

CHAPTER 4

Exchanging information about children, young people and families in a child protection context

International and Australian research shows that to protect children from harm, agencies and members of the public must actively share information. This is because it sometimes 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.

Generally, sharing information is also a contributor to good service delivery practice where more than one agency is involved in providing support.

However, it is important that the privacy rights of a person are respected, and those rights be balanced with the need to ensure the care and protection of the child or young person.

It is also important to note the importance of the confidentiality of reporters to the integrity of the child protection system.

4.1 THE LEGAL FRAMEWORK FOR EXCHANGING INFORMATION

In NSW, the privacy requirements of government and non-government organisations and agencies are governed by the following laws:

- ▶ *Privacy and Personal Information Protection Act 1998 (NSW)*
- ▶ *Health Records and Information Privacy Act (NSW)*
- ▶ *Privacy Act 1988 (Commonwealth)*
- ▶ *Privacy Amendment (Private Sector) Act 2000*

There are 12 **Information Protection Principles (IPPs)** under the *NSW Privacy and Personal Information Protection Act 1998*. These principles are legal obligations that describe what a NSW government agency or a funded non-government agency must do when it collects, stores, uses and discloses personal information.

Generally, these principles require agencies to get the consent of a client before information about them is shared.

In some cases, agencies do not have to follow all the principles, and can share information without a client or individual's consent, for example, if there is a serious and imminent threat to any person's health or safety.

There are other exemptions to those principles in the child protection context, for example:

- ▶ The *Children and Young Persons (Care and Protection) Act 1998* allows information to be exchanged between specified people and agencies without the consent of an individual where there is a risk of harm to a child or young person. It also protects the identity of people providing information about a child or young person at risk

- ▶ Section 27 of the *Privacy and Personal Information Protection Act 1998* provides NSW Police with a general exemption to compliance for its law-enforcement functions. This enables the police and other law-enforcement agencies to provide information to others without the consent of the individual when investigating criminal activities including child abuse or sex offences. Agencies can also provide information to NSW Police without consent for law-enforcement purposes, including assisting with locating a missing person
- ▶ Where search warrants or subpoenas have been issued by a court, agencies must comply with the terms of the warrant or subpoena.

In addition to the Department of Community Services, only officers in the following agencies ('**prescribed agencies**' under the Act) can exchange information with the Department of Community Services without consent. They are:

- ▶ NSW Police
- ▶ 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
- ▶ agencies that provide residential child care centre or a child care service under the Act
- ▶ the Family Court of Australia
- ▶ Centrelink
- ▶ the Commonwealth Department of Immigration and Multicultural and Aboriginal Affairs
- ▶ any other organisations that have direct responsibility for, or supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, to children.

REFER If you are unsure whether your agency is a prescribed agency, contact your legal services unit.

REFER For more information about exemptions, contact the Privacy Contact Officer in your agency.

REFER Useful websites about privacy law:

Privacy NSW: <http://www.lawlink.nsw.gov.au/lawlink/privacynsw>

Office of the Federal Privacy Commissioner: <http://www.privacy.gov.au>

REFER Information about NGOs and privacy can be found on Council of Social Service NSW (NCOSS) website at: <http://www.ncoss.org.au>.

4.2 INFORMATION SHARING IN SERVICE DELIVERY

Agencies involved in the day-to-day provision of services and support to children and young people will share information as part of the process of delivering effective results for an individual or family. Agencies should have the consent of the client before they share information in order to provide regular coordinated services, unless there is a serious and imminent threat to any person's health or safety. This can include circumstances where a report has been made about a child or young person, but where the Department of Community Services has not yet investigated the report or has closed the file. The sharing of that information should happen in accordance with prevailing program guidelines and policies.

4.3 INFORMATION-SEEKING POWERS OF THE DEPARTMENT OF COMMUNITY SERVICES

Section 248 of the Act gives the Department of Community Services (DoCS) the power to direct agencies to provide information about the safety, welfare and wellbeing of a child or young person, or a group of children and young people at any stage in a child protection intervention.

Agencies are obliged under the Act to provide information to the Department of Community Services about the safety, welfare and wellbeing of a child or young person, or a class of children and young people, to assist with investigations, assessments and the planning or delivery of care and support to children, young people and families.

A request for information made by the Department of Community Services must relate to a current or future concern for 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.

The Department of Community Services may request information on:

- ▶ a child or young person's history, current circumstances and their views
- ▶ a parent or other family member
- ▶ other significant or relevant relationships that the child or young person may have
- ▶ the agency's engagement with the child, young person and their family, including past support arrangements.

The Department of Community Services can only collect information that already exists. It cannot require an agency to collect new information, or to undertake a separate assessment and report.

When requesting information, the Department of Community Services will:

- ▶ explain how the request for information relates to safety, welfare and wellbeing and/or risk of harm for the child or young person
- ▶ identify the subject of the information request 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
- ▶ provide a background to the request, including whether or not consent has been requested and where it has not, why the agency should not inform a child, young person or parent that the information has been requested (for example, safety concerns)
- ▶ advise of the time frame for providing the information, giving the agency a realistic time frame within which to report, unless the information is required for court proceedings where a more limited time frame may be required.

NOTE When requesting information from other agencies, DoCS will provide a sufficient level of detail to assist the agency to find the relevant information in an efficient manner. Wherever possible, the Department will indicate the time period for which the information is sought (e.g. for the last three years) and indicate the type of information sought.

