



Community and Disability Services Ministers' Conference

Creating Safe Environments For Children- Organisations, Employees and Volunteers

National Framework

protected from harm within the community

Schedule: Guidelines for Information Sharing Across Jurisdictions

Overview

Objective: to progress the development of a coherent national approach to the seeking and release of information for the purposes of screening potential employees and volunteers in child-related areas.

In the context of the *Creating Safe Environments for Children* National Framework the purpose of information sharing across State and Territory borders is to inform assessment and decision-making during the recruitment of employees and volunteers in child-related areas.

It must be emphasised at the outset that optimum exchange of information across jurisdictions for the purpose of screening employees and volunteers does not replace the need for ongoing risk management in organisations and supervision and support of persons working in child-related areas. This is consistent with the importance placed upon provisions for protecting children from harm outlined in the previous two Schedules: *Guidelines for Building the Capacity of Child-Safe Organisations* and *An Evidence-based Guide to Risk Assessment and Decision-making when Undertaking Background Checking*.

Providing strong foundations for decisions concerning the acceptance or exclusion of prospective employees and volunteers supports the goal of minimising the risk of harm¹ to children in their dealings with community services² organisations. The sharing of relevant and reliable information between the States and Territories can be vital to ensuring the necessary information to protect children is available to those who need to know.

The effective protection of children requires that there are systems in place which are reflective of an increasingly mobile population and not restricted by jurisdictional boundaries. The mobility of Australia's workforce means that one jurisdiction may possess information which is highly relevant to the screening of a prospective employee or volunteer in a child-related area and ought to be made available to any other jurisdiction where that person seeks to work with children.

This Schedule is focused upon the cross-jurisdiction sharing of ***information related to criminal records***, and ***information relevant to the assessment of prospective out-of-home carers for licensing or registration purposes***.³ It is not intended for the Schedule to encompass the sharing of information relevant to the broader dimensions of child protection or residential care systems.

The release and use of criminal history and other information pertaining to an individual is sensitive from both justice and administrative perspectives, and must take into account issues of individual privacy. Information should only be exchanged in the context of robust systems for managing the available information, and rigorous assessment of what is appropriate and relevant for the purpose of protecting children.

It must also be acknowledged that limited assurance can be gained from screening⁴ of employees and volunteers which relies upon criminal convictions alone when assessing risk of harm to children. This Schedule seeks to address existing gaps between the level of information able to be accessed *within* a jurisdiction and that able to be accessed *across* jurisdictions.

As expressed in the overarching objective, these guidelines are intended to contribute towards a broader endeavour of developing a more coherent national approach to the seeking and release of information for the purposes of screening persons working in child-related areas. A Council of Australian Governments Working Group has been formed to progress inter-jurisdictional agreements in this area.

1. How can Information Sharing across Jurisdictions assist in Creating Child-Safe Organisations?

It is widely agreed that children have a right to the maximum level of protection in their dealings with organisations across Australia. The provision of guidelines for information sharing between States and Territories is consistent with the community expectation that every effort will be made to ensure the safety of children wherever they are involved with community services organisations. A public commitment to the sharing of relevant and reliable information between jurisdictions reinforces the standards expected of child-safe community services organisations in all States and Territories.

The central purpose of information sharing is to assist in minimising the risk of harm to children. Where the risk of harm may be linked with past behaviour of an individual, knowledge about this behaviour becomes critically important. Thorough risk assessment during the recruitment of employees and volunteers centres upon the importance of defensible decision-making which is informed by sound, relevant, comprehensive and up to date information. Such decision-making is compromised where relevant and reliable information is not available.

Authorised systems for the sharing of relevant and reliable information can minimise the exchange of unreliable or inaccurate information; avoid duplication of resources; and contribute towards greater compatibility between systems across jurisdictions. Awareness that relevant and reliable information will be shared between States and Territories also delivers a clear message that every effort will be made to ensure the safety of children is not compromised because people move across jurisdictional borders.

The sharing of relevant and reliable information between the States and Territories can be vital to ensuring the necessary information to protect children is available to those who need to know.

2. Principles⁵ and Standards for Information Sharing

Responsible and ethical information sharing requires following principles and standards which reflect an overarching commitment to quality assurance.

Principles which should govern information sharing across jurisdictions include:

- the paramount consideration is the wellbeing of children and their protection from harm;
- information is collected through lawful means;
- the purpose for seeking information is made explicit;
- information collection and sharing should only take place with the explicit knowledge and informed consent of the person who is the subject of the information;
- the privacy of the individual who is the subject of the information is respected;
- information is only made available to persons in specified positions in authorised agencies;⁶
- information that has been found to be malicious by the police or courts should not be made available; and
- information sharing will follow natural justice principles and adhere to the requirements of procedural fairness.

