

Exchanging information relating to children or young people in a child wellbeing context

Purpose of Exchanging Information

The Report of the Special Commission of Inquiry into Child Protection Services in NSW (2008) highlighted the multi-dimensional nature of risks facing vulnerable children and families where factors such as domestic violence, drug and alcohol use or mental health and neglect feature in child protection reporting, none of which can be satisfactorily addressed by any one agency working alone. The Commission stressed the importance of interagency collaboration in the provision of services to vulnerable children and their families and called for a clear and workable structure for the flow of information between agencies to facilitate this collaboration.

The Commission also highlighted the importance of information exchange to help identify cumulative harm from a combination of factors and/or over time. Sometimes it only becomes clear that a child or young person has been harmed, or is at risk, when information from a number of sources is combined to create a complete picture about their circumstances.

The Commission found that the regime of State privacy laws and regulations in place at the time of the Inquiry was a major barrier to interagency work. That regime involved considerable complexity and resulted in reluctance by organisations to exchange information because of doubts about whether or not it was lawful. The Commission recommended legislative amendments to free up the exchange of information between government and non-government organisations in the human services and justice sectors. The new Chapter 16A in the *Children and Young Persons (Care and Protection) Act 1998* contains those amendments.

Another imperative for greater information sharing among human services and justice organisations is the concerns of children and young people themselves. While they want their privacy to be respected, they do not wish to have to repeat their story to the various government and non-government organisations assisting them. In cases where they may have suffered sexual assault, serious physical abuse or neglect, those children and young people and their carers do not wish to have to relive the trauma with multiple accounts of what happened to them. Given the sensitive nature of these and other issues that children and young people face it is important to manage information in a sensitive way, and where possible to inform the child or young person early on that information about them might be provided to other organisations .

The legal framework for interagency information exchange established under the *Children and Young Persons (Care and Protection) Act 1998* allows organisations to share information about children or young people without their clients' consent. It takes precedence over the protection of confidentiality or of an individual's privacy because the safe, welfare and wellbeing of children and young people are paramount.

These guidelines set out how organisations can share information in ways which comply with the legal framework. Staff in relevant organisations in the human services and justice sectors are encouraged to continue to exchange information with each other in the normal course of their business. At the same time, the challenge from the Commission is for organisations to also become more proactive with their information sharing where this will further the safety, welfare or wellbeing of children or young people.

Legal framework for exchanging information

There are two schemes for the exchange of information relating to the safety, welfare or wellbeing of children and young persons and unborn children under the *Children and Young Persons (Care and Protection) Act 1998* (the Act).

Under **Chapter 16A** of the Act certain human services and justice agencies and non-government organisations (NGOs) will now be able to share information relating to the safety, welfare or wellbeing of children or young people without client consent and whether or not the child or young person is known to Community Services.

Section 248 will also still apply to the exchange of information concerning statutory cases between Community Services and other relevant human services and justice agencies and non-government organisations.

The provisions in Chapter 16A are facilitative in nature and apply only to NGOs and NSW government agencies, whereas **Section 248** also applies to certain Commonwealth bodies. Section 248 centres on Community Services role in information exchange and contains stronger powers of direction and discretion which are appropriate to Community Services' statutory role in relation to child safety, welfare and wellbeing. It also still applies to the exchange of information between Community Services, in exercising its statutory powers, and other relevant human services and justice agencies and non-government organisations.

Section 29: protects the identity of anyone who makes a report about a child or young person to the Community Services' Helpline. Therefore in the course of sharing information with another organisation under Chapter 16A and/or section 248, you must not disclose the identity of anyone who has made such a report or any information from which the reporter's identity can be deduced.

Providing and requesting information and coordinating services under Chapter 16A

Chapter 16A came into force on 30 October 2009. It allows information to be exchanged between certain organisations working with or providing services to children and young people and their families, despite other laws that prohibit or restrict the disclosure of personal information such as the *Privacy and Personal Information Protection Act 1998*, the *Health Records and Information Privacy Act 2002* and the *Commonwealth Privacy Act 1988*.

