

# Information Sharing Guidelines

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Acronyms	Full form
CEO	Chief Executive Officer
NT	Northern Territory
the Department	Territory Families Housing and Communities
the Act	Care and Protection of Children Act 2007

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# 1. Background

## 1.1. Enabling Legislation

Part 5.1A of the *Care and Protection of Children Act 2007* (NT) is the legal basis for the Northern Territory's information sharing framework for child safety and wellbeing. It is referred to in these guidelines as "Part 5.1A" or "the information sharing framework".

## 1.2. Principles

People and organisations with responsibility for children should provide and receive information to assist them in working in child safety and wellbeing related tasks. Personal information should be managed with sensitivity and discretion, recognising that the wellbeing of a child includes respect for their personal integrity and dignity, and that of their family, and involves, particularly for older children, having control over their personal information wherever possible.

People and organisations are to work collaboratively to ensure child safety and wellbeing and to respond to legitimate information sharing requests in a timely fashion.

Rules and standards to protect confidentiality and privacy of individuals should not obstruct the sharing of information for the safety and wellbeing of children.

## 1.3. Definitions

**Carer** means a person with whom a child is placed by the CEO pursuant to a placement arrangement.

**Child or young person** means a person less than 18 years of age.

**Authorised information sharer** means an information sharing authority and will most often be an individual person who is authorised because of the job they hold.

**Information sharing authority** means a person or organisation defined as an information sharing authority in section 293C of the *Care and Protection of Children Act*.

**Parent** in these guidelines includes all those with parental responsibility for the child. It encompasses biological parents, adopted parents, and parents recognised under Aboriginal customary law or tradition as well as people exercising parental responsibility pursuant to an order of the Family Matters Court or the Family Court of Australia.

**Reasonable belief** can be summarised as an honest belief which is well founded. It is more than a suspicion.

**Safety** means the condition of being and feeling safe. Safety is freedom from the occurrence or risk of physical or psychological injury, danger or loss.

**The Act** refers to the *Care and Protection of Children Act*.

**Wellbeing** includes a child's physical, psychological and emotional wellbeing.

## 2. Purpose of these guidelines

These guidelines are intended to:

- Describe the framework for information sharing in relation to child safety and wellbeing in the Northern Territory;
- Assist authorised information sharers in understanding their obligations under the information sharing framework; and
- Assist authorised information sharers in establishing efficient and collaborative information sharing relationships with each other.

These guidelines also are intended to provide guidance for authorised information sharers as to:

- What factors may be taken into account in the formation of a “reasonable belief” for the purposes of the information sharing framework; and
- When consideration should be given to obtaining consent from a child, young person or family member before sharing information under the information sharing framework.

These guidelines do not:

- Replace an organisation’s own policy or procedures documents. Authorised information sharers should produce policy and procedures documents that are consistent with the legislation and these guidelines and are tailored to their specific needs; Affect the requirement to report harm, exploitation or some sexual offences under s26 of the Act;
- Affect the provisions of the Act which allow an Authorised Officer to seek information as part of an Inquiry or Investigation into a situation where a report or complaint has been received that raises concerns for a child’s safety or wellbeing; or
- Require a person or an organisation to take any step which is not in accordance with the Act.

## 3. Who may share information?

In these guidelines the term “authorised information sharers” means those who are authorised as information sharing authorities under s293C of the Act or prescribed in future Regulations.

Although the phrase “information sharing authorities” is used in the Act, an authorised information sharer will most often be an individual person. Generally, that individual will be authorised because of the job they hold, including if they are in charge of a particular organisation, or because they are a member of a certain profession or undertake a particular function for or in connection with children.

## 4. How information can be shared under this framework

### 4.1. Authorised information sharers

Authorised information sharers include:

- Carers operating under the Care and Protection of Children Act;
- Police officers;
- School principals;
- Registered or authorised teachers;

- A provider of registered childcare services;
- Individuals in charge of non-government organisations (NGOs) who provide a service in connection with children;
- Individuals employed by the above organisations to provide a service or perform a function for or in connection with children;
- Case managers working with children in the youth justice system;
- Doctors, nurses, psychologists, and other health professionals registered under the Health Practitioner Regulation National Law to practise a health profession (other than students);
- Persons in charge of public or private hospitals;
- Public servants, including CEOs of government agencies, who are acting under a law of the Northern Territory in relation to children, including for example: Department of Territory Families, Housing and Communities authorised officers under the Care and Protection of Children Act and others acting under the Youth Justice Act; and
- Lawyers.

