



**Information
Exchange Non
Government
Organisation Forum
July 2009**

1. What are the new rules around information exchange?

The new rules are contained in a new Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998 (the Act)*. Chapter 16A allows prescribed bodies (see question 3) 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. Chapter 16A allows for the exchange of information between prescribed bodies without any Community Services involvement. Section 248 continues to apply in other respects.

Section 248 allows information to be shared between Community Services and other agencies without the consent of an individual, where the information is required for the safety, welfare and well-being of a child or young person. Specifically section 248 allows information to be supplied by agencies in response to a direction from Community Services and for information to be supplied by Community Services to agencies.

2. What information can be exchanged between 'prescribed bodies'?

A 'prescribed body' may provide information relating to the safety, welfare or wellbeing of a child/young person (or class of children and/or young people) to another prescribed body if the information would assist with making a decision, assessment, investigation or service delivery.

3. What agencies are covered by the new chapter 16A?

Agencies covered by the new chapter are known as '**prescribed bodies**' and include:

- NSW Police
- government departments and public authorities (other than Community Services)
- schools and TAFEs
- public health organisations and private hospitals
- private fostering and adoption agencies
- residential child care centres and child care services
- any other organisation whose duties include direct responsibility or direct supervision of healthcare, welfare,

education, children's services, residential services or law enforcement to children.

- A designated agency which is a department of the Public Service or an organisation that arranges the provision of out of home care.

Note: The 'prescribed bodies' as listed in the 2006 Interagency Guidelines for Child Protection Intervention have been revised. Commonwealth Government agencies including the Family Court of Australia, Centrelink and Department of Families, Housing, Community Services and Indigenous Affairs are not recognised as 'prescribed bodies' for the purpose of information exchange under Chapter 16A.

4. Do non-government organisations need to protect the names of their information sources (similar to non-disclosure of reporters' names)?

Yes, the details of the identity of information sources must not be disclosed. An exception to this is where the disclosure of reporter information can be made to law enforcement agencies (such as Police) for the purpose of an investigation into a serious offence alleged to have been committed against a child or young person and the disclosure is necessary for the purposes of safeguarding or promoting the safety, welfare and well-being of any child or young person.

This new legislation overrides all other legislation concerning privacy.

5. Does the legislation allow non-government organisations to exchange information about children or young people who fall below the threshold of significant harm?

Yes - A child or young person does not need to have been reported to Community Services for being at risk of *significant harm* for information to be shared.

6. Are non-government organisations expected to test the accuracy of information before they pass it on?

No, the amendments allow for the protection of those providing information where it is given in good faith.

7. Is there a quick way of telling whether an agency is a 'prescribed body' when they are requesting information?

Organisations should refer to the bodies listed in question 3 - or go to the KTS website www.keepthemsafe.nsw.gov.au and link to KTS fact Sheet *Information Exchange*, which provides additional information on 'prescribed bodies'.

8. How do I request information under the Act?

¹ Acknowledgement is given to Orange Family Support Service for providing the basis for which a series of Q&As have been developed for this information sheet.

Your organisation will have procedures about how this should occur but in all cases an agency requesting information should:

- identify the subject of the request and (if it is not the child or young person) identify the subject's relationship to the child or young person and provide additional identifying information so that agencies can be sure they are talking about the same child or person
- explain how the request meets the criteria under the Act, why the information is needed and the time period for which the information is sought
- provide background to the request, including whether consent has been requested
- advise a timeframe for providing the information.

9. How much information is an agency entitled to give and receive about an adult client or other party, including a client's child or children?

If the information concerns a child or young person's safety, welfare or wellbeing and the agency requires specific information to assess or inform its practice and the request is in compliance with the requirements set out in Chapter 16A, all information that falls within the scope of what is requested should be provided.

10. How much information is an agency able to give and receive about a client's drug usage, mental health and domestic violence history?

The same test applies as above.

11. If a signed 'Consent to Release' form is provided by a client could this provide a way of exchanging information between Community Services and a 'prescribed body'?

Information can be released by Community Services when it is relevant to the safety, welfare and wellbeing of an unborn child, a child, a young person or a class of children or young people. The release of information by Community Services is a discretionary power covered by section 248 of the Act.

The decision to release information is also based on factors in addition to the consent of the individual concerned. This means that even where consent is provided, the release of information is not guaranteed.

12. What can a 'prescribed body' do if Community Services is reluctant to give any information when the agency is working with a joint client?

Information can be released when it is relevant to the safety, welfare and wellbeing of an unborn child, a child, a young person or a class of children or young people.

As Community Services exchanges information under s248 of the Act, the 'prescribed body' is not able to 'appeal' these decisions but can request the decision 'not to provide information' in writing.