Up until now information exchange has generally only been possible where the information was sent to or received from Community Services.

Chapter 16A allows for the exchange of information between prescribed bodies without Community Services involvement. As used in this guide, the term "agency" applies to all "prescribed bodies", whether they are government or non-government organisations.

Objectives and Principles

Chapter 16A:

- establishes a scheme for information exchange between organisations while still protecting the confidentiality of information, and
- requires organisations to take reasonable steps to co-ordinate the provision of services with other agencies.

The four key principles to consider are (s245A(2)):

1. agencies that have responsibilities for children or young persons should be able to provide and receive information that promotes the safety, welfare or wellbeing of children or young persons,
2. agencies should work collaboratively and respect each other's functions and expertise,
3. agencies should be able to communicate with each other to facilitate the provision of services to children and young persons and their families,
4. the needs and interests of children and young persons, and of their families, in receiving services relating to the care and protection of children or young people take precedence over the protection of confidentiality or of an individual's privacy

Prescribed bodies

Prescribed bodies may share information without having to rely on Community Services as an intermediary (which is the case when relying on section 248).

The legislation and associated regulations specify which are prescribed bodies.¹

Generally prescribed bodies are:

- NSW Police Force
- a government department or a public authority
- a government school or a registered non-government school or a TAFE
- a public health organisation or a private hospital
- a private fostering agency or a private adoption agency
- a designated agency which is a department of the Public Service or an organisation that arranges out of home care
- any agencies that conducts a residential child care centre or a child care service under the 1987 Act
- any other organisations that have direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children.

If you are unsure whether your organisation is included in the scheme of information sharing under Chapter 16A, you should seek legal advice.

Unborn children

Organisations may rely on Chapter 16A to share information relating to the safety, welfare or wellbeing of an unborn child who is the subject of a pre-natal report. This includes information about the unborn child, the family and the expected date and place of birth.

Before providing information about an unborn child you need to know if a pre-natal report has been made to Community Services.

Risk of significant harm

Information sharing under Chapter 16A applies in relation to children or young people both above and below the statutory reporting threshold (risk of significant harm from end January 2010). A child or young person below the statutory reporting threshold may still need assistance even if they do not need statutory intervention. In other words, exchange of information can occur irrespective of whether a report has been made to the Community Services' Helpline.

Informing clients about information exchange

Consent is not necessary for exchange of information under Chapter 16A. It is however a principle of the *Children and Young Persons (Care and Protection) Act 1998* that a child or young person should be given an opportunity to express views on personal matters.

It is important that organisations providing a service to a child, young person or their parents/carers inform them early on that information about them may be provided to other organisations if practicable. Where appropriate, a client should be informed that information about them is being disclosed to another agency so long as this does not place the child or young person at further risk. Keeping the client informed is part of best practice case management and helps to maximise client engagement. This includes informing children, young people or families about their right to provide feedback, including complaints, about the care or services they are receiving or the disclosure of information under Chapter 16A.

Where a discussion is held with a child or young person present to inform them of which services they will be referred to, the worker should provide the child or young person (and accompanying adult if present) with an opportunity to agree to a referral to another agency. It should also be explained that this will mean that relevant information about the child or young person will be provided to the other agency. The worker must then document whether agreement is forthcoming in the case notes.

¹ A prescribed body is any organisation specified in section 248 (6), *Children and Young Persons (Care and Protection) Act 1998* or in clause 7, *Children and Young Persons (Care and Protection) Regulation 2000*.

There is no set age for informing children about information exchange. Generally children over the age of 12 are considered capable of understanding aspects of their own privacy and information sharing issues. Younger children may also be able to express a view.

Circumstances in which you would **not** seek to inform the child/young person or their parent/carer about exchanging information include:

- where you believe it is likely to further jeopardise a child or young person's safety, welfare or wellbeing
- where you believe it would place you or another person at risk of harm
- where you are unable to contact a parent/carer and the matter is urgent.

