

INFORMATION EXCHANGE – Long fact sheet for human services workers

What is *Keep Them Safe*?

Keep Them Safe: A shared approach to Child Wellbeing is the NSW Government's response to the Report of the Special Commission of Inquiry into Child Protection Services in NSW, led by the Honourable James Wood AO QC and released in November 2008. *Keep Them Safe* recognises the importance of the wellbeing of all children and young people, with the aim of providing appropriate support to families earlier, to prevent children and young people requiring statutory child protection intervention. To achieve this *Keep Them Safe* encourages families and communities, government agencies and non-government organisations (NGOs) to work together to support children, young people and families.

Exchanging information about children and young people to support child wellbeing

What's New?

- A new **Chapter 16A** in the *Children and Young Persons (Care and Protection) Act 1998* authorises agencies and NGOs to share information that helps deliver services and supports to promote the safety, welfare and wellbeing of a child or young person.
- Prescribed bodies can exchange information relating to a child or young person's safety, welfare or wellbeing, whether or not the child or young person is known to Community Services. Chapter 16A allows for the exchange of information between prescribed bodies without any Community Services involvement. Up until now information exchange has generally only been possible where the information was sent to or received from Community Services.
- Amendments to **Section 29** will allow agencies, in certain circumstances, to disclose a reporter details to a law enforcement agency in connection with an investigation into a serious offence alleged to have been committed against a child or young person.
- Direct information sharing will enable greater collaborative decision-making between agencies.

What is information exchange in a child wellbeing context?

Information exchange or information sharing involves providing details about services, individual clients or groups of clients and their needs to another practitioner or agency and communicating with other practitioners to provide the best service possible to children and families in need.

When are the laws around information exchange changing?

The new Chapter 16A came into force at the end of October 2009 and amendments to Section 29 of the *Children and Young Persons (Care and Protection) Act 1998* will come into force at the end of January 2010.

Why are the rules around information exchange changing?

Up until now information exchange has generally only been possible where the information was sent to or received from Community Services. The Special Commission of Inquiry (SCI) found that the capacity of agencies to exchange information about concerns for the wellbeing of children and young people is essential to ensure interagency cooperation and the provision of effective services. For example, sometimes it only becomes clear that a child or young person is at risk, or has been harmed, when information from a number of sources is combined to create a complete picture about the child or young person and their circumstances. Sharing information also helps to work out how best to help a child or family.

What are the new rules around information exchange?

The new rules contained in **Chapter 16A** of the *Children and Young Persons (Care and Protection) Act 1998* (the Act) allow government agencies and NGOs who are "prescribed bodies" to exchange information that relates to a child or young person's safety, welfare or wellbeing, whether or not the child or young person is known to Community Services and whether or not the child or young person consents to the information exchange.

These new rules will operate in addition to the existing rules of information exchange between Community Services and other government agencies and NGOs contained in **Section 248**. So there will be two schemes for the exchange of information, **Chapter 16A and Section 248**.

Will Section 248 provisions on exchange of information still be used?

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.

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 well-being of a 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 well-being of a particular child or young person or class of children or young persons.

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.

What does Chapter 16A do?

- Provides a scheme for information sharing among human services and justice agencies and NGOs (“prescribed bodies”)
- Allows information to be exchanged between organisations working with or providing services to children and young people (where there are concerns about their safety, welfare and wellbeing) and their families
- Provides a scheme for information sharing in relation to children and young persons who may be either above or below the statutory reporting threshold. For example: A child below the statutory reporting threshold may need some form of assistance even though they do not need statutory intervention. There is no need for a child or young person to be reported to the Community Services’ Helpline for the provisions to apply.
- Overrides other laws that prohibit or restrict the disclosure of personal information such as the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

Who can exchange information under the new rules?

NGOs and NSW government agencies who are identified as “prescribed bodies”. The new rules permit authorised staff in prescribed bodies to exchange information. If you are unsure whether you are working for a prescribed body or whether you are authorised to exchange information, you should ask your agency or organisation contact or legal adviser.

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*. ‘Prescribed bodies’ under the legislation are:

- NSW Police Force
- a NSW government department or 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
- agencies that conduct 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.
- the Family Court of Australia (for the purposes of section 248 but not Chapter 16A)
- Centrelink (for the purposes of section 248 but not Chapter 16A)
- the Commonwealth Department of Immigration and Multicultural and Aboriginal Affairs (for the purposes of section 248 but not Chapter 16A).

NGOs wishing to exchange information under Chapter 16A would normally be caught under the “any other organisations” provision above. If you are unsure whether you are working for a prescribed body or whether you are authorised to exchange information, you should ask your organisation contact or legal adviser.

What type of information can or should be shared?

