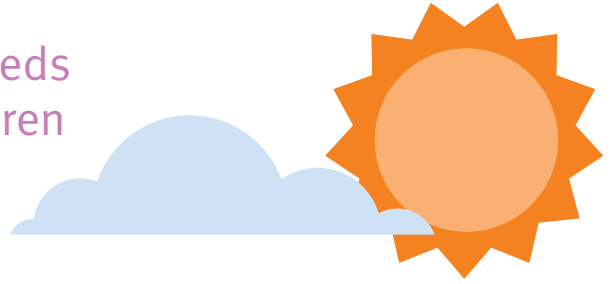


INFORMATION SHARING GUIDELINES

To meet the protection and care needs and promote the wellbeing of children



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01

Introduction

Sharing of information can support and assist families to receive support when needed and enable collaboration between services to help ensure the safety and wellbeing of children.

The importance of working collaboratively to meet the needs of children and families was acknowledged by the Queensland Child Protection Commission of Inquiry in its report, *Taking Responsibility: A Road Map for Queensland Child Protection* and by *The Royal Commission into Institutional Responses to Child Sexual Abuse*. Each review identified barriers to effective information sharing in child protection systems, including legislation, policy, practice and organisational cultures. They both confirmed the importance of information sharing to ensure children and their families receive the services they need.

Following a review of the *Child Protection Act 1999* (the Act), the Queensland Government simplified and broadened information sharing provisions. These laws introduce a modern information sharing framework to support the wide range of government and non-government agencies which deliver services to children and families, to share information with each other and to protect the safety, wellbeing and belonging of children. Sharing information in accordance with these provisions does not breach the privacy principles in the *Information Privacy Act 2009*.

These **Information Sharing Guidelines** are issued under Section 159C of the Act. They aim to support and guide organisations and agencies within the Queensland child protection and family support system, including government and non-government organisations to:

- understand their obligations when they share information under the Act
- outline what information can be shared, the circumstances in which it may be shared and who may share information
- define when information must be shared with Child Safety
- support the legislative framework for information sharing
- provide practical guidance about how to store and manage personal information

The guidelines do NOT replace the legislative requirements in the Act, nor do they replace each organisation's policies and procedures for information sharing and record keeping. It is important to refer to the legislation and internal organisational guidelines for advice, which is pertinent to specific service and client groups. Each entity remains responsible for ensuring that it complies with legislative or contractual requirements.



TIP The *Information Privacy Act 2009* allows personal information to be shared when it is done in line with the *Child Protection Act 1999*.

02

Key terms



The following list of terms are used throughout these guidelines. Where they are based on legislative definitions, the relevant section of the Act is also referenced. Page 6 of the guidelines provides additional information about prescribed entities, service providers and specialist service providers.

Authorised officer	A person appointed as an authorised officer under the <i>Child Protection Act 1999</i> . Generally, this is an employee of Child Safety. A Child Safety Officer is an authorised officer. (Section 149)	Independent Aboriginal or Torres Strait Islander entity	An individual or entity defined in Section 6 of the <i>Child Protection Act 1999</i> who facilitates the participation of an Aboriginal or Torres Strait Islander child or the child's family in the decision-making process.
Child	An individual who is under 18 years. (Section 8)	Information	Means personal information (fact or opinion), which is information about an individual, from which the identity of the individual can be ascertained.
Child Safety	Department of Child Safety, Youth and Women. The department responsible for administering the <i>Child Protection Act 1999</i> .	Licensee	An organisation licensed under the <i>Child Protection Act 1999</i> to provide care for children in the chief executive's custody or guardianship.
Chief executive	The chief executive of the department which administers the <i>Child Protection Act 1999</i> . Delegated officers of the chief executive's department may make particular decisions or take particular actions under the Act on behalf of the chief executive.	Prescribed entity	An entity defined and listed in section 159M of the <i>Child Protection Act 1999</i> . Refer page 6
Entity	Includes prescribed entities, service providers, chief executive, authorised officer.	Relevant child	A child in need of protection or a child who may become a child in need of protection if preventative support is not given to the child or the child's family. (Section 159BA)
Child in need of protection	Is a child who has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm and does not have a parent able and willing to protect the child from harm. (Section 10)	Service provider	Defined in section 159M of the Act. Refer page 6
Director of Child Protection Litigation	This position was established under the Director of <i>Child Protection Act 2016</i> whose main function is to apply for the child protection orders and conduct child protection proceedings.	Specialist service provider	Defined in Section 159M of the Act. Refer page 6

03

Legal framework

Chapter 5A — Service delivery coordination and information sharing of the Act provides the legislative framework for entities to coordinate services and share information to meet the protection and care needs of children and promote their wellbeing.

The framework:

- prioritises children’s safety, wellbeing and best interests over the protection of an individual’s privacy
- where it is safe, possible and practical the preferred approach of sharing information is with consent
- defines the types of entities that may share information with each other
- describes the particular purposes for which information may be shared between entities without consent
- specifies that information may only be shared if the holder of the information reasonably believes the information will help the receiver to do certain things, such as provide timely, coordinated and tailored support to families, assess and respond to the care and protection needs of children and offer help or support to their families.

Sharing information requires a case by case assessment of whether the information can be shared, based on the purpose for which it is being disclosed and to whom it is being given.

Key sections* of the legislative information-sharing framework

159A	Sets out the purpose of the Chapter, to provide for entities to meet the protection and care needs of the children by coordinating delivery of services and sharing information.
159B Principles	Principles to guide information sharing between organisations and individuals
159C Chief executive must make guidelines	Requires Child Safety to publish an information sharing guideline to provide practical guidance on sharing and dealing with information
159M Definitions for part	Defines the entities who may lawfully share information including prescribed entities, specialist service providers and service providers
159MA – 159ME	Specifies which entities can share information and for what purpose
159MF	Identifies facts or opinions as information that can be shared
159N	Requires particular entities to provide stated information with the chief executive of Child Safety when requested
159NA	Prevents information about spent convictions being shared
187	Places confidentiality obligations on those who share personal information under the Act
188	Maintains confidentiality

*These key sections are found in Chapter 5A, and are referred to throughout the guidelines. It is important to note however, these guidelines do not replace the legislation and there are other relevant sections in the Act.

TIP If the family have given their consent; their information may be shared with whoever they agreed the information could be shared with and for the purpose agreed to. If they have NOT consented, information may only be shared for the specific purposes and specific entities outlined in the information sharing provisions.



Principles¹

The following nine legislative principles guide information sharing and the coordination of services for children and their families.