An example could be where a school is seeking information from an agency that is working with the family about whether it is safe to permit the child to be collected from the school by specific family members.

Providing information²

It is important to interagency collaboration that agencies should be able to provide other agencies with information they believe is relevant to the safety, wellbeing or welfare of a child or young person (or class of children or young persons) without having to wait for a request for that information.

The legislation provides that an organisation may provide another organisation with information relating to a child or young person to assist the other organisation to:

- make a decision, assessment or plan relating to the safety, welfare or wellbeing of the child or young person, or
- initiate or conduct any investigation relating to the safety, welfare or wellbeing of the child or young person (for example Joint Investigation Response Team investigation)³, or
- provide any service relating to the safety, welfare or wellbeing of the child or young person, or
- manage any risk to a child or young person (or class of children or young persons) that might arise in the recipient's capacity as an employer or designated agency⁴.

The legislation makes it clear that information may be provided with or without a request being made if the provider reasonably believes it may assist the receiving organisation for the purposes above. This means the person providing the information has good reasons for his or her belief.

Examples of where information may be provided include:

- different organisations working together in a case conference to prepare a case management plan for a child
- Child Wellbeing Units from different government agencies exchanging information to assess whether or not concerns about a child meets the threshold of being at risk of significant harm for reporting to the Community Services' Helpline
- Child Wellbeing Unit advising a mandatory reporter that another organisation has been involved with a child recently and suggesting the mandatory reporter contact the other organisation
- a mandatory reporter giving information about a family to a Family Referral Service when making a referral to that service
- a clinician involved with a family who has concerns that a particular child is being neglected choosing to speak with another service provider (e.g. an NGO service such as Family Support who has been regularly involved with the family)
- an agency seeking information about an employee or carer where there are concerns for the safety of a child or young person.

Requesting information⁵

An organisation can be requested to provide any information it holds relating to the safety, welfare or wellbeing of a particular child or young person (or class of children or young persons).

An organisation may request information from another organisation about a particular child or young person and/or their family if it will assist the requesting organisation to:

- make a decision, assessment or plan relating to the safety, welfare or wellbeing of the child or young person or
- initiate or conduct any investigation relating to the safety, welfare or wellbeing of the child or young person (for example Joint Investigation Response Team investigation)⁶ or

² Section 245C, *Children and Young Persons (Care and Protection) Act 1998*. Note all future references to legislation relate to that Act unless otherwise specified.

³ See footnote 2

⁴ See footnote 2

⁵ Section 245D (1) – (2)

- provide any service relating to the safety, welfare or wellbeing of the child or young person; or
- manage any risk to a child or young person (or class of children or young persons) that might arise in the recipient's capacity as an employer or designated agency⁷.

However the request must be clear about its purpose and how the information is expected to assist.

Chapter 16A permits authorised staff in prescribed bodies to exchange information. If you are unsure whether you work for a prescribed body or whether you are an authorised person, you should ask your agency/organisation contact or legal adviser.

[Link to form for request for information.](#)

Agreeing to a request for information⁸

A request for information should be agreed to if it will assist the requesting organisation to:

- make a decision, assessment or plan relating to the safety, welfare or wellbeing of the child or young person, or
- initiate or conduct any investigation relating to the safety, welfare or wellbeing of the child or young person (for example Joint Investigation Response Team investigation)⁹, or
- provide any service relating to the safety, welfare or wellbeing of the child or young person, or
- manage any risk to a child or young person (or class of children or young persons) that might arise in the recipient's capacity as an employer or designated agency¹⁰.

Before agreeing to the request, a person in the provider organisation must reasonably believe that the information will assist the other organisation for one of the purposes outlined above. This means the person has good reasons for his or her belief. It also means that the organisation requesting the information must have provided sufficient detail to enable the provider organisation to form the belief before agreeing to the request.

Organisations receiving requests for information are responsible for identifying which parts of their organisation may hold relevant information.

If disclosing information about a child or their family you should generally consult your manager except in very urgent situations. Your organisation's policies on information sharing should also be consulted.