13. Why is Community Services not included as a 'prescribed body' for the purpose of Ch 16A?

Community Services is distinguished from that of a 'prescribed body' as its responsibilities are covered under section 248 of the Act. Section 248 contains the power to direct prescribed bodies to provide information. This is required so Community Services can fulfil its statutory role in relation to protecting the safety, welfare and wellbeing of children and young people.

Editor's note: The question of whether there are circumstances in which Community Services should also be considered a 'prescribed body' for the purpose of Chapter 16A is under active consideration. Updates will be posted on the KTS website.

14. When will the Information Exchange provisions be proclaimed?

The proclamation is planned for late October 2009 - to coincide with the commencement of Child Wellbeing Units and the *Keep them Safe* Family Case Management (FCM) Pilot. FCM is an integrated case management response to families who are frequently encountered by government and non-government agencies and who require the services of multiple agencies.

15. What about privacy and client confidentiality?

Consent is not necessary for exchange of information under Chapter 16A or section 248. However generally speaking you should seek and gain consent from a child/young person or their parents before disclosing information about them wherever possible, provided that doing so does not place the child or young person at further risk. Seeking consent is part of best practice case management and helps to maximise client engagement. Consent should be requested at the earliest possible stage.

The details of a person making a child protection report must not be exchanged without their permission or without the leave of a court or other body before which legal proceedings related to the report are conducted. Exceptions to this – please refer to issues covered in Q 4.

This is the same whether the report has been made to the Community Services Helpline or a referral has been made to a Child Wellbeing Unit.

16. Can a 'prescribed body' refuse to provide information about a child or young person?

A prescribed body may ask another prescribed body for information relating to the safety, welfare or wellbeing of a child/young person to assist with making a decision, assessment, investigation or service delivery.

A prescribed body can refuse to provide information if it would prejudice an investigation of a contravention of a law, a coronial inquest/inquiry, care proceedings or legal privilege. However if a prescribed body refuses to provide information in response to a request under Chapter 16A the prescribed body must provide the requesting body with reasons in writing for refusing the request.

17. What should I be saying to clients who might use the services of my organisation?

Information about the new information exchange provisions should be available to people using your service.

You should explain that the newly amended legislation now enables your organisation to share relevant information and requires you to co-ordinate with other organisations promoting the safety, welfare and wellbeing of the child or young person. It is important for people to know that NGOs working with children and young people are covered by this new legislation. It is important to remember that personal information is only shared with discretion and *must* relate to the safety, welfare and wellbeing of a child or young person or class of children or young people.

18. Does Chapter 16A apply to unborn children [s245B(3)]?

Organisations may rely on section 248 and 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, and the family of the unborn child who is the subject of a pre-natal report and the expected date and place of birth.

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

19. Does an NGO have to tell the person about whom they have exchanged the information that it has been passed onto another organisation?

Agencies should generally have the consent of the client before they share information in order to provide coordinated services.

If the information concerns the safety, welfare and wellbeing of a child or young person or class of children or young people, this can

override the needs of confidentiality or privacy.

It is good practice for agencies to have guidelines/policies in place to determine when and what information can be exchanged and circumstances where confidentiality and privacy may be overridden for the purposes of information exchange.

19. Does the person have a right to see what information has been passed on and to which organisations?

No, not in all circumstances – the agency has discretion to withhold that information if it concerns the safety, welfare and wellbeing of a child or young person or class of children or young people

20. Does the person have a right to request that any information that has been passed on be corrected and the organisation(s) be asked to update the information?

Yes – and the agency would be expected to respond to such requests.

21 Who should have access to this information in the organisation – for instance is there a difference between staff and board members right to see?

Yes. Agencies should develop or have access to specific policies and procedures that address the handling of confidential information and delegated responsibilities on 'right to see' client information.

22. How do we handle complaints concerning exchange of information?

Agencies should have in place a set of complaints handling procedures. This may require review and updating with the newly proclaimed 'exchange of information' procedures in place.

23. How should this information be stored?

Agencies should have in place appropriate policies and procedures to effectively manage and store client information and information received from other agencies.

Electronic records also require appropriate IT security arrangements (such as firewalls and anti-viral software). Written records of any verbal exchange are also required and should be stored securely on file consistent with your agency's policies and procedures.

24. What responsibility do we have to make sure the information is accurate and not hearsay – if its hearsay then what?

The Act safeguards information that is shared and protects people providing information under the scheme from liability.

However, agencies should have a quality assurance system in place to ensure that the

information being exchanged is accurate and reliable.

If information is considered 'hearsay' this should be documented and passed on with the information that is exchanged.

Further information on Information Exchange may be found on the *Keep them Safe* website www.keepthemsafe.nsw.gov.au and link to KTS fact Sheet *Information Exchange*.