- a) The State is responsible for ensuring that children in need of protection receive protection and care services that ensure their safety and promote their well being
- b) The State is responsible for ensuring that children and families receive the family support services that they need in order to decrease the likelihood of the children becoming in need of protection
- c) The chief executive has the primary responsibility for investigating, assessing and responding to allegations of harm to children, including by making plans for their protection and care
- d) The chief executive, authorised officers, prescribed entities and service providers should contribute, within each entity's own sphere of responsibility to assessing and meeting the protection and care needs of children and support their families
- e) Children in need of protection and children who may become in need of protection and their families should receive coordinated services that meet their needs in a timely and effective way
- f) The entities mentioned in paragraph (d) should work collaboratively and in a way that respects the functions and expertise of each of the entities
- g) Whenever safe, possible and practical, consent should be obtained before (i) providing or planning to provide a service, help or support to a child or a child's family to decrease the likelihood of the child becoming a child in need of protection or (ii) disclosing personal information about a person to someone else
- h) Because a child's safety, wellbeing and best interests are paramount, the child's protection and care needs take precedence over the protection of an individual's privacy and the principle mentioned in paragraph (g)
- i) Before disclosing information about a person to someone else, an entity should consider whether disclosing the information is likely to adversely affect the safety, wellbeing and best interests of a child or the safety of another person

Consent is preferred²

Entities sharing information under Chapter 5A, Part 4 of the Act are NOT legally required to seek or obtain consent from the person they are sharing information about. Children's safety, wellbeing and best interests must be prioritised over the protection of an individual's privacy, by enabling information to be shared without consent for particular purposes.

One of the legislative principle that guides sharing information under these provisions however is that Child Safety, prescribed entities and service providers, should obtain consent from parents and children, unless it is not safe, possible and practical.

What is safe, practical and possible will differ and depend on the circumstances of the child and the family and will need to be assessed by each entity, in regard to the particular purpose for which the information is being shared.

Circumstances where people may not be informed or their consent obtained about their personal information being shared include where seeking and obtaining consent could jeopardise the safety or wellbeing of a person. For example where:

- doing so may place someone at risk of harm
- it is impracticable or impossible to contact a parent or a young person and the matter requires an urgent response
- a person is unable to consent because of a mental health condition, is affected by drugs or alcohol, or non-compliance with medication
- there:
 - is a threat that a family may go into hiding or abduct a child
 - are assaults or threats to assault others
 - are attempts or threatened suicide
 - are concerns a child or another person could be coached or coerced.

1 *Child Protection Act 1999* (Qld) s.159B

2 *Child Protection Act 1999* (Qld) s. 159B (g) (i)(ii)

04

Who is allowed to share information³

The following entities are allowed to share information under the Chapter 5A Part 4 of the Act.

1. The chief executive or authorised officer
2. Prescribed entities, including specialist service providers
3. Service providers

CS

Chief executive or authorised officer

The chief executive is the chief executive of the department which administers the *Child Protection Act 1999*. An authorised officer is a person appointed as an authorised officer under the *Child Protection Act 1999*. Child Safety Officers are authorised officers. In addition, the chief executive may delegate particular powers and functions to officers of the chief executive's department.

PE

Prescribed entities

A prescribed entity is a government agency responsible for adult corrective services, community services, disability services, education, public health, housing services, Queensland Police Service, Mater Health Services, accredited non-state schools, specialist service providers and other entities that provide a service to children and families that is prescribed by legislation.

A specialist service provider is a non-government entity funded by the State or Commonwealth to provide services to a relevant child or the family of the relevant child. A relevant child is a child in need of protection or a child who may become a child in need of protection if preventative support is not given to the child or child's family.⁴

Examples of a specialist service provider include Family and Child Connect Service (FACC), Intensive Family Support (IFS) Service or Assessment Service Connect (ASC).

SP

Service providers

A service provider is a person providing a service to children or families, a licensee or an independent entity for an Aboriginal or Torres Strait Islander child.

Examples of a person providing a service to children or families include a General Practitioner (GP), private counsellor or a worker in an Aboriginal and Torres Strait Islander health service.

A licensee is an organisation licenced under the Act to provide care for children in the chief executive's custody or guardianship. This means organisations that provide placement services such as foster or kinship care services or residential care services.

An independent person for an Aboriginal and Torres Strait Islander child is an individual or an entity who facilitates the participation of the child and child's family in decision making processes.⁵

A licensee is an organisation licenced under the Act to provide care for children in the chief executive's custody or guardianship. This means organisations that provide placement services such as foster or kinship care services or residential care services.

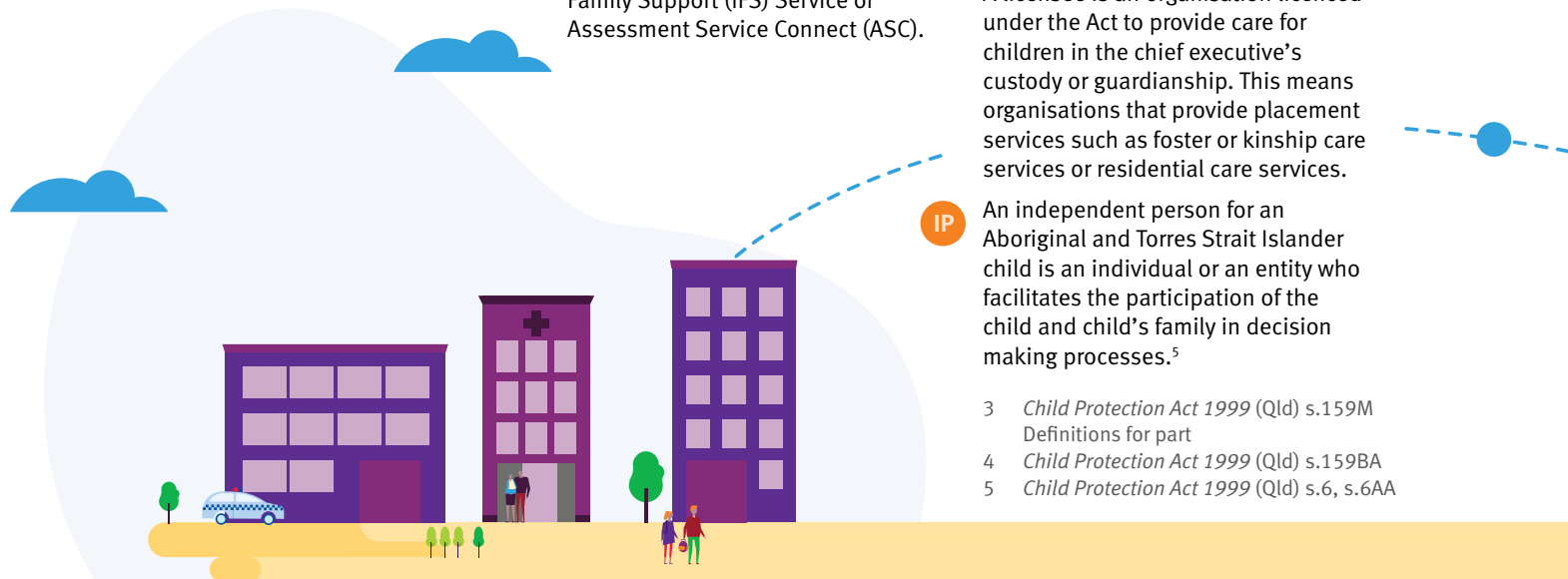
IP

An independent person for an Aboriginal and Torres Strait Islander child is an individual or an entity who facilitates the participation of the child and child's family in decision making processes.⁵

3 *Child Protection Act 1999* (Qld) s.159M Definitions for part

4 *Child Protection Act 1999* (Qld) s.159BA

5 *Child Protection Act 1999* (Qld) s.6, s.6AA



05

When information may be shared⁶

The information sharing framework in the Act enables broad information sharing without consent for specific purposes between entities involved in the child protection and family support system. Children and unborn children who may need protection after they are born are captured by this framework.