Before agreeing to a request organisations should consider whether there is an exemption providing them with the discretion to decline the request. These exemptions are contained in section 245D (4).

[Click here for the Response to Chapter 16A request – agree.](#)

Declining a request for information¹¹

An organisation is not obliged to provide any information requested if the organisation reasonably believes this would:

- prejudice the investigation of any contravention (or possible contravention) of a law
- prejudice a coronial inquest or inquiry
- prejudice any care proceedings
- contravene any legal professional or client legal privilege
- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained
- endanger a person's life or physical safety
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a breach (or possible breach) of a law, or

⁶ The general practice is for Community Services to undertake assessments in relation to concerns that a child or young person is at risk of significant harm. Chapter 16A confirms that NSW Police Force and NSW Health representatives can exchange information with each other in the course of a Joint Investigation Response Team investigation.

⁷ These Guidelines reflect the main sense of this provision. The actual wording is "to manage any risk to the child or young person (or class of children or young persons) that might arise in the recipient's capacity as an employer or designated agency". [Section 245C(1)(b)]. This makes it clear that information which might assist investigations of abuse allegations involving employees can be provided even if its purpose is seen in legal terms as being primarily for employment purposes rather than for a particular child's or young person's safety, welfare or wellbeing.

⁸ Section 245D (3)

⁹ See footnote 2

¹⁰ See footnote 2

¹¹ Section 245D (4) – (5)

- not be in the public interest.

It may be necessary to obtain legal advice to determine if any of these exemptions apply. Organisations may also have their own specific guidelines or fact sheets to assist staff to understand these exemptions.

If an organisation declines to provide information, it must notify the requesting organisation in writing of its refusal and the reasons for refusal, in relation to the exemptions listed above at the time of the refusal.¹²

Where there is a dispute between prescribed bodies about the exchange of information, the agreed process for interagency dispute resolution should be followed (refer to the NSW Interagency Guidelines - currently Chapter 1 *Building Interagency collaboration* (section 1.5)). Essentially this process involves interagency review, consideration of the engagement of an independent body to mediate the dispute and escalation to CEO level if required.

[Response to Chapter 16A request – decline.](#)

Protecting the confidentiality of information under Chapter 16A

Chapter 16A establishes a scheme for information exchange between prescribed bodies while still protecting the confidentiality of the information.¹³ A prescribed body can only share information it has acquired via Chapter 16A in accordance with the principles and procedures of Chapter 16A, unless otherwise permitted or required by law.

Chapter 16A prohibits organisations from using or disclosing information received under Chapter 16A for any purpose that is not associated with the safety, welfare or wellbeing of the child or young person (or class of children or young persons) to whom the information relates.¹⁴ This restriction applies except as otherwise required or permitted by any law. An example of this is where information is required to be given in response to a Freedom of Information application, subpoena in court proceedings or reportable allegation to the Ombudsman under section 256 of the *Ombudsman Act 1974*.

The *Children and Young Persons (Care and Protection) Act 1998* does not impose any particular requirements around storage of the information requested or provided. Storage of information should be consistent with the *State Records Act 1998* – even where that Act might not otherwise apply to the organisation. The *State Records Act 1998* requires government agencies to ensure the safe custody and proper preservation of records and the maintenance of accessibility to electronic records. Relevant privacy requirements applying to storage of information under the *Privacy and Personal Information Protection Act 1998* (PPIPA) or the *Health Records and Information Protection Act 2002* (HRIPA) will also apply. These include the requirements relating to the retention and security of personal information or health information under those Acts (s12, PPIPA and clause 5, Schedule 1 of HRIPA).

Agencies that are designated agencies should also be mindful to fulfil the requirements set out in section 170, *Children and Young Persons (Care and Protection) Act 1998* in relation to the placement of a child or young person in out-of-home care. Each designated agency must keep the records made by it in relation to the placement of a child or young person in out-of-home care for 7 years after the designated agency ceases to be responsible for the placement of the child or young person. At the expiration of the 7-year period or, if, within that period, the agency ceases to be a designated agency, it must deliver the records required to be kept under this section to the Director-General.