A government agency or NGO may request information, already held by another agency or NGO that relates to the safety, welfare or wellbeing of a child or young person and includes information that may assist the agency to:

- make a decision or undertake an assessment or plan
- initiate or conduct an investigation (for example a Joint Investigation Response Team investigation)
- provide a service

where there is a concern relating to the safety, welfare or wellbeing of a child or young person, or to

- manage any risk to the child or young person.

Unless an exemption applies, a government agency or NGO is obliged to comply with a request for information that meets the above criteria if they reasonably believe that the provision of the information may assist the recipient agency or NGO for any purpose referred to above.

Depending on what information is requested, it may include relevant, factual information held on:

- a child or young person's circumstances or history
- a parent or other family member
- people having a significant or relevant relationship with a child or young person
- the other agencies' dealings with the child or young person, including past support or service arrangements.

Information does not have to be shared if an exemption in section 245D applies, such as when it would prejudice an investigation of a possible breach of a law, care proceedings or a coronial inquest, endanger a person's life or is not in the public interest.

Is the consent of the child, young person or family necessary to exchange information?

No. Consent is not necessary for the exchange of information under Chapter 16A. However it is important that organisations providing a service to a child, young person or their parents inform them early on that information about them may be provided, or is being provided, to other organisations. Keeping the client informed is part of best practice case management and helps to maximise client engagement.

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 and the matter is urgent.

An example of circumstances where this might be the case is: a school seeking information over the phone 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 family members; or a request for access to a student on school grounds; and/or information relating to a student from a parent that the student does not reside with.

What about privacy and client confidentiality - what cannot be shared?

The new legislation overrides all other legislation concerning privacy where the requirements of the legislation are in conflict. The needs and interests of the child or young person take precedence over the protection of confidentiality or of an individual's privacy.

A "prescribed body" requesting information under the new legislation must not use or disclose the information for any purpose that is not associated with the safety, welfare or wellbeing of the child or young person except as otherwise permitted or required by law. This means that the information should be shared only with practitioners within that prescribed body who "need to know" in order to do their job to protect or support a child or young person. An agency is not required to disclose information in certain circumstances, such as if it believes it would prejudice an investigation of a possible breach of a law, care proceedings or a coronial inquest, endanger a person's life, or is not in the public interest (a full list of the exemptions can be found at section 245D(4)).

Can the reporter's details be exchanged?

The reporter's details cannot be exchanged without their permission (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).

Section 29 of the *Children and Young Persons (Care and Protection) Act 1998* places an important restriction on information exchange by protecting the identity of people who report concerns about children and young people to the Community Services' Helpline. A person who acts in good faith to provide information in accordance with the legislation is not liable to any legal or disciplinary action and cannot be held to have breached any professional ethics, code or standards.

From the end of January 2010, a new exception to the provisions that protect the identity of reporters will come into effect under amendments to **Section 29**. Disclosure of the reporter's details will be allowed where 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 where the disclosure is necessary to safeguard or promote the safety, welfare or wellbeing of any child or young person (whether or not the victim of the alleged offence).

However this disclosure without the consent of the reporter 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 or the person or body that makes the disclosure has certified in writing that it is impractical to obtain the consent of the reporter.

How is the information exchanged?

Agencies and organisations should have plans and procedures to support implementation of Chapter 16A, covering how information is shared and stored in a secure way and who in the agency or organisation is designated to exchange information.

Exchange of information can be written or oral. Standard forms, letters, emails and other forms of electronic communication can be used. Information may be exchanged orally, for example where there is an established arrangement between agencies or at a case conference. However, a written record of the verbal exchange must be made and stored securely on file consistent with your organisation's policies and procedures.

What do I do if I get a request to provide information under the Act?

Authorised staff of government agencies and NGOs are obliged to comply with requests for information that meet the criteria under the Act. Agencies are not obliged to collect new information, but rather to provide information already held. If a "prescribed body" has any doubt about the identity or authority of a person requesting information on behalf of an agency or NGO, it is essential that they confirm the person's identity or authority by contacting the agency before providing the information.

How do I request information under the Act?

The authorised agency or NGO officer requesting information 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.

Your agency or organisation may also have procedures about how information should be requested.

Where can I find more information about the exchange of information?

More detailed guidance “*Exchanging information relating to children or young people in a child wellbeing context*” is available on the Keep Them Safe website (see address below). The legislation can be found in Chapter 16A [Children Legislation Amendment \(Wood Inquiry Recommendations\) Act 2009](#).

Other relevant information:

- Fact sheets, guidance and form letters to request and provide information are available at the Keep Them Safe website www.keepthemsafe.nsw.gov.au
- Contact your agency or organisation contact, Legal Officer or Child Wellbeing Unit (if relevant)
- the Council of Social Service of NSW (NCOSS) website at: <http://www.ncoss.org.au> for information about NGOs and privacy.

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

Disclaimer: While reasonable efforts have been made to ensure that the contents of this document are correct, the State of New South Wales, its agencies and employees, do not accept responsibility for the accuracy or completeness of the contents, and is not liable to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the contents of this document.