Child Safety, prescribed entities and service providers may share information with each other to identify, assess and respond to child protection wellbeing concerns.

Child Safety and an independent Aboriginal and Torres Strait Islander entity for the child may also share information with each other to facilitate the participation of the Aboriginal or Torres Strait Islander child or child's family.

In all cases described below, an entity must reasonably believe the information they are sharing will help with the particular purpose for which it is sharing the information. Decisions about information sharing need to be made with consideration of the individual circumstances of the child and family.

Enabling sections

Reporting suspicion to the chief executive (159MA)

Entities may share information with each other to decide if they should inform Child Safety about suspected harm or risk to a child or that an unborn child may be in need of protection after they are born.



Examples

- A young parents program supporting a pregnant teenager may share information with a domestic violence service if they believe it will help the domestic violence service decide whether to report to Child Safety about the safety of the unborn child after birth (service provider to service provider).
- A counsellor may share information with a school if they believe the information will assist the school decide if there is any risk of harm to the child and whether to report to Child Safety (service provider to prescribed entity).

Assessment or investigation (159MB)

Entities may give information to Child Safety to help it to investigate harm or risk of harm and assess a child's need for protection or an unborn child's need for protection after birth; or take other action or decide whether Child Safety suspects a child is in need of protection.

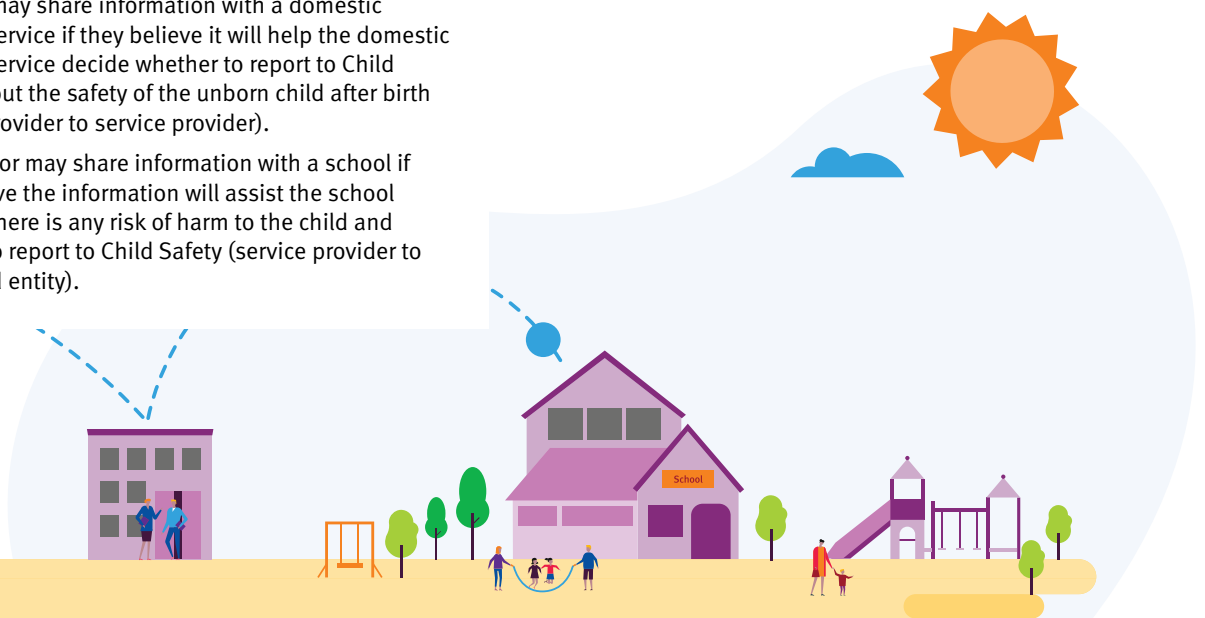
Child Safety may also give entities information to help them decide whether and what information to give to Child Safety.



Examples

- A specialist domestic violence service may share information with Child Safety if they believe it will help Child Safety investigate or assess the likelihood a child will need protection after the child is born.
- A Child Safety Officer may share information with a school about concerns which have been reported to help the school understand the issues and risks; and to then help the school decide whether they will share information about the child or family with Child Safety.
- Child Safety may give information relating to concerns about an unborn child to an ASC service to help with the assessment and investigation of these concerns.
- A police officer and a Child Safety Officer can share information as part of a joint investigation into suspected child harm.

⁶ Child Protection Act 1999 (Qld) s.159MA- 159ME



Assessing care needs and planning services (159MC)

Prescribed entities and service providers may give information to Child Safety to help Child Safety with the development or assessment of a child's case plan, assess or respond to, make plans or decisions or provide services to a relevant child or the child's family or offer help and support to a pregnant woman.



Examples

- A kindergarten may share information with Child Safety to assist with the education and care needs of a child in foster care.
- A midwife in Queensland Health may provide information to Child Safety about a pregnant woman to assist Child Safety to offer her help and support.

Child Safety and prescribed entities may give information to other prescribed entities and service providers to help them participate in case planning, assess or respond to, plan and provide services to child in need of protection or the child's family; or help Child Safety support a pregnant woman.

A service provider may give information to a prescribed entity to help them participate, assess or respond to and plan services for a child in need of protection or their family.



Examples

- Child Safety may share information with a GP to respond to the health needs of a child in care.
- A foster and kinship care service may give information to a Tertiary Family Support service to assist them to provide services to respond to the child's care needs (service provider to prescribed entity).

Decreasing the likelihood of a child becoming a child in need of protection (159MD)

Child Safety and prescribed entities may give service providers and other prescribed entities information to help assess or respond to a child's needs or plan or provide services to a child or the child's family to decrease the likelihood of a child becoming a child in need of protection.

A service provider may give information to a prescribed entity to help decrease the likelihood of the child becoming a child in need of protection.



Examples

- A FACC service may give information to another FACC service about a family, so the second service may provide a service to the family who lives in their catchment.
- A community health nurse may share information about a family to the Department of Housing and Public Works based on her concerns about the children becoming homeless.
- Police officer may make a referral to FaCC to help a child or a child's family access appropriate support services.

Facilitating participation of child or child's family (159ME)

Child Safety and an independent Aboriginal or Torres Strait Islander entity for a child (independent person) may share information with each other to help the independent person facilitate the participation of the Aboriginal or Torres Strait Islander child or the child's family in decision making planning, or providing services to the child or child's family. An independent person may give Child Safety information to help Child Safety provide or offer to provide services to the child or child's family



Example

- Child Safety may contact an independent person for a child to provide updated information about the date, time or location of a Family Group Meeting, if the child and their family has previously stated that they would like the independent person to be involved in the meeting.

06

When information must be shared with child safety⁷

Particular entities must comply with a request from Child Safety made under section 159N for stated information about a child, an unborn child or another person. These entities include:

- the Public Guardian
- a prescribed entity
- a licensee
- the person in charge of a student hostel.

