits or restricts the disclosure of information.
- (2) This Chapter does not limit any power or obligation under another Act to give information.
- (3) Disclosure of information under this Chapter does not waive, or otherwise affect, a privilege a person may claim in relation to the information under any other law of the Territory.

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## **Part 5A.7      Review**

### **124U      Reviews of operation of Chapter**

- (1) The Information Commissioner must review:
  - (a) the first 2 years of operation of this Chapter; and
  - (b) the 3rd to 5th years of operation of this Chapter.
- (2) In conducting the reviews, the Information Commissioner must consult with:
  - (a) the Minister; and
  - (b) information sharing entities.
- (3) The reviews must include consideration of any adverse effects of this Chapter.
- (4) The report of the reviews may include any recommendations on any matter addressed in the reviews.
- (5) The Information Commissioner must give a copy of the report to the Minister within 6 months after the end of each period of operation being reviewed.
- (6) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after the Minister receives the copy.

### **7      Section 127 amended**

- (1) Section 127, before "The"  
*insert*
- (1)
- (2) Section 127, at the end  
*insert*
- (2) Without limiting subsection (1), the regulations may provide for the following:
  - (a) compliance conditions for information sharing entities under Chapter 5A;

- 
- (b) appropriate information sharing policies that information sharing entities under Chapter 5A are required to have in place;
  - (c) in relation to the framework under section 124P, the following:
    - (i) entities that are required to comply with the framework and entities that are not;
    - (ii) any prescribed forms or templates relevant to it;
  - (d) record keeping requirements for Chapter 5A.
- (3) Before a regulation is made prescribing a person or body to be an information sharing entity under paragraph (f)(ii) of the definition of **information sharing entity**, the Minister must:
- (a) consult with the person or body; and
  - (b) be satisfied that the person or body would comply with the information sharing guidelines.

## Part 3                      Amendment of Information Act

### 8                      Act amended

This Part amends the *Information Act*.

### 9                      Section 104 amended (Complaint about interference with privacy)

Section 104(1)(a)

*omit, insert*

- (a) that the organisation has collected or handled the person's personal information in a manner that contravenes:
  - (i) an IPP; or
  - (ii) a code of practice; or
  - (iii) an authorisation; or
  - (iv) Chapter 5A of the *Domestic and Family Violence Act*;



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**10 Section 106 amended (Commissioner to accept, reject or refer complaint)**

Section 106(3)(b) and (d)

*omit*

or an authorisation

*insert*

, an authorisation or Chapter 5A of the *Domestic and Family Violence Act*

**11 Schedule 2 amended (Information Privacy Principles)**

Schedule 2, Information Privacy Principle 2.1(d)(i)

*omit*

and

*insert*

or

**Part 4 Repeal of Act**

**12 Repeal of Act**

This Act is repealed on the day after it commences.