



# Queensland Child Protection – Update to Information Sharing Regime

CompliSpace Pty Ltd 1300 132 090

[www.complispace.com.au](http://www.complispace.com.au)

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# 1. Executive Summary

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Queensland, like many other Australian jurisdictions, is in the process of reforming and strengthening its child protection legislation. A recent focus of the reform has been the information sharing scheme contained within the Chapter 5A (“Service delivery coordination and information sharing”) of the Child Protection Act 1999 (Qld) (Child Protection Act). The amendments to Chapter 5A, as implemented through the Child Protection Reform Amendment Act 2017 (Qld), aim to create an information sharing regime that holds the safety, wellbeing and best interests of children as paramount.

This briefing note will explore the amendments made to Chapter 5A, with a specific focus on the changes made to Part 4 (“Information Sharing”). Notable features of the new information sharing scheme under Chapter 5A, Part 4 of the Child Protection Act include:

defining which entities may share information, including prescribed entities (which now includes principals of non-state schools), service providers and specialist service providers

- ✓ clarifying what type of information can be shared
- ✓ specifying the purposes for which information may be shared
- ✓ clarifying when entities must share information with Child Safety Services and when they can voluntarily share information with Child Safety Services and/or each other
- ✓ identifying exceptions to an entity’s obligation to share information with Child Safety Services
- ✓ preventing information about spent criminal convictions being shared.

## 2. The Purpose of Information Sharing

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As pointed out in Child Safety Service’s “Information Sharing Guidelines”, issued under section 159C of the Child Protection Act, the sharing of information can assist families to receive support when needed and enable collaboration between services to help ensure the safety and wellbeing of children. Following a review of the Child Protection Act, the Queensland Government decided to expand and simplify the information sharing provisions. The new framework enables a wide range of government and non-government agencies which provide services to children to share information with each other and to protect the safety, wellbeing and best interests of children. Sharing information in accordance with these provisions does not breach the privacy principles in the Information Privacy Act 2009 (Qld).

## 3. Who can Share Information?

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Chapter 5A enables information to be shared in certain circumstances with and between:

- ✓ “prescribed entities” as defined in section 159M of the Child Protection Act
- ✓ “service providers” as defined in section 159M of the Child Protection Act
- ✓ the Department of Child Safety, Youth and Women (Child Safety Services).

Under section 159M, the term “prescribed entity” includes:

- ✓ a government agency responsible for adult corrective services, community services, disability services, public health or housing services
- ✓ the Department of Education
- ✓ the Queensland Police Service
- ✓ Mater Health Services
- ✓ principals of non-state schools
- ✓ specialist service providers (non-government entities funded by the State or Commonwealth to provide services to a relevant child or the family of a relevant child) including Family and Child Connect Service, Intensive Family Support Service or Assessment Service Connect.

Under section 159M, the term “service providers” includes:

- ✓ service providers that provide a service to children or families, for example, a general practitioner or a private counsellor
- ✓ service providers that are licensees under the Child Protection Act, for example, an organisation that provides placement services such as foster care or residential care services
- ✓ service providers that are independent Aboriginal and Torres Strait Islander entities for an Aboriginal or Torres Strait Islander child, for example, an individual or entity who facilitates the participation of the child and child's family in decision making processes.

## 4. What Information can be Shared?

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For the purposes of Chapter 5A, “information” means personal information (including facts or opinions) about an individual, from which the identity of the individual can be ascertained.

## 5. Consent to Information Sharing

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One of the legislative principles that underpins Chapter 5A is that prescribed entities and service providers should obtain consent from parents and children before sharing their information, so long as it is safe, possible and practical to do so (sub-section 159B (g)(ii) of the Child Protection Act). If a family has given consent, their information may be shared with whoever they agreed the information could be shared with and for the purpose agreed to.

However, as is made clear in section 159B(h), the Child Protection Act ultimately requires that children’s safety, wellbeing and best interests are prioritised over the protection of an individual’s privacy. Where a child and/or their family has not consented, information may still be shared, however it may only be shared for the specific purposes and between the specific entities outlined in Chapter 5A.

Examples of circumstances in which it may not be safe, possible or practical to seek consent to share information include, but are not limited to:

- ✓ if it is impracticable or impossible to contact the student or a parent and the matter requires an urgent response
- ✓ if the person is unable to consent because of a mental health condition, the effects of drugs or alcohol, or non-compliance with medication
- ✓ if doing so could jeopardise the safety or wellbeing of a person, including when doing so may place someone (other than the alleged perpetrator of harm to a student) at risk of harm, such as when there:
  - is a threat that a family may go into hiding or abduct a child
  - are assaults or threats to assault others
  - are attempts of or threatened suicide
  - are concerns that a child or another person could be coached or coerced.
  - When Can Information be Shared Between Prescribed

## 6. Entities and Service Providers?

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Prescribed entities and service providers may only provide information to, or seek information from, one another if they reasonably believe providing the information would assist the recipient of the information:

- ✓ to decide whether to report suspected harm or a risk of harm to a child to Child Safety Services (section 159MA)
- ✓ to participate in case planning, to assess or respond to the health, educational or care needs of a child in need of care and protection or to otherwise make plans or decisions relating to, or provide services to, a child in need of care and protection (section 159MC)

- ✓ to assess or respond to the health, educational or care needs of a child, to make plans for or decisions about a child or their family, or to provide or offer to provide services to a child or their child's family to decrease the likelihood that the child will become in need of protection (section 159MD).

Decisions about whether there is the required “reasonable belief” should be made with consideration of the individual circumstances of the child and family. Once the required reasonable belief is formed, the information may be provided regardless of whether the prescribed entity or service provider has requested the information.