Child Safety must reasonably consider the information which it is requesting is relevant to performing a function or exercising a power under the Act. This means that when requesting information, Child Safety should be clear about the purpose for which the information is needed.

Child Safety should advise an entity receiving a request under s159N, how the information will be used and disclosed, including disclosure to parties as part of the disclosure process in child protection proceedings.

An entity does not need to share information with Child Safety if it reasonably considers that giving the information would not be in the public interest, could enable the existence or identity of a confidential source of information to be ascertained, endanger a person's life or physical safety, or if it may prejudice the:

- investigation of a contravention or possible contravention of a law
- investigation under the *Coroner's Act 2003*
- effectiveness of a method or procedure for prevention, detection, investigation or dealing with a contravention or possible contravention of a law.

Expired and expunged convictions may also not be shared under this section.

Example

- Child Safety is concerned a mother does not have the capacity to appropriately care for her children as there is a reasonable suspicion she is a regular drug user, associates with other drug offenders and places her children in an unsafe environment. Child Safety has obtained a formal criminal history of the mother from the Police Information Centre through a request under s95 of the Act. The criminal history states the mother was convicted of three drug related offences in a six-month period. A Child Safety Officer then submits a request to the Queensland Police Service under s159N of the Act to obtain further details of the circumstances of the three drug offences, to inform an assessment of the mother's ability to care safely for her children.

⁷ *Child Protection Act 1999* (Qld) s.159N



07

Guidance about information sharing

It is important to carefully consider the purpose for which information is needed, when making a decision about requesting and sharing personal information. The following important concepts provide further guidance about information sharing.

a. Consent

Seeking consent for sharing information underpins the development of engagement and a positive working relationship with a family.

The informed consent of families is integral to the service model of many funded organisations operating within the child protection and family support system. The participation and active engagement of children and families are also key foundations of the Strengthening Families Protecting Children Framework for Practice implemented by Child Safety.

For consent to be informed and for people to fully participate in decision making, they should be given enough information to make a decision and should understand what they are agreeing to. Potential barriers to informed consent, such as disability, mental illness, age, culture or language, should be identified and managed when seeking and obtaining consent.

Entities should inform children and their families when commencing work with them that their personal information may be given to other organisations in certain circumstances. People should also be informed when their information has been shared and the reasons it has been shared, unless doing so would create risks to them, the child or others.

Children and young people should be given the opportunity and supported to participate in decision making processes relating to information sharing and have their views considered. The level of engagement of children in these processes needs to be based on their age, developmental stage and any particular needs.

Effective engagement of Aboriginal and Torres Strait Islander children and families takes into account the cultural and historical factors that have led to entrenched disadvantage and vulnerability within this community. Aboriginal and Torres Strait Islanders people should be supported and empowered to participate in decision making processes.

Recognition, consideration and understanding of cultural protocols and practices also contributes to effective engagement. Protocols for consultation are resources of the Department of Aboriginal and Torres Strait Islander Partnerships to provide guidance on engaging Aboriginal and Torres Strait Islander peoples.

Obtaining informed consent should include:

- determining whether an interpreter is required
- avoiding technical words or jargon
- avoiding leading questions.

Care also needs to be taken to respond to any cultural and language barriers to the participation and understanding of families from culturally and linguistically diverse backgrounds. Cross cultural competence and skills and use of interpreters where necessary may support obtaining consent from families from diverse backgrounds.

It is not always safe, possible or practical to seek and obtain consent. Requiring consent can at times, prevent or delay a service engaging with a family and prevent the effective coordination of services where multiple services are involved. Professionals need to be able to share information about a child or their family so help and support is provided in a timely way to enable families to meet the protection and care needs of children.

b. Reasonable belief

An entity may only share information if it reasonably believes it will help the receiver of the information do certain things, such as assess and respond to the care and protection needs of children and offer help or support to their families.

Whether a belief is reasonable will depend on the situation. Professional judgement is important when making a decision about what information to share. The reasons for forming a reasonable belief should be documented.

Personal information that is shared should be limited to what is needed to fulfil the purpose of sharing the information

c. Facts or Opinion⁸

Information shared may be comprised of facts or professional opinion. If possible, facts and opinion should be clearly represented as such. For example, in the opinion of the medical officer, the diagnosis is (fact)

d. Limits⁹

Information about expired convictions or expunged convictions and charges **MUST NOT** be shared. Other limits are relevant for requests for information under Section 159N.

e. Protection from liability¹⁰

A person is protected from liability when sharing confidential information, if they are acting honestly and if their actions in giving information are consistent with the purpose of information sharing under the Act. A person is protected from:

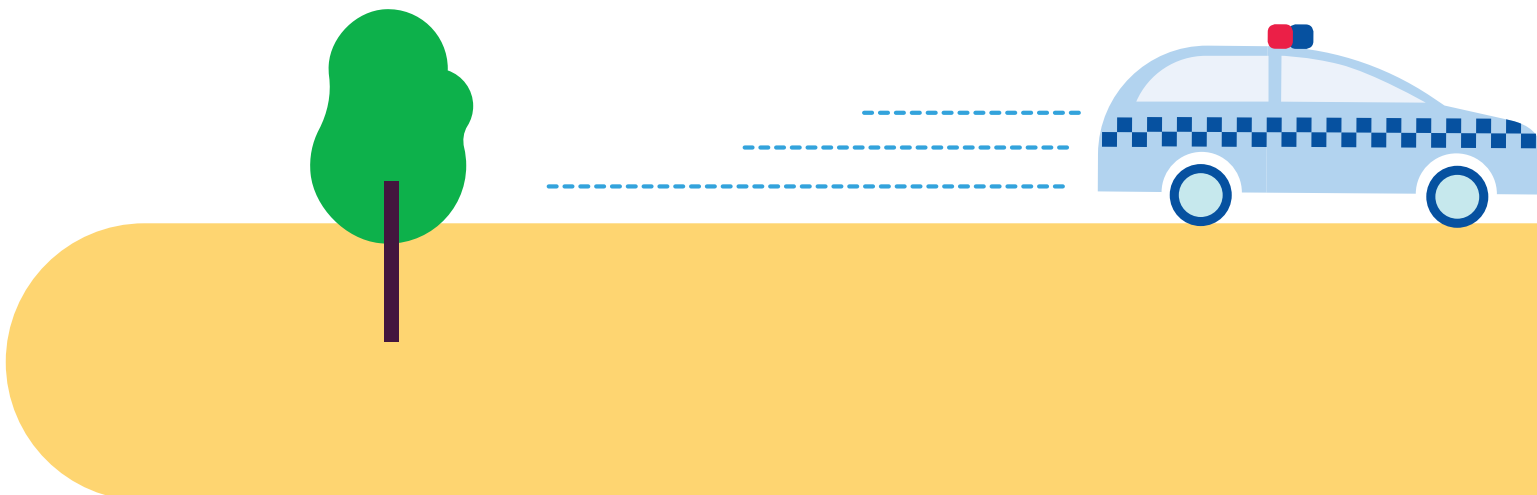
- criminal prosecution
- civil suit such as defamation or breach of privacy and
- administrative processes, such as disciplinary action.

In addition, the Privacy Principles are not breached if the information is shared in accordance with the information sharing provisions of the Act.