Protection for staff¹⁵

If a person acts in good faith when providing any information under Chapter 16A, he or she:

- is not liable to any civil or criminal action, or any disciplinary action, for providing the information, and
- cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

Clients' rights – opportunities for feedback or complaint

¹² Section 245D (5)

¹³ Section 245A (1)(a)

¹⁴ Section 245F

¹⁵ Section 245G

Where a client feels that there has been a misuse of Chapter 16A, or feels their privacy has been unreasonably breached, they should lodge their feedback or complaint directly with the organisation in question. If they are not satisfied with the response, clients may escalate their complaint to the relevant funder or oversight body. In NSW the relevant oversight body is the NSW Ombudsman (www.ombo.nsw.gov.au or phone: 0292861000).

Information sharing between Community Services and other organisations under Section 248

Community Services will continue to use Section 248 for the purposes of exchanging information with a prescribed body, in keeping with its statutory child protection responsibilities. Chapter 16A applies only to NGOs and NSW government agencies, while section 248 also applies to certain Commonwealth bodies.

Section 248 gives Community Services stronger powers of direction and discretion which are appropriate to Community Services' statutory role in relation to child safety, welfare and wellbeing. It will still apply to the exchange of information between Community Services, in exercising its statutory powers, and other relevant human services and justice agencies and non-government organisations.

Community Services will continue to use Section 248 for the purposes of exchanging information concerning statutory cases with a prescribed body and in these circumstances may,

- supply the prescribed body with information relating to the safety, welfare and wellbeing of particular child or young person or class of children or young persons,
- direct the prescribed body to furnish Community Services with information relating to the safety, welfare and wellbeing of a particular child or young person or class of children or young persons.

A Section 248 direction for information made by Community Services must relate to the safety, welfare or wellbeing of a child, young person or class of children or young people. This may include concerns about the current effects of past abuse on a child or young person, such as risk-taking and self-harming behaviour. Information sharing under s248 also includes information in relation to an unborn child who has been the subject of a prenatal report under s25.

Community Services will respond to all requests for information from Child Wellbeing Units and in connection with the Family Case Management project under Chapter 16A. Community Services will also apply the objects and principles applicable to exchanges of information under Chapter 16A when responding to any requests for information under section 248. This will enable the implications of this arrangement to be tested in relation to information held by Community Services.

Prescribed bodies may make requests for information from Community Services under section 248.

Community Services will provide information under section 248 to prescribed bodies when:

- the prescribed body is providing a service under a case plan together with Community Services
- the prescribed body has ongoing contact with the child or young person and their safety or wellbeing and the service outcomes would be compromised without that information. An example might be a school that is managing a student who is at risk or who poses a risk to others, or where there is proposed court action and the stress associated with that action may affect the child in other settings
- the prescribed body needs assistance and/or advice to make decisions about future supports and service delivery arrangements for the child, young person and their family. An example might be about the child or young person's current living arrangements, or the role that Community Services has had in supporting them to date which would provide a more complete picture of the situation
- the prescribed body discovers that allegations against an employee have been reported to Community Services on a child protection matter, and details of that report need to be given to the Ombudsman by the agency head
- the prescribed body needs to determine (generally for the purposes of the agency's investigation under Part 3A of the *Ombudsman Act 1974*) whether a person might pose a threat to a child or young person
- the police need to manage a child or young person for a short time until an appropriate person or agency can take responsibility for assisting them.

While Community Services is working to ensure that information relevant to the provision of services for vulnerable children is made available to prescribed bodies, there are some restrictions on what will be released under section 248.

[Letter of Request to CS of Information.](#)

Section 29 - Protecting reporters' identity

Section 29 of the *Children and Young Persons (Care and Protection) Act 1998* protects the identity of people who report concerns about children and young people to the Community Services' Helpline [s29 (1)(f)]. It places an important restriction on information exchange either under the legislation or with the clients' consent. If you have made such a report and you suspect or believe your details have been disclosed without your permission, you should make a formal complaint. Currently under section 29(1)(f), the reporter's details cannot be exchanged without the reporter's consent or permission from the court or other body before which proceedings relating to the report are conducted (whether a report has been made to a Child Wellbeing Unit or directly to the Community Services Helpline, and whether or not it meets the mandatory reporting threshold).