It is the responsibility of each authorised information sharer to satisfy themselves that they are authorised under the Act to share information in relation to a child or children and that anyone who they propose to share information with is also authorised.

Authorised information sharers (and/or their employer organisations) are encouraged to seek independent legal advice if they are unsure of their status under the Act. Authorised information sharers who are Northern Territory Government employees can seek legal advice from the Solicitor for the Northern Territory or via the legal unit in their agency.

## 4.2. When may I share information under the Information Sharing Framework?

Authorised information sharers may share information only with other authorised information sharers.

Authorised information sharers may share information about a specific child or group of children. The child or group of children must be specified when sharing the information.

The child (or children) does not have to be or have been the subject of a child protection notification or court order for information to be shared.

Information about a child or children includes information about other people as long as that information directly or indirectly relates to the safety or wellbeing of the child. Therefore, information about parents, carers, siblings or others may be information in relation to the child if it relates to the child's safety or wellbeing, directly or indirectly.

Authorised information sharers may share information at their own instigation, i.e. when no request has been made, as long as they:

- Specify the child or children to whom the information relates when sharing the information; and
- Have a reasonable belief that the information would help the recipient take a specified action in relation to the child or children. The actions which are covered are very broad and are described as:
  - make a decision, assessment or plan;
  - initiate or conduct an investigation; or

- provide a service or perform a function.

An authorised information sharer may request information about a specific child or children from another authorised information sharer. The request must:

- Say which child or children the information relates to; and
- Specify the information which is requested.

An authorised information sharer may request information from another authorised information sharer under Part 5.1A only if the requestor has a reasonable belief that the information would assist the requestor to make a decision, assessment or plan, initiate or conduct an investigation or perform a service or function, related to the safety or wellbeing of the child (or children) to whom the information relates.

### 4.3. What is a “reasonable belief”?

A reasonable belief can be summarised as an honest belief which is well founded. Having a reasonable belief does not mean that a person has to be certain, however it is more than a suspicion.

Belief is simply the state of mind of the person who is required to make a decision to request or give information.

Whether a belief is reasonable will depend upon all of the circumstances. Those circumstances can include:

- The information the person has already;
- The skills, training and experience of the person. For example, a doctor might have quite a different belief about an injury or medical condition to a teacher;
- The urgency of the situation.

See Clause 9 for more discussion of the factors which a person may take into account in forming a belief as to the need to share information.

### 4.4. What matters may authorised information sharers take into account?

The information sharing framework requires authorised information sharers to have a reasonable belief that information would help the requesting or receiving authorised information sharer to:

- make a decision, assessment or plan; or
- initiate or conduct an investigation; or
- provide a service or perform a function that relates to the safety or wellbeing of a child.

In forming a reasonable belief about the matters in Clause 8 an authorised information sharer may consider anything that they may think relevant, including:

- Any information provided by the person making the request;
- Any relationship that the requesting person may have with the child or functions that they may be required to perform to protect the safety or wellbeing of the child or children;
- The potential negative impact on the specified child or children if the information were not shared;
- The likely or expressed wishes of the child, including whether the child would want access to, or the attention of, whatever service the other authorised information sharer provides;
- The maturity, worldliness and independence of the child and the child’s capacity to make decisions for him or herself;

- Whether and in what way the child's particular safety or wellbeing needs are likely to be assisted by the requesting or receiving service;
- Whether the information is comprised of facts or opinion;
- The currency of the information.

Authorised information sharers may also consider the possible impacts of not sharing the information, including:

- A potential failure to protect or promote the safety and wellbeing of the child;
- The risk that the service provider will be unable to effectively perform the functions set out in these guidelines;
- The risk that harm may not be identified by another person or organisation due to an incomplete appreciation of the child's situation; and
- The risk that a service provider may be discouraged from providing a service which facilitates a child's safety or wellbeing.

Authorised information sharers may also consider the risk that sharing the information will have a negative impact on a child's safety or wellbeing by:

- Discouraging a child or his/her family from accessing services which facilitate a child's safety or wellbeing;
- Precipitating family or community conflict;
- Undermining a child's support networks;
- Damaging a child's dignity and emotional wellbeing;
- Otherwise placing the safety or wellbeing of a child at risk; or
- Anything else that the authorised information sharer considers relevant to inform the particular decision.

The reasonable belief that information is related to the requesting authorised information sharer's child safety or wellbeing related tasks is assessed on a case-by-case basis. That is, it needs to be considered on each occasion that information is shared or requested.