⁸ *Child Protection Act 1999* (Qld) s.159MF

⁹ *Child Protection Act 1999* (Qld) s.159NA

¹⁰ *Child Protection Act 1999* (Qld) s.159Q



f. STARR Principles

The STARR principles provide a useful guide for how and what information to share. The most important consideration is whether sharing information is likely to promote a child's safety and wellbeing.

SECURE

Information must be shared and stored securely according to organisational requirements.

TIMELY

It is not appropriate to delay information sharing that may help to prevent harm to a child and promote their safety and well-being. Timeliness is particularly important in emergency situations and it may not be appropriate to seek consent if doing so will cause delays and increase the risk to a child.

ACCURATE

Accurate and up to date information is vital and should clearly distinguish between facts and opinion.

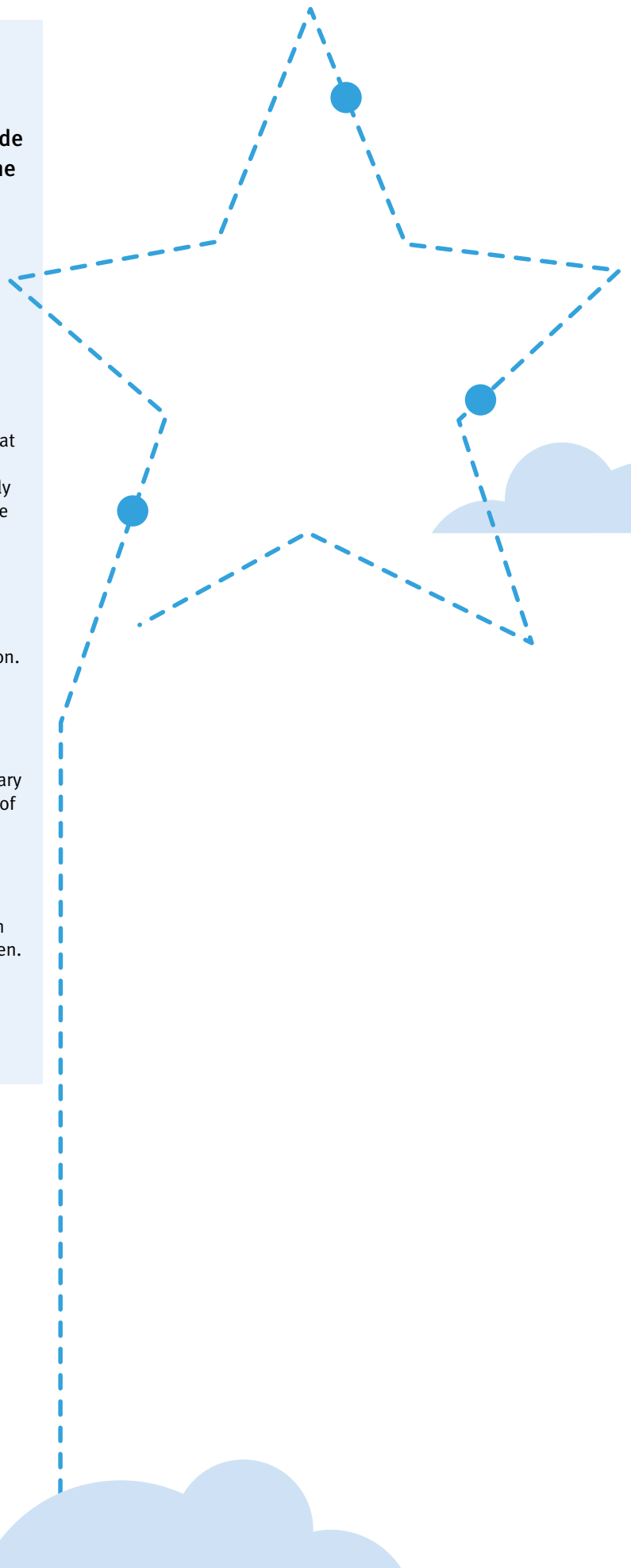
RELEVANT

Only information relevant and appropriate to the purpose should be shared with those who need it. The information shared must not include unnecessary detail and must be directly relevant to the purpose of the receiving agency.

RECORD

Information sharing decisions should be recorded, such as what information has been shared and with whom and for what purpose and if consent was given.

If consent was not given, or sought, document the reasons for this. If the decision was made not to share information, it is also good practice to record this decision.



08

Confidentiality¹¹

Any information acquired by an entity performing functions under the Act must be kept confidential. Provisions in the Act outline specific confidentiality requirements.¹² See below for a summary of key sections.

It is an offence for a person receiving information to use or disclose the information or give anyone access to a document except where the law allows it.¹³ Disclosure means passing the information to another person and access might be as simple as leaving a file in a position where someone could view the content of the file.

For example, disclosure or access is permitted:

- so a person can perform their child protection functions under or in relation to the Act
- if the use or disclosure is for purposes related to a child's protection or wellbeing – for example, a foster carer provides information about a child directly to a school to help the school meet the child's needs
- to protect a person from a serious and imminent risk to their safety or health
- if it is required or permitted by the Act or another law – for example, where a summons or subpoena has been issued for the production of certain documents to a court.

Any information disclosed by an entity performing functions under the Act to another entity performing functions under the Act is also subject to the same confidentiality provisions.¹⁴

Information given by an entity performing functions under the Act to another person, who is not providing a service under the Act, such as a family member, is also subject to confidentiality provisions.¹⁵

The maximum penalty for contravening sections 187 or 188 is 100 penalty units or up to 2 years of imprisonment. The table below identifies other sections of the legislation relating to confidentiality requirements.

a) Limits on further use or disclosure

When information is shared with another person or entity, the recipient should be advised why the information is being provided, the limits on further use or disclosure of the information and the confidentiality provisions applying to the information.

b) Disclosure in the context of child protection court proceedings

Under the *Child Protection Act 1999*, the Director of Child Protection of Litigation has a duty of disclosure in child protection proceedings in Queensland.

Under the Director of *Child Protection Litigation Act 2016*, Child Safety has a duty to disclose to the Director of Child Protection Litigation all information relevant to a proceeding.

This means information shared with Child Safety relevant to a child protection court matter may be disclosed by the Director of Child Protection Litigation during a child protection proceeding. The information may be provided to relevant parties, including the parents, the child, separate representative, the child guardian or another participant joined by the court.

It is possible for the Director of Child Protection Litigation to withhold or refuse to disclose information only where certain requirements are satisfied as specified in the Act.¹⁶ Persons or entities sharing information with Child Safety should identify any concerns about the possible disclosure of information at the time of providing the information, so these factors can be considered. Child Safety will ensure any identified concerns about disclosure are provided to the Director of Child Protection Litigation.

See below for a summary of key sections of the Act which relate to confidentiality and disclosure, however does not reproduce the detail of the legislation. People and entities sharing information under the Act, should refer to and be familiar with these provisions in the legislation.