Disclosing reporter's identity¹⁶

From the end of January 2010, a new exception to the provisions that protect the identity of reporters will come into effect. This amendment was recommended by Commission to assist law enforcement agencies in their investigations of serious offences alleged to have been committed against children or young persons. The amendment allows for the disclosure of information about the identity of the reporter, or information from which the identity of the reporter could be deduced, to a law enforcement agency in the following circumstances:

- if the disclosure is made in connection with the investigation of a serious offence alleged to have been committed against a child or young person, and
- the disclosure is necessary to safeguard or promote the safety, welfare and wellbeing of any child or young person (whether or not the victim of the alleged offence).

Disclosure is not permitted unless a senior officer of the law enforcement agency to which the disclosure is to be made has certified in writing that obtaining the reporter's consent would prejudice the investigation of the serious offence concerned or the person or body that makes the disclosure has certified in writing that it is impractical to obtain the consent of the reporter.

The person or body that discloses the identity of the reporter to the law enforcement agency is required to notify the reporter of the disclosure unless it is not reasonably practicable to do so or the law enforcement agency advises that to do so would prejudice the investigation of the serious offence concerned.

This new system seeks to achieve a balance between the need for reporters to have confidence when making reports about children at risk of significant harm, and the need for the police to have access to all necessary information for investigating serious crimes against children.

It strengthens the primacy of the best interests of a child or young person because it limits the disclosure of a reporter's identity to cases where it is necessary for the purposes of safeguarding or protecting a child or young person's safety, welfare or wellbeing. It also aims to strengthen the partnership between Community Services, Health and Police as they work collaboratively on serious child protection offences.

Responding to information requests or directions (Chapter 16A and section 248)

What sort of information can be requested or provided under Chapter 16A and section 248?

A prescribed body may **request** information from another prescribed body or Community Services may **direct** the provision of information (already held by an agency) on the following:

- a child or young person's history or circumstances
- a parent or other family member
- any person/s having a significant or relevant relationship with a child or young person
- the facts surrounding whether a person poses a risk to the safety, welfare or wellbeing of a child or young person
- the agency's dealings with the child or young person, including past support or service arrangements subject to the exemptions set out in section 245D(4) and the outcomes of these dealings.

Information can only be shared if it is:

- related to the safety, welfare or wellbeing of a child or young person or class of children or young persons (in compliance with legislation)
- relevant to the purpose for which it is being shared
- shared only with the practitioner/s who "need to know" in order to do their job well

¹⁶ S.29 (4A) – (4C)

When sharing information about the child or young person, you may also disclose information about the child's or young person's parent/carer where this is relevant to the safety, welfare or wellbeing of the child or young person.

Agencies can only request information that already exists. They cannot require an agency to collect new information, or to undertake a separate assessment and report, to meet the information request or direction.

Background to requests or directions for information

When requesting information under Chapter 16A or directing the provision of information under Section 248, the agency should:

- **identify** the subject of the information request/direction and, if it is not the child or young person, identify the subject's relationship to the child or young person - provide any particular identifying information so that agencies can be sure that they are talking about the same person
- **explain how** the request/direction for information relates to the safety, welfare or wellbeing of the child or young person (or class of children or young person)
- **explain why** the information will assist it to make a decision, assessment or plan, or to initiate or conduct an investigation, or to provide any service, or to manage any risk to the child or young person (for requests under Chapter 16A)
- provide a sufficient level of **detail** to assist the other agency to understand the purpose of the request and to locate the relevant information in an efficient manner
- provide a **background** to the request/direction, including whether or not the agency has informed a child, young person or parent that the information has been sought and if not, why not (for example, where there are safety concerns)
- indicate the **time period** for which the information is sought (e.g. for the last 6 months, three years) and the type of information sought.
- provide a **realistic time frame** for the agency to provide the information noting that **communicating/** negotiating a due date is best practice as it promotes collaboration and can ensure urgent matters are prioritised (unless the information is required for court proceedings where a more limited time frame may be required).
- preferably **contact** the providing agency by phone before making the request to discuss your needs and ensure the request is well targeted, that is ask for the relevant information and avoid requesting all files/documents.