Some examples of the information sharing that could occur under these provisions include:

- ✓ a counsellor sharing information with a school if they believe that information will assist the school in deciding whether there is a risk of harm to the child and whether to report to Child Safety Services, under section 159MA
- ✓ a school sharing information with a foster and kinship care service to assist with the education and care needs of a child in foster care, under section 159MC
- ✓ a school sharing information about a family to the Department of Housing and Public Works based on the concern that the children will become homeless, under section 159MD.

## 7. Information Sharing with Child Safety Services

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Under Chapter 5A, there are two possible ways that information may be shared with Child Safety Services: mandatory sharing of information and voluntary sharing of information.

### Mandatory Information Sharing with Child Safety Services

Under section 159N, Child Safety Services may ask a prescribed entity, the public guardian, a licensee or the person in charge of a student hostel for stated information, about a child or an unborn child, that Child Safety Services reasonably considers relevant for the performance of a function or exercise of power under the Child Protection Act. This means when Child Safety Services requests such information, it should be clear about the purpose for which the information is needed.

The entity must comply with the request unless the information is not in its possession or control, or if a relevant exception applies. Exceptions to sharing information exist under ss 159N(3) and 159NA. Under section 159N(3), the entity does not have to provide any requested information if it reasonably considers that to do so would:

- ✓ prejudice the investigation of a contravention or possible contravention of the law in a particular case
- ✓ prejudice a coronial investigation
- ✓ enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained
- ✓ endanger a person's life or physical safety
- ✓ prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law
- ✓ not be in the public interest.

### Voluntary Information Sharing with Child Safety Services

Information may be voluntarily provided to Child Safety Services if a prescribed entity or service provider reasonably believes the information may help Child Safety Services to:

- ✓ investigate an allegation of harm or risk of harm to a child, or assess a child's need for protection (section 159MB)
- ✓ take action, or decide whether Child Safety Services reasonably suspects that a child is in need of protection, under section 14 of the Child Protection Act (section 159MB)

- ✓ investigate or assess, before the birth of a child, the likelihood that the child will need protection after birth (section 159MB)
- ✓ develop or assess the effectiveness of the child's case plan (section 159MC)
- ✓ assess or respond to the health, educational or care needs of a relevant child (section 159MC)
- ✓ otherwise make plans or decisions relating, or provide services, to a relevant child or their family (section 159MC)
- ✓ offer help and support to a pregnant woman under section 21A of the Child Protection Act (section 159MC).

Under section 159MB (2), Child Safety Services can also voluntarily share information with prescribed entities or service providers if it believes this will help the entity to decide whether to share information that Child Safety Services has requested. Under section 159MC(2), Child Safety Services can also provide information to enable prescribed entities or services providers to:

- ✓ participate in case planning
- ✓ assess or respond to health, educational or care needs of a child
- ✓ otherwise make plans or decisions or to provide services to a child or their family
- ✓ help Child Safety Services offer help and support to a pregnant woman under section 21A of the Child Protection Act.

Some examples of the information sharing that could occur under these provisions include:

- ✓ a school sharing information about a child or their family with Child Safety Services to assist with the education and care needs of a child in foster care, under section 159MC
- ✓ a Child Safety Officer sharing information with a school about concerns which have been reported to help the school understand the issues and risks that a child faces, under section 159MC.

## 8. Information that must not be Shared

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Despite all the provisions in Chapter 5A Part 4 of the Child Protection Act, section 159NA provides that information must not be shared to the extent that it relates to:

- ✓ a conviction in a person's criminal history if the rehabilitation period for that conviction has expired and not been revived
- ✓ an expunged conviction or expunged charge.

## 9. Recordkeeping

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Records must be kept of information sharing under Chapter 5A. Written records should include what information has been shared, with whom, when and why. The records must be stored securely and confidentiality must be maintained.

## 10. What Does this Mean for Schools in Queensland?

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It is important that schools are aware of their obligations in relation to information sharing under Chapter 5A of the Child Protection Act. The overarching principle is that, wherever safe, possible and practical, schools should attempt to obtain consent from the child and/or their family before sharing personal information. However, a child's safety, wellbeing and best interests ultimately take precedence over the protection of an individual's privacy. Where schools believe there is a need to share information with Child Safety Services, a prescribed entity or a service provider without consent, the provisions of Chapter 5A, Part 4 should be followed to ensure that any information sharing complies with the law.

## 11. How CompliSpace can help

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CompliSpace combines specialist governance, risk and compliance (GRC) consultancy services with practical, technology-enabled solutions. We are the leading provider of student duty of care and child protection GRC services in Australia, working with leading non-government schools and educational authorities in all Australian states and territories.

Our team of lawyers and industry experts actively monitor changes to relevant laws and standards and deliver a full suite of online policies, procedures and governance programs that enable schools to continuously comply with their legal and regulatory obligations.

In response to the need to meet Child and Youth Risk Management Strategy requirements, the Blue Card system and related child protection and non-state schools accreditation requirements, CompliSpace has developed detailed policies and procedures that address the provisions under Queensland's child safe organisation and child protection legislation. The new policies and procedures are designed to integrate into a school's existing Child Protection Program and be tailored to the particular circumstances of each school. CompliSpace has also developed detailed online child protection training which includes information on the relevant legislative requirements.

CompliSpace works with schools to tailor compliance and risk management systems to a school's individual needs and characteristics, ensuring meaningful compliance with their legal and regulatory obligations.

If you are looking to update your existing child protection content, contact us on:

T: 1300 132 090

E: [contactus@complispace.com.au](mailto:contactus@complispace.com.au)

W: [www.complispace.com.au](http://www.complispace.com.au)

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