

S149B-K and S163

Section 149B-K ([s149B-K](#)) and section 163 ([s163](#)) are closely related sections of the *Children and Young Persons (Care and Protection) Act 1998* (the Act) both of which play a critical role in how we manage the sharing of information regarding children in out-of-home care (OOHC). Both s149B-K and s163 are fundamentally about maintaining transparency and connection between children in OOHC and their families or any other person significant to the child who makes a written request for the information. The S149B-K focus on determining level of information disclosed and the s163 updates are the ongoing commitment to transparency and connection.

Practice Considerations

The Office of the Children’s Guardian ([OCG Disclosure Guidelines](#)) highlight six core practice considerations:

1. **Incorporating the child's perspective:** Children should be given the opportunity to express who they believe should be informed about their placement and what specific information they are comfortable sharing. This must be age-appropriate and sensitive to the child's level of understanding and emotional state as per section 149D(a) of the Act.
2. **Risk assessment in information sharing:** Agencies must rigorously evaluate the potential risks involved in disclosing placement information, with a strong emphasis on balancing the need for transparency with the safety and well-being of the child and others in the care environment.
3. **Regular review and flexibility:** Agencies must regularly reassess and adjust their practices based on changes in the child’s circumstances, preferences, and the overall risk landscape, with flexibility and responsiveness to new information and evolving situations.
4. **Engaging and supporting carers:** Carers play a vital role in the child’s life and their concerns about information disclosure should be carefully considered, recognising their need for support and understanding in navigating the complexities of sharing placement information. Agencies need to obtain carers consent before disclosing high – level identifying information. When decisions are made without the carers' or young person’s agreement, it is essential to provide clear, written explanations outlining the rationale.

5. **Maintaining privacy and confidentiality:** Agencies must ensure that all disclosures of placement information comply with legal standards and are conducted with the utmost respect for privacy, reflecting the importance of safeguarding personal information and protecting the identities of those involved. Agencies should be vigilant in ensuring that only the necessary information is shared and that it is done in a way that minimises any potential risks.
6. **Fostering family and community connections:** Proactive communication, where agencies actively share appropriate information, supports these important relationships and help families cope with separation. Section 163 underpins the right of parents to be informed about their child's progress and development. This practice is especially important for Aboriginal and Torres Strait Islander children, where connections to family, community, and culture are integral to their well-being.

It is important to consider how these obligations intersect with the [Child Safe Standards](#):

- **Standard 5:** All processes for responding to and reporting abuse are child focused. Agencies must fully consider the impact on the child when disclosing placement information – this includes the child's perspective, their emotional and psychological safety, and their right to have a say in what information is shared.
- **Standard 13:** Agencies must have robust strategies in place to identify, assess, and mitigate any potential risks that could arise from sharing placement information – this includes considering the potential for misuse of information, the risk of harm to the child or their carers, and the broader implications for the child's safety and stability in their placement.

Section 149B-K

The S149B-K is solely about determining the amount of information shared, including for section 163. It is about assessing the risks related to disclosing placement information and is not an assessment of whether face-to-face [family time \(contact\)](#) is safe.

The types of information that could be provided include high-level identifying information or non-identifying information in relation to either: contact, events or placement or all.

High-level identifying information includes details that can directly reveal the identity or location of the child, such as the full names of carers, the child's residential address, or the name of the school they attend. Given the sensitivity of this information, the process of obtaining consent must be handled with care and transparency, and include:

1. A detailed discussion with the carers about the nature of the information that may be disclosed and the reasons why this information is important for maintaining connections with the child's family or significant others, serving in the best interests of the child. Approach the conversation with empathy, acknowledging any concerns the carers may have about privacy, safety, or the potential impact of sharing this information.
2. Obtain written consent from the carers, stating what information will be disclosed, to whom, and for what purpose. The consent form should also outline any conditions or limitations the carers wish to impose on the disclosure, such as restricting the sharing of certain details or specifying how the information should be communicated.
3. Once consent is obtained, it should be documented in the child's case file, along with any notes from the discussion that led to the consent. This documentation serves as a record of the carers' agreement and can be referred to in future decision-making processes or if any disputes arise later on.