If there is insufficient information to form a reasonable belief, an authorised information sharer who has received a request for information can ask for further information related to the request and the child safety or wellbeing tasks or function it relates to. An authorised information sharer can provide further information about a request. (See Clause 13 about making requests for information.)

## 4.5. What types of information may I share?

Any information relevant to child safety or wellbeing can be shared including, for example, information about:

- Any history of dealing with the child, including past support which may have been provided;
- The child's current care circumstances;
- The child's family members and relationships;
- Issues relating to a child's siblings or other family members where these are relevant;
- The child's health and treatment needs;



- Any psychological, behavioural or emotional difficulties the child may have;
- The child's educational, developmental, religious or cultural needs;
- Any disabilities;
- Allergies, dietary requirements;
- A parent's mental health, substance misuse, disability or history of domestic violence affecting a child's safety or wellbeing; or
- A person posing a risk to the child.

## 4.6. When must I share information?

If an authorised information sharer has received a valid request, he/she must share information which he/she reasonably believes would assist a requesting authorised information sharer in performing the actions, functions or tasks described in Clause 9 above unless there are grounds for refusing the request as described in Clause 12.

The information sharing framework does not require any person or individual to collect new information in response to a request. Only information in the possession of the authorised information sharer at the time the request is responded to is relevant.

An authorised information sharer is not required to undertake any new assessment or report to meet an information sharing request. [Note: an Authorised Officer as delegate of the CEO under the Act has additional and separate responsibilities to investigate and to provide information to ensure service providers can adequately perform their functions to protect the safety and wellbeing of a child. These roles are not affected by the information sharing framework.

Information provided under the information sharing framework to one authorised information sharer can be requested and provided by that authorised information sharer to a third authorised information sharer as long as the new transfer of information also complies with the framework.

## 4.7. When may I refuse to share information?

An authorised information sharer may refuse to share information:

- When the person making the request is not an authorised information sharer;
- When the information requested is not relevant to the requesting person's child safety or wellbeing task;
- When the request is not in relation to a specified child or children;
- When you reasonably believe that sharing the information might:
  - Endanger a person's life or physical safety;
  - Prejudice the investigation of a crime or other illegal activity;
  - Prejudice a Coronial inquest or inquiry;
  - Prejudice court or tribunal proceedings;
  - Breach legal professional privilege or client legal privilege;
  - Enable the identification of a confidential source related to the enforcement or administration of a law; or

- Prejudice the effectiveness of a method or procedure for detecting preventing or investigating criminal or illegal activity.
- When the request relates to a circumstance prescribed by Regulations.

#### 4.7.1. Expungement of Criminal Records

With the raising of the minimum age of criminal responsibility, children arrested, charged, and/or convicted and sentenced for an offence(s), while they were 10 or 11 years of age have had their records expunged.

Under section 468 of the Criminal Code, it is an offence to disclose expunged information contained in a record or parts of a record pertaining to convictions and charges of children aged under 12 years.

### 4.8. How should requests for information be made?

A request for information should identify the subject of the information and, if it is not the child or children to whom it relates, identify the subject's relationship to the child or children. (This requirement is important to ensure that authorised information sharers are talking about the same person.)

Should you wish to request information in writing, a sample Letter of Request is provided on the Northern Territory Government website:

<https://nt.gov.au/community/child-protection-and-care/sharing-information-to-protect-children>

Authorised information sharers may prepare and use their own templates as long as they comply with the Act and these guidelines. A request, whether it is written or verbal, should:

- Explain how it relates to the safety or wellbeing of the child or children,
- Explain how the information will assist the authorised information sharer to make a decision, assessment or plan or to initiate or conduct an investigation, or to provide any service or perform a function in relation to the child or children,
- Provide a sufficient level of detail to assist the other party to locate the information in an efficient manner.
- Provide background to the request including whether or not consent has been obtained, whether the requestor has informed the child and/or any family members of the child 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 six months, last three years) and the type of information sought, and
- Provide a realistic time frame for the requested party to provide the information. 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, in the case of written requests, the requestor will phone first to discuss needs and develop a request that is well targeted. This approach will assist requestors to ask only for relevant information.

### 4.9. In what form can information be exchanged?

With the exception of reasons for refusal to provide information (Clause 15) requests and responses can be made verbally or in writing. Authorised information sharers should use their professional judgement to determine which form is most appropriate for the particular circumstances.

In the Northern Territory, with outreach services working in remote communities, information sharing often will occur verbally, either over the phone or face-to-face.