Standards which should govern information sharing across jurisdictions include:

- information which is made available is relevant to the purpose for which it is sought;
- information which is made available has been verified as accurate, is up to date, complete and not misleading;
- information is made available in a timely manner;
- information concerning charges, where exchanged, should be accompanied by a statement concerning the status of the charge, any outcome and the reasons for the outcome;
- rigorous identification checking should be integral to any scheme for the sharing of information across jurisdictions;
- records containing personal information are treated as confidential and protected against loss, modification, unauthorised access or use, and destroyed when no longer required; and
- information sharing processes and mechanisms are formal, reliable, transparent, documented, consistently applied and open for scrutiny and evaluation.

Collaboration between the community services, law enforcement and justice portfolios will be vital to ensuring the maintenance of these standards, particularly in relation to the timeliness of information exchange.

3. Key Considerations for Information Sharing

The primary consideration for the exclusion from child-related employment/volunteering of those persons who pose a risk of harm to children does not deny the importance of balancing certain rights and responsibilities in designing systems for information sharing. Systems providing for the cross-jurisdiction availability of information about individuals must be robust and withstand scrutiny from legal, human rights and civil liberties perspectives.

Natural Justice and Procedural Fairness

It is vital that information sharing for the purpose of screening employees and volunteers is guided by provisions for natural justice and procedural fairness. These considerations include:

- ensuring there are systems in place enabling people to exercise their right to know about, and respond to, any information that is held about them and could be used to declare them ineligible to work with children;
- identifying and making known the specific categories of information to be sought for screening purposes;
- seeking of consent for obtaining each category of information; and
- ensuring there are proper governance arrangements and safeguards in relation to the collection, retention, use, access to and disclosure of personal information.

Ensuring natural justice and procedural fairness should be informed by understanding of the *Creating Safe Environments for Children* Framework Schedule concerning risk assessment and decision-making, in particular the provisions concerning the competence of persons who have access to personal and sensitive information for the purposes of making recruitment decisions.

Systems providing for the cross-jurisdiction availability of information about individuals must be robust and withstand scrutiny from legal, human rights and civil liberties perspectives.

Protection of privacy

The information required to make recruitment decisions may be sensitive and is rightly subject to privacy considerations and protections. Any exchange of information must comply with the relevant State or Territory privacy provisions. Clarity concerning what information can be shared between States and Territories, how and with whom it can be shared, and how it must be treated by the recipient is an essential component of protecting privacy and civil rights.

Prevention of discrimination

Information which may be available for the purposes of background checking and risk assessment does not constitute a character check. There is an onus on the authority seeking information to establish that the information sought is relevant and necessary for the purpose. It is reasonable that justification is provided and assurances are given that the information will be treated responsibly.

Clarity about information sharing for specialised purposes

The range of information sought for screening of potential employees and volunteers may vary in accordance with the specific nature of the child-related employment/volunteering to be undertaken. In some areas of child-related work a greater degree of duty of care exists because of the nature of the services and programs provided, for example in out-of-home care programs. It is therefore important that there is clarity for all parties about any specialised purposes of information sharing.

Public accountability and transparency

Government authorities are required by legislation and policy to operate in ways that are transparent and accountable. Public accountability requires that people are informed about the nature and type of information which may be exchanged between jurisdictions and the circumstances under which this can take place. Transparency is also central to ensuring ethical practice within the authorised agencies which have access to this information.

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4. What Information should be shared between Jurisdictions?

There are aspects of information sharing relevant to the purpose of screening employees and volunteers which are within the control of the community services portfolio and aspects which need to be managed in close collaboration with other portfolios, in particular law enforcement and justice.

The cross-jurisdiction sharing of *information related to criminal records* and *information relevant to the assessment of prospective-out-of-home carers for licensing or registration purposes* are priorities identified by community services where strengthening systems and practices for information sharing could contribute towards enhancing the safety of children.

4.1 Criminal history information

Within jurisdictions there are existing arrangements for obtaining criminal history information, some of which are governed by specific legislation concerning working with children. However, there are inconsistencies between the level of information able to be accessed *within* a jurisdiction, for background checking purposes, and that which is able to be exchanged *across* jurisdictions. These differences generate significant challenges for authorities attempting to ensure thorough screening of persons seeking to work with children.