If carers refuse to provide consent, the agency must carefully consider whether disclosing the information is still in the best interest of the child and whether it can be done without compromising the safety, welfare, and wellbeing of the child, carers, or other household members. If the agency decides to proceed with the disclosure, a clear and structured procedure must be followed:

- **Risk assessment:** Conduct a comprehensive risk assessment evaluating the potential risks to the child and carers if the information is disclosed without consent. Consider the potential consequences of not disclosing the information, such as the impact on the child's relationship with their family.
- **Internal review:** Before any information is disclosed, conduct an internal review of the decision involving senior staff members who can objectively evaluate the reasons for and against the disclosure. Consider whether alternative options, such as disclosing less sensitive information, might achieve the same goals with lower risk.
- **Providing written notice to carers:** If the agency decides to move forward with the disclosure, the carers must be provided with a written notice that explains the decision. This notice should include the reasons why the agency believes that disclosing the information will not pose a risk to the safety, welfare, and wellbeing of the child, carers, or other household members. The notice should also inform the carers that the information will not be disclosed for at least 21 days from the date of the notice, giving them time to respond.

- **Right to review by NSW Civil and Administrative Tribunal (NCAT):** The written notice must also inform the carers of their right to request a review of the decision by the NCAT within the 21-day period. If the carers choose to request a review, the agency must refrain from disclosing the information until the review process has been completed.
- **Documentation and transparency:** All steps taken during this process, including the risk assessment, internal review, and communication with carers, must be thoroughly documented. This ensures that the agency's decision-making process is transparent and can be reviewed if necessary.

Decision to disclose non-identifying placement Information

Refusing to disclose placement information is a significant decision that must be approached with the utmost care, primarily focusing on the safety, wellbeing, and legal obligations involved. There are specific circumstances where refusing to disclose information is not only appropriate but necessary – safety risks and/or legal or court orders. When the decision is made to refuse disclosure of placement information, it is essential to handle this process with clarity, professionalism, and care:

- **Document the decision:** Proper documentation is critical – include the details of the initial request, assessment process, and communication of refusal.
- **Communicate the decision:** The individual requesting the information should be notified of the decision to refuse disclosure and include a specific explanation of the reasons for the refusal.
- **Provide a legal basis:** It is important to reference any legal grounds, such as court orders or statutory obligations, that require the refusal of disclosure.
- **Offer support:** Where possible, offer alternative ways to keep the individual informed without compromising safety or legal obligations.
- **Ongoing review:** Regularly review the decision to ensure it remains appropriate as circumstances change.

Review Mechanisms for Decisions

When it comes to disclosing high-level identifying information, it's crucial to carefully consider the balance of maintaining important relationships with the protecting the safety and privacy of the child and their carers. Agencies must have robust review mechanisms in

place through their policy and processes, typically involving an internal evaluation conducted by senior staff members. Key aspects of this review process usually include:

- **Risk assessment:** A thorough risk assessment must be conducted to identify any potential threats to the child, carers, or other household members if certain information is disclosed. Consider past incidents, current family dynamics, and any known risks associated with the individuals involved.
- **Consultation:** The views of the child, carers, and any other significant stakeholders must be considered in alignment with the agency's duty of care and legal obligations.
- **Documentation:** Every step of the decision-making process, including risk assessment and consultation outcomes, should be meticulously documented to ensure transparency and a clear rationale for the decision.
- **Approval by senior staff:** Before any information is disclosed, the decision must be approved by an appropriately authorised senior officer within the agency.

Information on NCAT's Review Process

If a decision is made to disclose high-level identifying information without the consent of the carers, they have the right to request a review by NCAT. NCAT acts as an independent body that reviews decisions made by agencies to ensure they comply with the law and that the rights of carers and children are upheld.

When a carer requests a review, NCAT will examine the decision-making process to determine whether the agency acted within its legal authority and whether the decision was made fairly and appropriately. Key points about NCAT's role include:

- **Review process:** NCAT will review all relevant documentation, including the risk assessment, the consultation process, and the rationale provided by the agency for disclosing the information. The tribunal will consider whether the agency's decision aligns with the best interests of the child while also respecting the rights and concerns of the carers.
- **Possible outcomes:** NCAT has the authority to uphold the agency's decision, require further review, or overturn the decision if it finds that the agency did not follow proper procedures or if the disclosure is deemed inappropriate. The tribunal may also suggest alternative actions or impose specific conditions on the disclosure of information.
- **Legal implications:** Engaging with NCAT is a formal process, and the decisions made by the tribunal have legal standing. It's important that agencies prepare thoroughly for

a potential NCAT review by ensuring that all decisions are well-documented and that the reasoning behind those decisions is clear and legally sound.