Authorised information sharers should make a written note of verbal exchanges as soon as practicable as best practice.

Written exchanges are encouraged and can be electronic or “hard copy”.

Authorised information sharers should consider establishing procedures on how to document information sharing events.

For information on record keeping and documentation see Clause 22 of these Guidelines

## 4.10. Reasons for refusal to provide information to be in writing

Where all or part of an information request is refused, an authorised information sharer must give the requesting authorised information sharer a response in writing setting out the reasons for the refusal.

If there is more than one ground for refusal then all grounds must be stated. The grounds for refusal are limited to those set out in s.293E(5) of the Act.

These grounds are summarised at Clause 12 of these guidelines but you should consult the legislation if you are providing written reasons.

It usually will be self-evident which of the exemptions apply in the case of a refusal to provide information. In a complex case it may be appropriate to seek legal advice. Organisations may develop their own policies and procedures to assist authorised information sharers to understand the exemptions in the context of their business.

## 4.11. Good faith protection

Authorised information sharers who act in good faith when providing any information under Part 5.1A are not liable to any civil or criminal action nor are they in breach of any professional ethics or code for giving the information.

# 5. Seeking consent is encouraged but not required

## 5.1. When should I obtain consent before I share information?

Authorised information sharers are not legally required to obtain consent to share information under the information sharing framework, however consent should be sought where possible. It is a principle of the Act that a child should be given an opportunity to express wishes or views on personal matters.

Best practice is to seek consent from family members before information relating to them is exchanged, provided that doing so will not impact negatively upon the child’s safety or wellbeing or an investigation in relation to a child.

Maintaining confidentiality is an important aspect in any relationship between a service provider and a client. However, privacy considerations – including the potential loss of trust - must not compromise the safety or wellbeing of children.

People and organisations providing services to children should inform the child or the child's parents early on that information about them may be provided to other organisations. Consider seeking consent to make a referral to other services at an early meeting.

Keeping the client informed is best practice and builds client engagement.

Children, young people and their families should be informed of their right to provide feedback, including complaints, about the care or services they are receiving or the disclosure of information under Part 5.1A.

Control over one's personal information is a central aspect of dignity and therefore wellbeing. Authorised information sharers should consider notifying people that their information has been shared and the reasons for it as a matter of good practice. This may be after the event if there are safety or legal considerations.

Authorised information sharers are especially encouraged to consider obtaining consent before they share the information of older children (12 years +) who have the capacity to understand the exchange of information. This is particularly important if the information is sensitive or potentially damaging to a person.

Authorised information sharers should consider all the circumstances of the child and his/her family including any cultural sensitivity they are aware of in weighing up whether it is appropriate to seek consent.

Circumstances in which you would not as a matter of course consider informing the person or, if that person is a child, the child's parent or carer about the transfer of information include the following:

- Where an authorised information sharer believes obtaining consent could jeopardise the safety, or wellbeing of a person, including the child or a member of their family;
- Where you believe it may place you or another person in your organisation or workplace at risk of harm;
- Where it is impracticable to contact the parent or young person, and the matter is urgent; and/or
- Where there are other reasons why it is not in the best interests of the child (for example a situation where an investigation into the child's circumstances is under way).

Consent can be either explicit (agreement given verbally or in writing) or implied (for example information sharing with a particular individual or organisation may be inherent in or reasonably expected in the service being sought by the client).

Respectful ways of gaining and monitoring consent are to:

- Help clients understand why information sharing is important, whom it is designed to support and the intended outcomes;
- Explain what circumstances may arise where information may be shared without the person's consent;
- Be honest and explain that acting without consent will sometimes be in the interest of the child's safety or wellbeing. The greater the trust in the relationship, the easier it will be for the client to have faith in the provider's judgment about this; and
- Tailor the approach to clients, for example by providing written material in languages other than English, engaging an interpreter, or using visual media.

## 5.2. What if a child or young person cannot give consent?

If a potential authorised information sharer judges that a child or young person is not able to give consent, they should:

- Consider advising the parent or carer of the need to share information where it is safe to do so and such consultation will not significantly delay provision of the information; or
- Share the information without consent in accordance with the information sharing framework.

## 5.3. What is the role of parents and family?

Parents and family usually will not be authorised information sharers.

However, they may have a role in providing consent to share information, particularly relating to younger children.

Best practice is to parents and family when information is being shared about children, including in circumstances where consent has been refused. Parental understanding and support is invaluable to child wellbeing and safety, regardless of the child's age.