Existing legislative and policy frameworks governing 'working with children checks' demonstrate a degree of consistency in relation to aspects of criminal history information considered important for background checking purposes. For example, the importance of taking account of a history of convictions relating to sexual offending, recognition of indicators of patterns of behaviour, and awareness of possible connections between certain types of offending.⁷

Access to information concerning *convictions* and *charges*, whilst encompassed within the screening legislation of some jurisdictions, is only available subject to legislation and information release policies which differ across the States and Territories. Spent conviction legislation varies significantly between States and Territories, and exemptions from spent conviction legislation for areas of child-related employment are not uniformly recognised across State and Territory borders.⁸ In effect, these anomalies mean that the comprehensiveness of a criminal history check may be significantly influenced by a person's mobility and may be based upon incomplete information.

One argument for cross-jurisdiction sharing of information beyond criminal convictions is that it assists in establishing patterns of behaviour where persons have repeated claims made about them but are never convicted. This issue was highlighted during the Bichard Inquiry in Britain, which drew attention to the impact of fragmented criminal history information and prompted recommendations to improve the consistency of information exchange between recognised authorities.⁹ The significance of such information is that if it is considered in conjunction with information about convictions and the results of other background checks, the additional information may enable the decision-maker to make a more informed assessment of any risk posed to children.¹⁰

Release of non-conviction information across jurisdictions for the purposes of employee/volunteer screening requires legal authority, and legislation or policy may establish constraints upon the exchange of information.

It is acknowledged that charges may be subsequently withdrawn, dismissed or discharged because they are ultimately found to be without substance. However, it is generally understood that there are a number of additional reasons as to why charges where a child is the alleged victim may not proceed to the stage of finalisation in a court. These reasons include: concerns about the welfare of the child; the impact of the court process upon the child; and the capacity of the child to give evidence.

For the purposes of screening persons to work in child-related areas, in addition to convictions there are charges pertaining to particular types of offences which may be deemed relevant. These include:

- sexual offences;
- violence offences;
- offences where there is violent intent;
- any offences against a child; and
- drug trafficking offences.

It is acknowledged that release of non-conviction information across jurisdictions for the purposes of employee/volunteer screening requires legal authority, and legislation or policy may establish constraints upon the exchange of information. Determining the systems and processes through which access to information by recognised authorities can be made nationally consistent is a challenge requiring work in conjunction with law enforcement and justice portfolios. Notwithstanding the constraints, there is commitment within the community services sector to work towards a level of sharing of relevant and reliable information which provides a solid foundation for risk assessment and decision-making during the recruitment of employees and volunteers in child-related areas.

4.2 Information concerning history as an out-of-home carer

Licensed or registered carers are persons who provide care in the formal out-of-home care sector through State or Territory community services departments or authorised non-government agencies. Carers in the formal sector have children placed in their care through some type of court order or administrative authority, and where the respective State or Territory exercises a duty of care and may make a financial payment for the care of the child. There is some commonality between jurisdictions in the range of information taken into account in the background checking of applicants for licensing/registration as an out-of-home carer.

Information may currently be shared across State and Territory borders between community services agencies during the assessment process for licensing/registration of prospective out-of-home carers. This information generally pertains to previous deregistration decisions and carer history in another State or Territory. The rationale for such inquiries is based very clearly upon the intense nature of the duty of care; the expectation of special provisions to provide for the safety of children in high risk situations; and the general vulnerability of the population of children and young people in out-of-home care. The importance of such sharing of information is echoed in the cross-jurisdiction information sharing issues within the *National Plan for Foster Children, Young People and their Carers 2004–2006*.

If persons seeking approval as an out-of-home carer declare they have been a carer in another State/Territory they may be asked to consent to the release of information from the agency where they were formerly a registered/licensed carer. However, awareness that such information may be held by another jurisdiction is currently dependent upon this being made known by prospective carers.

The process of inquiring about previous carer history should apply to all prospective out-of-home carers seeking licensing/registration. Formal, reliable and transparent mechanisms for information sharing in this area will enable greater consistency in the conduct of such inquiries and for the release of information concerning carer history to another jurisdiction. Such inquiries should be made with the consent of applicants seeking approval as licensed/registered out-of-home carers, and should be consistent with the principles of information sharing outlined earlier in this Schedule.