The Role of Children and Young People

A child's views are a critical component in the decision-making process regarding the disclosure of placement information. Practitioners must give these views substantial weight and consideration, unless there are compelling reasons not to, such as when the child has a significant intellectual disability that affects their understanding, or when their expressed views could potentially endanger their safety. Practitioners should approach the child's preferences with genuine curiosity and a desire to fully understand the reasons behind their wishes.

This involves:

- **Engaging in dialogue:** Practitioners should have open and respectful conversations with the child about their concerns regarding the disclosure of certain information. This dialogue is essential to uncover any underlying fears, anxieties, or issues that may be influencing the child's preferences.
- **Considering the child's perspective:** The child's views should be given great weight in the decision-making process. While they may not always be the sole determining factor, they should be taken very seriously and considered alongside safety and legal factors. In most instances, a child's wishes should be upheld unless there is a valid and significant reason not to do so.
- **Documenting the child's wishes:** It's crucial to meticulously document the child's preferences, the reasoning behind them, and how these views were factored into the final decision. This documentation not only ensures transparency but also provides a clear record that can be referred to in future discussions or reviews.

Section 163

Under s163, DCJ and designated agencies are legally required to provide parents with regular updates on their child's progress and development while in OOHC. This means that the task of providing information to a parent cannot be delegated to a carer. The types of progress updates given will be determined by the assessed level in the S149B-K risk assessment. Keeping parents informed helps maintain the parent-child bond, which is crucial for the child's sense of identity and belonging. Even in cases where the child cannot be reunited with their parents, ongoing communication helps the child feel that

their parents are still involved in their life and by keeping parents informed, agencies can help alleviate some of the anxiety and stress that parents often feel when separated from their children. Agencies may share updated through written reports, verbal updates, or as part of case plan reviews, and should include information about:

- **Health and educational updates:** Health updates should cover both physical and mental health. Educational updates should provide insights into the child's academic progress and how they are adapting to their school environment.
- **Social, emotional, and developmental progress:** Information about how the child is adjusting to being in out-of-home care, their relationships with carers and peers, and any behavioural changes that have been observed, such as coping mechanisms, signs of distress, or improvements in their emotional resilience. Developmental progress about milestones in language, motor skills, or social interactions for younger children, whilst for older children, it could involve their growth in independence, responsibility, and self-identity.
- **Activities and significant events:** Keep parents informed about the day-to-day activities and significant events in their child's life. This helps bridge the gap caused by physical separation and supports the parent-child relationship.

Recordkeeping and Confidentiality

Under [section 160](#) of the Act, agencies are responsible for the meticulous maintenance of all records related to the development, history, and identity of a child or young person for whom the Minister has parental responsibility – including written documents and photographic records. Agencies must preserve these records with care and ensure they are readily accessible to the child or young person when they leave care. Information about a child—whether a written report, verbal update, or case plan review—needs to be documented with exactly what was shared, with whom, and when. Detailed records – including clear labelling – ensures transparency, accountability, and provide a clear trail that can be referred back to if any questions arise later.

Confidentiality is paramount—not only for maintaining trust with the child and their family but also for complying with our legal and ethical obligations. This means ensuring that any information shared is stored securely, whether digitally or physically, and that access is limited to those who need it. Always confirm the current address before sending, or better yet, arrange to hand-deliver the updates if possible.

When communicating with families, use respectful and clear language, keeping in mind who will be reading or hearing the information. Consider the literacy levels of the parents,

including if information should be translated into another language. If providing a verbal update, it's crucial to document the conversation thoroughly.

Scheduling regular updates ensures important communications aren't missed. Regular updates are vital for keeping parents informed and maintaining their connection with their child, which is an essential part of supporting the child's wellbeing.