11 *Child Protection Act 1999* (Qld) s.187 & s.188

12 *Child Protection Act 1999* (Qld) s.187

13 *Child Protection Act 1999* (Qld) s.187 (3)

14 *Child Protection Act 1999* (Qld) s.187

15 *Child Protection Act 1999* (Qld) s.188

16 *Child Protection Act 1999* (Qld) s.191

186

Confidentiality of notifiers

Prohibits the disclosure of the identity of people who notify Child Safety about harm or risk of harm to a child (or, in the context of court proceedings, information from which the identity of a notifier may be deduced), except in certain limited circumstances. It also sets out when disclosure of information is permitted, for example with the leave of a court or tribunal in a court proceeding.

187

Confidentiality of information obtained by persons involved in administration of Act

Prohibits entities and people (such as prescribed entities, Child Safety, service providers) who obtain information as part of their role under the Act, from disclosing this information, except in certain limited circumstances. It also sets out when disclosure of information is permitted, for example when Child Safety is cooperating and coordinating with entities to provide services to a child or their family.

188

Confidentiality of information given by persons involved in administration of Act to other persons

Prohibits a person who receives personal information from an entity (including Child Safety or prescribed entity) performing a role under the Act, from disclosing this information. It also sets out when disclosure is allowed, for example when directly related to a child's protection or wellbeing, to protect a person from serious or imminent risk.

189

Prohibition of publication

Prohibits publication of information that leads to the identification of children.

189C

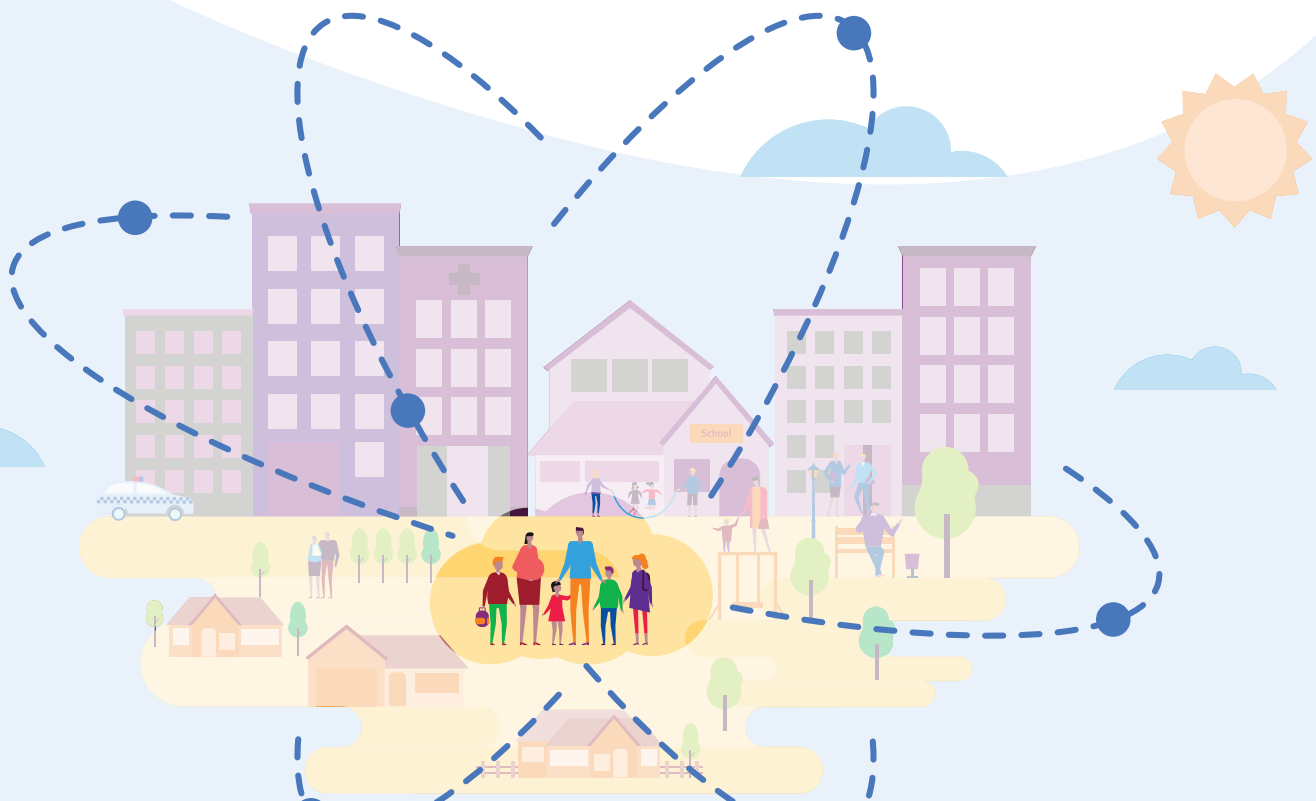
Litigation director's duty of disclosure

Imposes a duty on the litigation director to disclose all documents in his or her possession which are relevant to the proceeding, subject to sections 186 and 191 of the Act.

191

Refusal to disclose particular documents or information

Sets out the circumstances when the litigation director or another person engaged in the administration of the Act may refuse to disclose information in court proceedings.



09

Secure management of confidential information

When personal information is shared in accordance with the information sharing provisions of the Act, the Privacy Principles in the IP Act are not breached. Care must be taken however, to ensure that personal information is handled in accordance with the Privacy Principles set out in the IP Act that include the 11 Information Privacy Principles or National Privacy Principles, whichever apply to the entity, and section 33 of the IP Act.

These guidelines do not override the requirements for Queensland government agencies and others to comply with the Privacy Principles. Queensland government agencies should follow their established policies and procedures to ensure information is handled in a secure and confidential manner in compliance with legislative obligations.

Services funded by Child Safety are contractually required to comply with the Privacy Principles. They are also subject to additional requirements which are detailed in service agreements and in the Human Services Quality Framework. Other entities may have similar legislative requirements.

The general principles relating to privacy include the following. Further information is available on the Office of the Information Commissioner's website www.oic.qld.gov.au.

1. Personal information must not be transferred overseas unless one of the exceptions to section 33 applies, for example, the person consents to the transfer. It is important to note that overseas transfer may occur if the entity's computer systems are hosted in the cloud outside Australia.
2. Information must only be collected to perform an agency's functions. Information must not be collected in a way that is unfair, unlawful or an unreasonable intrusion into the privacy of the person. People must be advised why information is being collected, the authority for the collection and to whom it may be disclosed. (IPPs1-3)
3. Documents containing personal information must be protected from loss, unauthorised access, use, modification, disclosure or any other misuse. (IPP4)

The level of security required will depend on the nature of the personal information and the likely consequences if a breach occurs. If a document contains extremely sensitive information such as child safety, health or criminal, the agency should take maximum care in storing and protecting the information. Security measures may be: physical, such as locks or swipe cards; electronic, such as encryption, passwords for computers and audit trails; and operational, such as restrictions on access.
4. Reasonable steps must be taken to ensure an individual can find out whether the agency holds documents containing personal information, the type of information held and the purpose for which the information is used and what the individual should do to obtain access to a document containing their personal information. Some agencies publish this information in the form of a privacy policy available in hard copy and accessible through the agency's website (IPP5)
5. Requests for access to and amendment of a person's information should be accepted. Agencies should have their individual procedures and policies to guide administrative access to personal information and ensure these are available to clients. (IPP 6, 7)
6. Personal information should not be used for a purpose other than the particular purpose for which it was obtained, and not disclose the information to anyone other than the person it relates to, unless one of the exceptions apply. (IPP 10, 11)



