

Exchanging Information About Children (Chapter 16A and Section 248)

The *NSW Children and Young Persons (Care and Protection) Act 1998* (the Care Act) allows certain people and organisations to exchange information to facilitate services that promote the safety, welfare and well-being of children and young people (children).

Chapter 16A allows information sharing between prescribed agencies including:

- the Department of Communities and Justice (DCJ)
- Permanency Support Program (PSP) Service Providers
- other government agencies and non-government organisations



Exchanging information allows you to share information without consent when it relates to the safety, welfare and wellbeing of a child and helps your organisation to:

- make a decision, assessment or plan
- initiate or conduct any investigation
- provide any service.

A person may also provide information to manage any risk to a child that relates to that person's work in their organisation.

Information may be provided proactively, that is you can provide the information without being asked for it if it relates to the areas explained above.

Consent

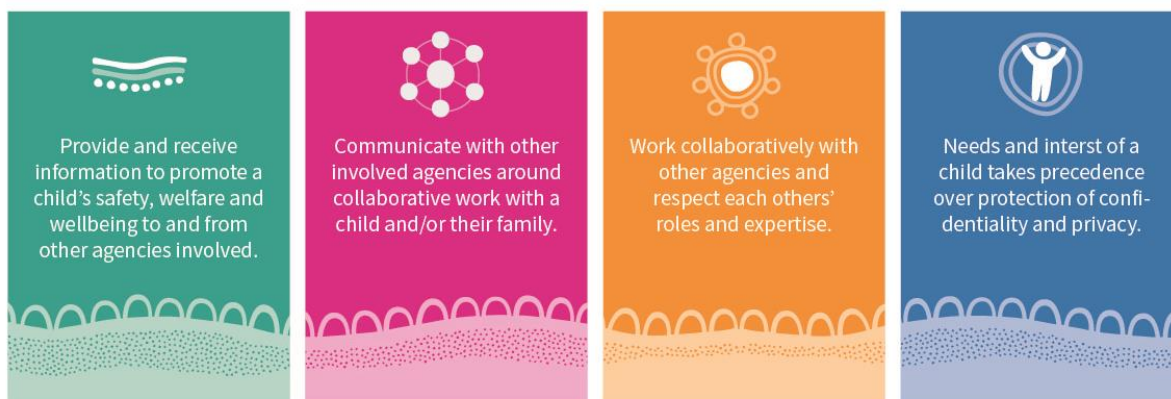
Consent is not required under Chapter 16A. However best practice is to inform children, families and carers about your ability to share their information before you start working with them and to seek consent wherever it is possible and safe. See more on page 5.

Principles of Exchanging Information

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Legal Framework for Exchanging Information

There are two sections of the Children and Young Persons (Care and Protection) Act 1998 that allow for the sharing of information between agencies. These are Chapter 16A and Section 248.

Chapter 16A allows prescribed agencies working with a child to share information involving their safety, welfare or wellbeing without consent. It is the primary way in which DCJ and PSP service providers exchange information.

Section 248 allows DCJ to provide or request information from agencies about the safety, welfare and wellbeing of a child known to your agency. DCJ generally uses section 248 in limited circumstances such as requesting information from non-prescribed agencies including Commonwealth bodies such as the Federal Circuit Court of Australia, Services Australia and the Department of Home Affairs.

What information can be requested or provided under Chapter 16A and Section 248?

Your PSP Service Provider may share information with another agency, organisation or DCJ about:



Example

Barkave is a caseworker at a PSP service provider. She works with Bonnie, a child in OOHC. Barkave calls Bonnie's school to exchange information about Bonnie's progress at school. She introduces herself to the principal and requests Bonnie's attendance and school reports. The principal confirms that Barkave works for a prescribed body and answers her questions over the phone and in a follow up email. Barkave uses this information as part of her work with Bonnie.