States and Territories are committed to formalising systems for cross-jurisdictional sharing of information concerning prospective out-of-home carers seeking licensing or registration and to ensuring that the interstate checking process is undertaken. It is acknowledged that existing policies, systems and practices within jurisdictions are likely to necessitate review before any change to existing arrangements can be made. Collaboration and coordination in the exchange of this information will necessitate ensuring the information is robust in terms of quality and consistency. The starting point of sharing this information should be between State and Territory Government community services departments.

5. The Importance of Authorised Systems for Information Sharing

Australia's federal system of governance means there are jurisdictional differences in legislation and standards. As mentioned in the overview, information that may be taken into account during screening of prospective employees/volunteers may be of a sensitive and personal nature. It is therefore important to emphasise that any sharing of information across State and Territory borders must take place within robust systems and accompanying legislation, policy and regulations which govern their operation. This will assist in ensuring that information which is made available across jurisdictions meets certain standards of reliability and is managed according to agreed processes.

It is vital that persons are not discouraged from seeking employment/volunteering in child-related areas because they believe that information will be shared about them which is unrelated to any risk to children. This is further reason for providing publicly available guidelines about the release and use of information and the rationale for doing so.

Any sharing of information across State and Territory borders must take place within robust systems and accompanying legislation, policy and regulations which govern their operation.

In Summary

This Schedule expresses commitments to strengthen information sharing systems and practices between States and Territories, in an effort to provide children with a greater level of protection in their dealings with community services organisations across Australia. It is important to reiterate that the Schedule is focused upon the cross-jurisdiction sharing of information related to criminal records, and information relevant to the assessment of prospective out-of-home carers, and it is not intended to encompass the broader context of child protection or residential care systems.

The Schedule proposes enhanced information sharing for the purpose of screening employees and volunteers in child-related areas. Fully realising this longer term goal will require ongoing commitment from all States and Territories and further work in conjunction with related portfolios. Any approach to information sharing should also remain open to review, informed by emerging knowledge concerning the prevention of harm to children in the context of programs and services offered by organisations.

Information sharing between States and Territories is a vitally important measure in the endeavour to provide a nationally coherent approach to protecting children in their dealings with organisations. However, it does not stand alone in increasing the safety of children and should be understood as one further element in the national community services commitment to creating and maintaining child-safe environments. It is therefore important that these guidelines for information sharing are considered in conjunction with the previous two Framework Schedules: *Guidelines for Building the Capacity of Child-Safe Organisations* and *An Evidence-based Guide to Risk Assessment and Decision-making when Undertaking Background Checking*.

End Notes

- 1 In the context of the *Creating Safe Environments for Children* National Framework 'harm' means physical, sexual, emotional or psychological, abuse and neglect of children.
- 2 Consistent with the intent of the *Creating Safe Environments for Children* National Framework, reference to community services in the context of this Schedule applies to all government and non-government organisations which are considered part of the community services sector within a particular jurisdiction.
- 3 The term 'out-of-home care' describes various types of care, including foster care, provided for children and young people under statutory care and protection legislation. For the purposes of this Schedule reference to 'licensing' and 'registration' encompasses formal approval or authorisation permitting persons to provide of out-of-home care.
- 4 Although specific practices differ between jurisdictions, 'screening' in the context of minimising the risk of harm to children in their dealings with organisations is generally understood to refer to the combined processes of background checking, risk assessment and decision-making concerning acceptance/exclusion of persons in areas of child related employment/volunteering.
- 5 Reference has been made to the *Privacy Act 1988* (Cth); Government of South Australia (July 1992) Department of Premier and Cabinet Circular PCO12— *Information Privacy Principles Instruction*; Office of the Victorian Privacy Commissioner (June 2006) *Controlled disclosure of criminal record data*, Melbourne.
- 6 'Authorised agencies' in this context refers to agencies which possess legal, or otherwise duly sanctioned, authority to receive the type information referred to in this Schedule.
- 7 As mentioned in the *Evidence-based Guide to Risk Assessment and Decision-making when Undertaking Background Checking* it is important to take account of the emerging research and professional knowledge base in the area of assessing risk posed to children in organisational environments.
- 8 The Standing Committee of Attorneys-General is examining the development of a uniform spent convictions scheme. A uniform national exemption from spent convictions legislation for the purpose of background checking of employees and volunteers would support efforts to create safe environments for children in their dealings with community services organisations.
- 9 *The Bichard Inquiry Report* (2004) The Home Office, London.
- 10 Ministerial Council on Education, Employment, Training and Youth Affairs, Inter-Jurisdictional Working Group (2004) *Consultation Paper: Conduct of Criminal Record Checks on Persons Seeking to Work with Children in Educational Settings*, p. 13.

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