Exceptions may include where the individual has agreed to the use or disclosure of information, where it is necessary to protect the safety of a child or where it is required or authorised by law

When personal information is to be shared, a written record of what information has been shared and to whom, should be recorded. As best practice, when sharing information organisations should also advise the recipient that:

- the information is only being shared for the listed purpose
- it is confidential information and must only be used for that purpose

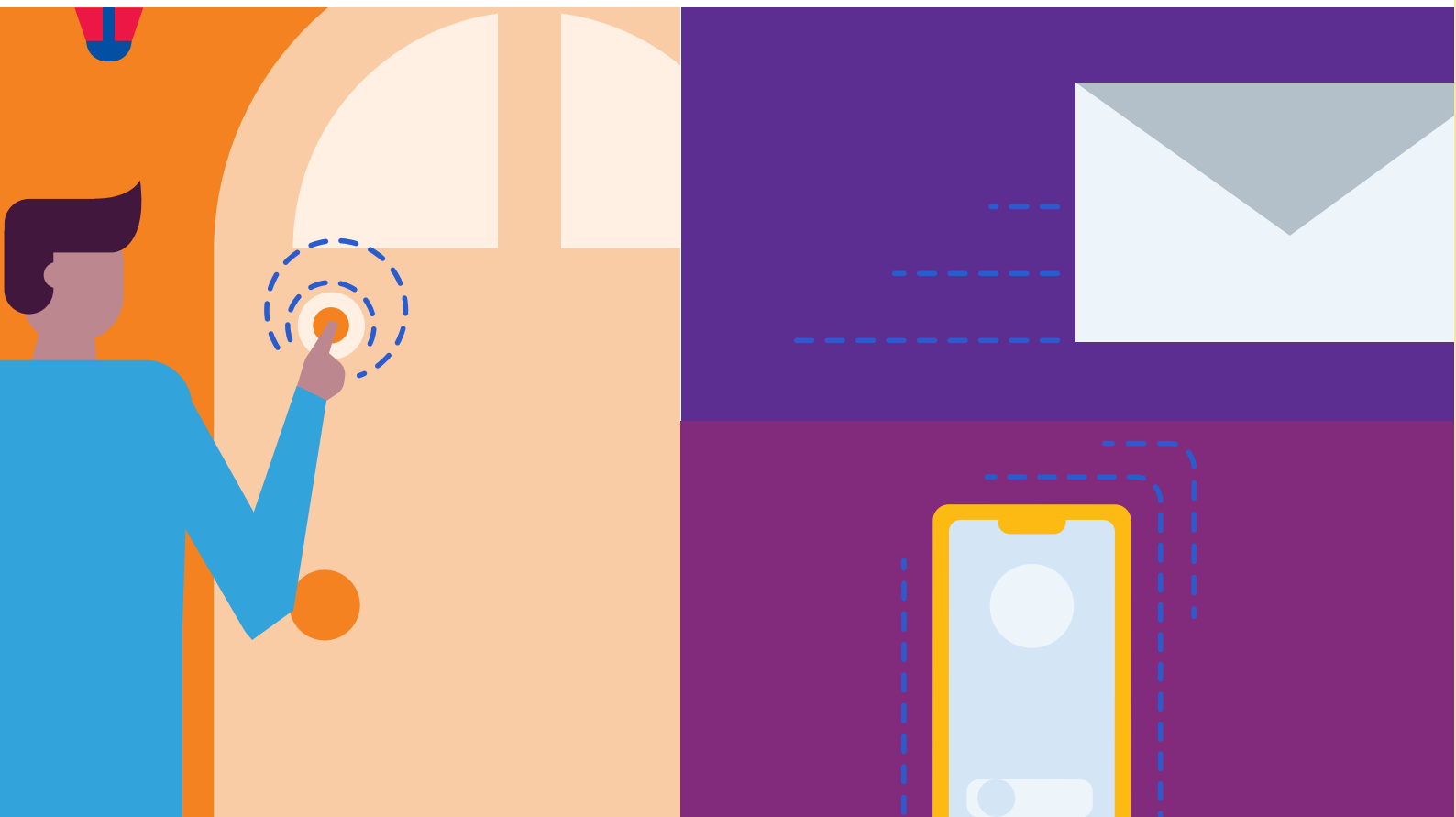
- it must only be disclosed in accordance with the relevant confidentiality provisions in the Act
- inappropriate disclosure of this information may be a breach of the Act and the IP Act
- and may have harmful consequences for a child or another person
- inappropriate disclosure of this information may also be an offence under the Act.

Entities must ensure their own internal policies and procedures reflect the requirements of the Privacy Principles and the confidentiality provisions of the Act.

They should also have a privacy breach response protocol so that if a privacy breach occurs they are prepared to respond in a timely way to:

- contain the breach
- assess the risk
- notify the department
- determine whether affected parties should be notified
- assess whether any systemic issues need to be addressed.

Entities should also have a privacy complaints process, so that people know what steps to take if they are concerned that there has been a breach of their privacy.



APPENDICES

APPENDIX A

Child Protection Act 1999 information sharing provisions

<i>Child Protection Act 1999</i>	Holder of information	Recipient of information	About whom	To help with the following purpose
159MA Reporting suspicion of harm	Prescribed Entity Service Provider	Prescribed Entity Service Provider	Child or unborn child	Decide whether information about suspected harm or risk to a child or about an unborn child should be given to Child Safety.
159 MB Investigation and assessment	Prescribed Entity Service Provider	Child Safety	Child or unborn child	Investigate allegations of harm or risk of harm, to assess the need for protection, or decide whether to take action.
	Child Safety	Prescribed Entity Service Provider	Child or unborn child	Decide whether to give information to Child Safety.
159MC Assessing care needs and planning	Prescribed Entity Service Provider	Child Safety	Relevant Child	Develop or review a case plan, assess or respond to the health, education, care needs, make plans or decisions, provide services to a relevant child or the child's family, offer help and support a pregnant woman.
	Prescribed Entity Child Safety	Prescribed Entity Service Provider	Child in need of protection	Participate in case planning, assess or respond to the health, education, care needs or make plans, decisions, provide services to a child in need of protection, or their family, help Child Safety offer support to a pregnant woman.
	Prescribed Entity Service Provider	Prescribed Entity	Child in need of protection	Help the prescribed entity participate in above for a child in need of protection or to help Child Safety offer support to a pregnant woman.
159MD Decreasing likelihood of a child becoming in need of protection	Prescribed Entity Child Safety	Prescribed Entity Service Provider	Child	Assess or respond to the health, education or care needs of a child or to make plans, decisions or offer or provide services to decrease the likelihood of a child becoming in need of protection.
	Service Provider	Prescribed Entity	Child	Assess or respond to the health, education or care needs of a child or to make plans, decisions or offer or provide services to decrease the likelihood of a child becoming in need of protection.
159ME Facilitating participation of child or child's family	Child Safety	Independent Person	Child	Facilitate participation of the child or their family in making plans or decisions, or provide or offer services to the child or their family.
	Independent Person	Child Safety	Child	To help the child or their family participate in plans or decisions, or help Child Safety provide or offer services to child or their family.