Should information be exchanged verbally or in writing?

Information must be requested and provided in a secure way. Each organisation will have its own procedures as to how information is given or received.

Information requests and responses can be oral or in writing, via hard copy or email although in most circumstances it is best practice to communicate with the receiving agency prior to drafting a request.

Standard forms and letters to communicate with other agencies can be used, citing the relevant sections of the Act that apply to the sharing of information in particular cases. A separate form or letter should be used to request information for each person or class of children or young persons. Given the consequences of acting outside the protections offered by Chapter 16A, a written record of the exchange should be made and stored on file in a way that is consistent with the *State Records Act 1998* – even where that Act might not apply to the organisation. The *State Records Act* requires government agencies to ensure the safe custody and proper preservation of records and the maintenance of accessibility to electronic records. Further information is available at www.records.nsw.gov.au/recordkeeping/state-records-act-1998. Relevant privacy requirements applying to storage of information under the *Privacy and Personal Information Protection Act 1998* (PPIPA) or the *Health Records and Information Protection Act 2002* (HRIPA) will also apply.

Alternatively, information can be shared over the phone, or in person. In cases where information is requested or provided orally, it is expected that there will be an established local working arrangement between officers in the agencies, and contact officers are clearly identified. Where information is exchanged orally, each agency should ensure that there is a concise written record kept of the details of the exchange.

If an agency has any doubt about the identity of a person requesting information orally on behalf of an agency, they should confirm the identity by contacting the agency before providing the information, or ask that the request be put

in writing. While formal records should be kept of requests for information, it may be necessary for a requesting and receiving agency to communicate informally about the request perhaps to clarify what is requested or what is relevant.

A common example of oral exchange of information would be at a case conference. In these circumstances the record of the case conference could form the record of information exchange, subject to it being circulated on a confidential basis.

Your agency's policies on the mechanisms for providing information, including providing information orally, should be checked before proceeding. There may be agency delegations determining who can approve the release of information.

[Refer to relevant forms.](#)

Public access to Government Information

Any information provided to a government agency will be subject to Freedom of Information legislation as is currently the case.

From early 2010, the *Government Information (Public Access) Act 2009* (GIPA), will govern public access to government information and focuses the legislative onus in favour of the release of government information through consideration of the public's best interest. GIPA will not affect how information is exchanged under section 248 or Chapter 16A.

Information for court proceedings

When child protection matters proceed to the Children's Court, there are specific procedural arrangements that apply to information collection.

If information is sought by Community Services from another agency expressly for use in a matter before the Children's Court, Community Services will inform that agency of the legal proceedings and obtain consent for the release of the information under appropriate delegations. Consent to attach that information to any affidavit will also be sought from the agency.

Community Services may arrange for the issue of a subpoena when any documents already obtained from another agency, such as a report or a file, need to be produced for the purpose of Court proceedings.

Where criminal proceedings have been initiated, agencies should be mindful that if the prosecution relies upon information contained in agency records, there is an obligation on the prosecution to disclose to the defence the existence of that information. In practice, this can mean that a record of an interview or an assessment report is potentially available to the accused through their legal representative. Issues of this nature that arise in a specific case should be discussed with the Office of the Director of Public Prosecutions or the police prosecutor with responsibility for that case.

When Community Services has obtained information under Section 248, it may be disclosed for the purpose of legal proceedings arising out of the Act, but only after the provider agency has been advised. This gives the agency a chance to object to the production of the material (in part or entirely) or to be assured that it has responded accurately and completely before information is supplied to the Court.