NOTE Where information is provided under Section 248, any subsequent use of the information continues to be subject to confidentiality requirements, including those arising under Sections 29 and 254 of the Act.

4.4 PROVISION OF INFORMATION BY THE DEPARTMENT OF COMMUNITY SERVICES

In response to a request from another agency, the Department of Community Services (DoCS) is able to **provide agencies with information** about the safety, welfare and wellbeing of a child or young person, or a group of children or young people. This is a discretionary power and will only be exercised when it is considered necessary for the safety, welfare and wellbeing of a child or young person.

Only 'prescribed' agencies can make requests for information from the Department of Community Services.

The Department of Community Services can provide information to other 'prescribed' agencies when:

- ▶ that agency is providing a service under a case plan together with the Department of Community Services
- ▶ that agency has ongoing contact with the child or young person and their safety or wellbeing and the service outcomes would be compromised without that information. For example, to 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
- ▶ that agency needs assistance and/or advice to make decisions about future supports and service-delivery arrangements for the child, young person and their family. For example, the child or young person's current living arrangements, or the role that the Department of Community Services has had in supporting them to date
- ▶ that agency discovers that an employee has been reported to the Department of Community Services on a child protection matter, and details of that report need to be given to the Ombudsman by the agency head
- ▶ that agency 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.

Provision of information by the Department of Community Services is restricted by the following considerations:

- ▶ provision of information must be approved by the Department of Community Services' Manager Casework or Helpline Team Leader or approved delegate
- ▶ the release of information will be limited to information of relevance and importance, determined at the discretion of the Department. For instance, information about a person/people receiving services under other programs managed by the Department and where there is no current child protection issue will not be provided
- ▶ information on third parties that does not relate to the request for information will not be provided
- ▶ identifying information about a person who has made a risk of harm report will not be provided
- ▶ the Department of Community Services cannot provide documents, other than to the Ombudsman:
 - ▷ that legally belong to other agencies, for example Children's Court Clinic Assessment Reports
 - ▷ where it has an agreement with another agency not to release, for example, records from NSW Health
 - ▷ which may be subject to legal privilege, for example, legal advice.

NOTE DoCS will provide an agency with relevant information to assist that agency in its decision-making.

4.5 HOW THE DEPARTMENT OF COMMUNITY SERVICES WILL EXCHANGE INFORMATION

Information may be requested or provided:

- ▶ **In writing:** The Department of Community Services has detailed internal processes to manage information requests, and will use standard forms and letters to communicate with agencies, citing the relevant sections of the Act that might apply to the sharing of information in particular cases. A separate form or letter will be used to request information for each person
- ▶ **Over the phone, or in person:** In some cases, the information may be requested or provided verbally, usually when there is an established local working arrangement between officers in the Department of Community Services and other agencies, and contact officers are clearly identified. Where information is exchanged verbally, each agency will ensure that there is a record kept of the details of the exchange.

4.6 OTHER AGENCIES RESPONDING TO AN INFORMATION REQUEST

Agencies receiving the request for information take responsibility for identifying which parts of their system may hold the information relevant to the request. They are responsible for identifying information that may assist the requesting agency in determining the risk to a child or young person.

The provision of any information must be approved by a suitably delegated officer in the agency.

REFER Check your agency's policies on the mechanisms for providing information, including providing information verbally.

REFER Check your agency delegations to determine who can approve the release of information.

4.7 INFORMATION FOR COURT PROCEEDINGS

When child protection matters proceed to the Children's Court, the following information collection arrangements will apply:

- ▶ if information is sought by the Department of Community Services from another agency expressly for use in a matter before the Children's Court, the Department of 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
- ▶ the Department of Community Services will issue a subpoena when any documents 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.

NOTE When the Department of 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 with the knowledge and consent of the supplying prescribed agency. This provides the agency with a chance to object to the production of the material (in part or entirely) by the Department, and for the agency to be assured that it has responded accurately and completely before information is supplied to the Court.

4.8 OTHER INFORMATION EXCHANGE ARRANGEMENTS

In addition to the Department of Community Services, there are other agencies that can direct that information be provided about individuals or classes of persons. The circumstances where that exchange can occur are as follows:

1. The **Children's Guardian** has the power to direct the Department of Community Services, designated agencies 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.
2. The **NSW Ombudsman** can obtain information from agencies under the Ombudsman's general powers related to proposed and current investigations.
3. The **Commission for Children and Young People and other Approved Screening Agencies** can request information when undertaking a Working with Children Check. That information can relate to relevant employment proceedings they have 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 *Child Protection (Prohibited Employment) Act 1998*.

Agencies have a duty to comply with these requests.

These agencies may also release information about individuals and/or classes of persons to other agencies in certain circumstances:

4. **Police** 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.

Information cannot be provided under Section 248 of the Act to any agency for the purposes of screening employees or prospective employees. Information is not sought from Department of Community Services about the safety, welfare and wellbeing of a child or children as part of a Working with Children Check background check. Employment screening is not part of the administration and execution of the care legislation.

REFER Further information on information exchange arrangements with the Children's Guardian is available at Section 185 of the Act.

REFER Further information is available online at the Commission for Children and Young People website: <http://www.kids.nsw.gov.au/check>.

REFER *Child protection in the workplace: responding to allegations against employees 2004* on the NSW Ombudsman's website: <http://www.ombo.nsw.gov.au> for further details and guidance.