

Serial 40
Domestic and Family Violence Amendment (Information Sharing) Bill 2017
Ms Fyles

A Bill for an Act to amend the *Domestic and Family Violence Act*

NORTHERN TERRITORY OF AUSTRALIA

DOMESTIC AND FAMILY VIOLENCE AMENDMENT (INFORMATION SHARING) ACT 2017

Act No. [] of 2017

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2017

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

[Assented to [] 2017]
[Second reading [] 2017]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Domestic and Family Violence Amendment (Information Sharing) Act 2017*.

2 Commencement

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

3 Act amended

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

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

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) court services;
 - (v) disability services;
 - (vi) education services;
 - (vii) housing services;
 - (viii) public health services;
 - (ix) youth justice services;
- (c) the Chief Executive Officer of any other Agency that provides a domestic violence related service to any of the following:
 - (i) persons who fear or experience domestic violence;
 - (ii) other persons affected by that domestic violence;
 - (iii) persons who commit domestic violence;
- (d) the Commissioner;

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- (e) the principal, as defined in section 5 of the *Education Act*, of a non-government school registered under that Act;
 - (f) any other person who, or entity that:
 - (i) provides a domestic violence related service; and
 - (ii) is prescribed by regulation for this definition.

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 make reasonable efforts to obtain the consent of a person who fears or experiences domestic violence before sharing information about the person.
- (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) 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;

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- (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; or
 - (iii) provide or arrange 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 the 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;

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- (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 family 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; or
- (c) provide or arrange a domestic violence related service to or for a person.

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 contacting, or attempting to contact, the person or another person;
- (c) provide 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

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- (ii) taking action to lessen or prevent threats to life, health, safety or welfare because of domestic violence; or
 - (iii) providing assistance or a domestic violence related service to 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 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) Subsection (1) does not apply to any of the following:
- (a) a disclosure or use that is required or authorised by this Chapter;
 - (b) a disclosure or use 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;
 - (c) a disclosure to a court or tribunal;
 - (d) a disclosure or use that is in compliance with the Information Privacy Principles or the National Privacy Principles, whether or not the person who makes the disclosure or uses the information, or the entity that employs or engages the person, is bound by those Principles;
 - (e) a disclosure or use that is otherwise required or authorised by law.

(4) 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 CEO to make and publish guidelines

- (1) The CEO must make administrative guidelines for the operation of this Chapter.
- (2) Before making the guidelines, the CEO must consult with the Information Commissioner appointed under section 85 of the *Information Act*.
- (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.
- (4) The guidelines:
 - (a) must be published on the Internet; and
 - (b) may be published in any other manner decided by the CEO.
- (5) The CEO must make the guidelines within 56 days after the commencement of this section.

Part 5A.5 Risk assessment and risk management framework

124P 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.

124Q 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 124P.

Part 5A.6 Miscellaneous

124R 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.

124S 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.

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.

8 Repeal of Act

This Act is repealed on the day after it commences.