Other information exchange arrangements

In addition to Community Services, there are other statutory agencies that can direct that information be provided about individuals or classes of persons. Certain prescribed bodies have a duty to comply with these requests and should do so according to organisational policies and procedures. A written request identifying the legislative powers relied upon is a requirement.

Some examples of circumstances where directions for the provision of information include the following:

1. The **NSW Police Force** can make a written request to government agencies for any information that is relevant to the assessment of the risk posed by a registrable person to the lives or sexual safety of children, under Section 16 of the *Child Protection (Offenders Prohibition Orders) Act 2004*. Agencies are obliged to provide this

information unless it is subject to legal or other professional privilege. Where search warrants or subpoenas have been issued by a court, agencies must comply with the terms of the warrant or subpoena.

2. The **Children's Guardian** has the power to direct Community Services, designated agencies (providers of Out of Home Care under the *Children and Young Persons (Care and Protection) Act 1998*) and authorised carers to provide information relating to the safety, welfare and wellbeing of a particular child or young person or class of children or young persons. Further information is available at section 185 of the Act on information exchange arrangements with the Children's Guardian.
3. The **NSW Ombudsman** can obtain information from agencies under the Ombudsman's general powers related to proposed and current investigations. More information is available at: <http://www.ombo.nsw.gov.au>
4. The **Commission for Children and Young People and other Approved Screening Agencies** can request information when undertaking a Working with Children Background Check. That information can relate to relevant employment proceedings notified to the Commission. Information can also be sought by the Commission when estimating the risk to children posed by an applicant for a review of their prohibited status under the *Commission for Children and Young People Act 1998*. More information is available at: <http://www.kids.nsw.gov.au/check>
5. The **Health Care Complaints Commission** is an independent body which acts to protect public health and safety by dealing with complaints about health service providers in NSW. The Commission has the power to obtain information and/or documents (including medical records) from any person to help it in assessing complaints about health service providers. More information is available at: <http://www.hccc.nsw.gov.au/Home/default.aspx>
6. **Child Death Review Team** – There are provisions under the *Children and Young Persons (Care and Protection) Act 1998*, the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA) and the *Coroners Act 1980* for the exchange of information about children and young people who have died. Protocols and Memoranda of Understanding (MOU) exist between Community Services, the Ombudsman, the Coroner and the NSW Child Death Review Team. The legislation defining a reviewable death under CS-CRAMA has changed and this affects the exchange of information about deceased children between Community Services and the Ombudsman. However, in the main, the provisions for information exchange remain unchanged between the organisations that review child deaths.

Section 248 of the Act is not used for the provision of information to any agency for the purposes of screening employees or prospective employees. It is not part of the Working with Children Background check to seek information from Community Services about the safety, welfare and wellbeing of a child or children.

Commonwealth Government and Community Services

Under the National Framework for Protecting Australia's Children 2009-2020, the Council of Australian Governments (COAG) agreed to the development of new Commonwealth-State measures to improve information sharing about children and families at risk. Under these arrangements, Community Services officers are able to access information held by Commonwealth agencies while complying with Commonwealth privacy legislation.

An Information Sharing Protocol between the Commonwealth and Child Protection Agencies January 2009 outlines how the Commonwealth and statutory child protection agencies can share information in order to provide more responsive care and protection services to children. It is underpinned by a separate appendix for each Commonwealth Agency joining the *Protocol*. Appendix One relates to Centrelink which officially came into effect on 1 January 2009, and was operational in NSW from 1 March 2009. Appendix Two relates to Medicare, and came into effect from 1 July 2009, with implementation in NSW scheduled for 1 November 2009. The Child Support Agency protocol is scheduled for later in 2009, and those for the Family Court and the Department of Immigration will be prepared in 2010.

Further information on *Protecting Children is Everyone's Business – National Framework for Protecting Australia's Children 2009-2020* can be found online at the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs web site:

http://www.fahcsia.gov.au/sa/families/pubs/framework_protecting_children/Pages/default.aspx

Important note: This information does not constitute legal advice. If more information is required, consult the relevant legislation or a legal adviser, as necessary.

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