Definitions

Term	Definition
Child	An individual who is under 18 years.
Child Safety	Chief executive or authorised officer of the Department of Child Safety, Youth and Women.
Relevant Child	A child who is need of protection or a child who may become a child in need of protection if preventative support is not given to the child or the child's family.
Child in need of Protection	A child who has suffered harm is suffering harm or is at unacceptable risk of suffering harm and does not have a parent able and willing to protect the child from harm.
Service Provider	A person providing a service to children or families, a licensee or an independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child.
Prescribed Entity	Government agencies responsible for adult corrective services, community services, disability services, education, housing services, public health, Mater Health services, Queensland Police Services, accredited non-state schools and specialist service providers.

APPENDIX B

Checklist for information sharing

What is the purpose?

- What is the sharing of information meant to achieve?
- What personal information needs to be shared or obtained?
- Could the desired outcome be achieved without sharing personal information?
- Has the holder of the information provided information which is directly relevant to the intended purpose of the receiving agency?

Is sharing information lawful?

- Does the holder of the information believe that sharing it is necessary to ensure a child's safety or support a child's care needs and promote their wellbeing?
- Does the holder of the information believe that sharing the information will help with a particular purpose under the *Child Protection Act 1999* (the Act)?
- Is sharing information authorised under the Act?

Has consent been sought and obtained?

- Has the individual whose information is proposed to be being shared agreed to the sharing of their information?
- Is it safe, possible and practical to obtain consent?
- Would obtaining consent adversely affect a child's or another person's safety or delay services to a child and their family?

Are processes in place to support secure sharing of personal and confidential information?

- What is being shared? Is some of the information sensitive or subject to specific security considerations?
- Has the holder of the information ensured the personal information is accurate, complete and up-to date?
- What is the method for sharing? Is it secure?
- Does the response specify the purpose for which the information is being provided and limit further use or disclosure?
- Has the information sharing request been documented? What information was shared with whom it was shared, when was it shared, the justification for sharing and whether consent was obtained?
- Are there arrangements in place to deal with loss, unauthorised access, disclosure, modification that might happen?
- Is there a complaints management policy for dealing with complaints about breaches of privacy or confidentiality?



APPENDIX C

Ten top tips for information sharing

- 1** Base your decision making on the safety and wellbeing of the child
- 2** Consult your agency's policies and procedures about information sharing
- 3** Understand the reason and purpose you are giving or requesting information
- 4** Be open with children and families from the outset of intervention about information sharing that may occur
- 5** Seek consent for information sharing if possible, safe and practical
- 6** Consent is **NOT** required
- 7** Check information you share is:
 - necessary for the purpose you are sharing it
 - only with people who need it
 - accurate and up to date
 - shared in a timely manner
 - shared securely
- 8** Record your decisions and include:
 - what information you shared
 - with whom you shared the information
 - for what purpose the information was shared
 - if consent was given or not given
- 9** You cannot be forced to share personal information pursuant to the information sharing provisions
- 10** Ensure personal information is stored securely and is not used, disclosed or given access to, unless authorised or required to do so by law



APPENDIX D

FAQs

1. What laws allow personal information to be shared within the child protection and family support service system?

Chapter 5A, Part 4 of the *Child Protection Act 1999* allow information to be shared without consent between particular entities. The sections enable broad information sharing about children and unborn children, where they may be at risk after they are born.

2. Who can share information under the Chapter 5A of the Act?

Section 159M defines the entities which can share information include Child Safety, prescribed entities (which includes specialist service providers) and service providers.

3. When can information be shared?

Sections 159MA to 159ME describe the specific purposes for which information may be shared between entities (organisations and individuals) without consent of the person whose information is being shared. Entities should only share information for these specific purposes, if it is reasonably believed the information will help to identify, assess and respond to a child's protection and care needs.

4. What type of information may be shared?

An entity may only share information it reasonably believes may help the recipient support a child or unborn child who may become in need of protection if support is not proved to the child or the child's family or to help a child who is need of protection. Information may be comprised facts or opinion, for example a professional opinion. It may be shared in writing or verbally.

5. What about the *Information Privacy Act 2009*?

The *Information Privacy Act 1999* (IP Act) does not prevent personal information from being shared, if another law, such as the *Child Protection Act 1999* authorises personal information to be shared. The IP Act provides a framework to protect personal information and allows the sharing of personal information in limited circumstances. It guides decision making in relation to the collection, storage, use and appropriate sharing of personal information. Queensland government agencies and many funded organisations are required to comply with the 11 Information Privacy Principles in the IP Act.

6. What if a child or parent doesn't agree to information being shared? Is consent needed?

No. A key principle of the information sharing provisions is to obtain consent if it is possible, practical and safe to do so. It is best practice to seek a child or parent's consent to share their personal information. However, consent is not legally required to share information under the provisions.

7. When can information about an unborn child and pregnant women be shared?

The aim of information sharing about an unborn child is to enable Child Safety to support the woman and reduce risks to the child following their birth, Child Safety, prescribed entities and service provides may now share information about an unborn child and pregnant woman without her consent for particular purposes:

- to help Child Safety investigate or assess whether an unborn child will need protection after the child is born;
- enable help and support to be offered to a pregnant woman.

A pregnant woman will still be able to decide whether to accept an offer of help or support from Child Safety.

Entities may give Child Safety information to help it to investigate or assess the likelihood a child will need protection after he or she is born. Child Safety may give information to entities to help them decide whether and what information to share.

Child Safety and prescribed entities may give information to prescribed entities and service providers to help Child Safety offer a pregnant woman help and support. A prescribed entity and a service provider can give information to Child Safety to enable Child Safety offer help and support to a pregnant woman.

Entities may also share information with each other to decide if they should report concerns about an unborn child to Child Safety.

8. Can a prescribed entity refer a pregnant woman to a FACC service with her consent?

No. Information about an unborn child can only be shared for particular purposes.

9. What about Aboriginal and Torres Strait islander children and independent entities?

The information sharing that is allowable under Chapter 5A, Part 4 for children and unborn children includes Aboriginal or Torres Strait Islander children.

For Aboriginal and Torres Strait Islander children, Child Safety must, in consultation with the child and child's family, arrange for an independent Aboriginal or Torres Strait Islander entity for the child to facilitate the participation of the child and the child's family in decision making.

The child and child's family must consent to the ongoing involvement of an independent Aboriginal or Torres Strait Islander entity.

Section 159ME provides specifically for information sharing between an independent Aboriginal or Torres Strait Islander entity for a child and Child Safety.

10. What information must not be shared?

Information about expired convictions or expunged convictions and charges must not be shared.

11. Does personal information need to be kept confidential?

Yes. The use and disclosure of information is restricted as outlined in section 187 of the Act. An entity must also ensure personal information is handled in accordance with the Privacy Principles.

12. Can notifier details be shared?

No. Under section 186 of the Act, notifier details must not be shared, unless one of the exceptions in section 186 or 188E applies.