Some young people will express a wish for their circumstances to be kept confidential from their parents or family and this should be respected, provided that it does not impact on their safety and wellbeing.

## 5.4. Is it safe to seek consent?

Authorised information sharers should not seek consent if to do so would place someone at increased risk of harm. Below are examples of situations where individuals may be placed at increased risk of harm if a process of seeking consent is pursued.

An increased risk of harm may exist where a person may as a result:

- Withdraw themselves or their family from the agency's view;
- Cease to access a service seen to be necessary for the client's or their child's safety or health;
- Coach or coerce family members to 'cover up' harmful behaviour;
- Abduct someone or abscond;
- Assault or threaten to assault others;
- Attempt or threaten suicide; or
- Destroy incriminating material relevant to a child or young person's safety or wellbeing.

Even while recognising a risk and knowing that information can be shared without consent, a potential authorised information sharer may feel uncomfortable about not seeking consent. The discomfort may be alleviated if authorised information sharers already have discussed with their client the possibility that they may need to share information without consent for the protection of the client or the children and young people parented by the client.

## 5.5. What if I seek consent and it is refused?

While it is best practice to seek consent, it is not necessary to have obtained consent in order to share information if the information helps ensure a child's safety and wellbeing.

If you have received a request for information from another authorised information sharer, and you believe that the requested information would help the person making the request in their child safety and wellbeing-related tasks for a specified child, under the law you must share that information despite a lack of consent.

## 6. Administration

### 6.1. Record keeping and documentation

Authorised information sharers should record all exchanges of information made under the information sharing framework. Records should document the requests made and information exchanged. Documentation should cover:

- Information requests received;
- Information requests made;
- Information that has been shared; and
- Information requests that have been refused, together with the reasons for refusing.

Good documentation will make it easier for an authorised information sharer to establish that they have shared information appropriately and are therefore entitled to the protections available under the Act.

Documents that contain sensitive information and are no longer required can – provided that it is consistent with any other law pertaining to storage of information – be destroyed. Part 5.1A does not impose any new record keeping requirements on authorised information sharers. In some cases it may be prudent to destroy sensitive, personal or confidential information rather than store it.

### 6.2. Protecting confidentiality and storage of information

Information shared under the information sharing framework remains confidential information. It is an offence to use or disclose such information for a purpose not related to the safety or wellbeing of a child to whom the information relates, unless otherwise authorised by law (for example, a request for information by the Children’s Commissioner).

Information provided by one authorised information sharer can be passed on to a third authorised information sharer as long as the second and any subsequent transfers are also in accordance with the information sharing framework in the Act.

Information should be requested and provided in a secure way so that it is seen only by those who need to be aware of it.

The information sharing framework legislation does not impose any particular requirements around storage of information. The usual privacy considerations do apply (for example, Northern Territory public sector organisations must store information in accordance with the *Information Act*).

### 6.3. Cross border information exchange

As Northern Territory legislation, the information sharing framework only authorises the exchange of information by authorised information sharers within the Northern Territory.

There are other mechanisms by which information may be exchanged with interstate authorities. For example Northern Territory public sector organisations generally can exchange information with interstate

bodies in line with the *Information Act*. Organisations covered by the *Commonwealth Privacy Act* can exchange information in accordance with that legislation without reference to State or Territory borders.

The CEO of the Department of Territory Families, Housing and Communities can exchange information with interstate authorities where a child is at risk of harm or where necessary to pursue an investigation or other function under the Act.

An Information Sharing Protocol between the Commonwealth and Child Protection Agencies January 2009 outlines how the Commonwealth and statutory child protection agencies can share information in order to provide more responsive care and protection services.

## 7. Other lawful means to share information

There are a number of other ways in which information can be exchanged which are not affected by the information sharing framework, Part 5.1A of the *Care and Protection of Children Act*. These include:

- Section 34 of the Care and Protection of Children Act (child protection) investigations;
- Requests for information by the Children's Commissioner;
- Subpoena for Court proceedings;
- Exchange of information under the Northern Territory Information Act and Commonwealth Privacy Act;
- Freedom of information (FOI) requests under the Information Act;
- Requests for information by the Ombudsman; and
- Requests for information by the Coroner.

For further information on Information Sharing contact the Department of Territory Families, Housing and Communities on 1800 565 935.

Information sharing provisions do not affect mandatory reporting. Suspected child abuse and harm must be reported to the Child Protection Hotline on 1800 700 250.