Tips for Asking For Information

When requesting information under Chapter 16A, or when DCJ directs information under section 248, you should:

- **confirm the identity** of the child or the adult and their relationship to that child
- explain the **relevance of the request for information** and how it relates to the safety, welfare or wellbeing of the child (for requests under Chapter 16A)
- explain how the direction for information relates to the safety, welfare and well-being of the child (for directions under section 248)
- explain **why** the information will **assist** you to make a **decision, assessment or plan** (for requests under Chapter 16A)
- explain **why** an **investigation** is initiated or conducted (for requests under Chapter 16A)
- explain **why** any **service** is **provided** (for requests under Chapter 16A)
- explain why any risk to the child is managed (for requests under Chapter 16A)
- provide **sufficient detail** that helps others to **understand the purpose** of the request and to **locate the relevant information** in an efficient manner
- **provide background** to the request, including if you have **obtained consent** and/or a **child or family** has been **informed** and **if not, why not** (for example, where there are safety concerns)
- indicate the **timeframe you need the information for** (e.g. for the last six months, three years) and the type of information (e.g., attendance at appointments)
- provide a **realistic timeframe for the prescribed body to provide the information**, negotiating a date between you is ideal

- ensure the information is requested and provided in a **secure way** – follow your PSP Service Provider’s policies and procedures as to how information is given or received
- if you **think DCJ has relevant information** for you and you are unsure where to go, approach your local **Child and Family District Unit (CFDU)**.

You can only provide or request information that already exists. You cannot be asked to collect new information or undertake a separate assessment and report to meet the information request or direction given.

Information requests and responses can be given by phone, email or letter. It is best practice to communicate with the receiving organisation prior to drafting a request.

Before disclosing information, you should consult with your organisational policies and your manager, except in very urgent situations.

You may not need to comply with a request if it is from a Commonwealth or an interstate agency which is **not** a prescribed body under Chapter 16A.

Example

Lawrence is working with Bethany who has recently been transferred from another NGO. He is working with the new carers on Bethany’s transition. The carers have questions about Bethany’s past routines and favourite foods. Lawrence answers based on the information he has and rings the previous caseworker for more information. As the two have previously met and exchanged numbers, the previous caseworker can immediately answer to help Lawrence support Bethany and her new carers.

Who Shares Information Under Chapter 16A and Section 248?

Prescribed bodies are authorised to share information. Prescribed bodies are defined in the Care Act and Regulations and include (but is not limited to):

- the NSW Police Force
- a State 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 health facility
- an accredited adoption service provider
- a registered community housing provider
- a designated agency
- a registered agency
- a children's service
- any other organisation who has 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 a child.

PSP Service Providers can directly share information with interstate Community Services if the information relates to the safety, welfare or wellbeing of a child as listed under Chapter 16A or S248.

Consent and Concerns About Information Sharing

Under Chapter 16A, PSP service providers do not need consent from children and families to share information. However, it is best practice and a responsible use of power to:

- let people know from the beginning the limits to confidentiality and the possibility of information of being shared
- obtain consent where possible
- be open to hearing their concerns about the information being shared
- consider people's views carefully and balance them against the benefits of sharing information
- consult colleagues and managers when we are unsure about a decision
- be transparent and respectful about why we share information and how it might be used
- provide avenues for complaint if they disagree with the decision.

When Not to Share Information

In most cases, you will be able to share information with another prescribed body. However, section [245D \(4\)](#) of the Care Act states exemptions where information should not be shared such as it will prejudice an investigation or care proceedings, contravene legal

privilege or endanger a person's life or safety. Refer to the legislation for a complete list under [section 245D \(4\)](#). If there are unusually complex issues, it may be necessary to obtain legal advice.

Disputes About Sharing Information

If your PSP Service Provider refuses to provide information, you must put this refusal in writing to let the requesting agency know and explain your reasons for doing so. PSP Service Providers do not have to share requested information from Commonwealth, or any agencies or non-government organisations not listed under Chapter 16A.

If you have concerns about a request to sharing information or would like to dispute a request, escalate the issue to your manager.

Protection For Casework Staff in PSP

If you act in good faith when providing information under Chapter 16A, you:

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

References

Children and Young Persons (Care and Protection) Act 1998.

<http://classic.austlii.edu.au/au/legis/nsw/consol_act/caypapa1998442/>