

**New information-sharing laws under the
Children and Community Services Act 2004 (WA) – section 28B**

IMPLEMENTATION INFORMATION FOR THE NON-GOVERNMENT SECTOR

Keeping children and young people safe from abuse and neglect, and supporting individuals and families at risk or in crisis, is a shared responsibility. Agencies and services need to work in collaboration to achieve this, and the sharing of relevant information can be crucial to the task. Greater collaboration between the government and non-government sectors will help promote the safety and wellbeing of children, other individuals, families and communities.

To support this work, new information sharing laws are being introduced in the *Children and Community Services Act 2004* on 1 January 2016. The information below aims to help the relevant services in the non-government sector to understand and implement the new laws.

What is changing?

- ✚ Since 2011, the *Children and Community Services Act 2004* (WA) has made it possible for certain government authorities (“**prescribed authorities**”)¹ to share information that is relevant to the wellbeing of a child or children (“**relevant information**”) directly with one another. This has allowed the exchange of relevant information between prescribed authorities in relation to cases or matters in which the Department for Child Protection and Family Support is not necessarily involved.
- ✚ From 1 January 2016, using section 28B of the *Children and Community Services Act 2004*, prescribed authorities will also be able to exchange relevant information with “**non-government providers**” and non-government schools.
- ✚ The type of information that can be shared is also being broadened to include information that is relevant to the safety of persons subjected or exposed to family and domestic violence.

Seeking consent before sharing relevant information remains best practice in information sharing provided it does not compromise a person's safety or wellbeing to do so. However, at times it can be necessary to share information without the consent of the person/s the information relates to. The new laws will enable this to occur by providing important protections from legal liability or breach of professional codes of conduct to people who, in good faith, share relevant information.

(Note that the Department for Child Protection and Family Support is not a prescribed authority. Information sharing with the Department for Child Protection and Family Support occurs under different arrangements in the *Children and Community Services Act 2004*.²)

Who in the non-government sector can use the new laws?

Non-government providers and schools in the non-government sector can use the new laws to exchange information with a prescribed authority.

“Non-government providers” are persons providing social services under a contract or other agreement (excluding grant agreements) with a prescribed authority or the Department for Child Protection and Family Support.³ Social services are a broad range of services provided

¹ Prescribed in regulation 20A, *Children and Community Services Regulations 2006*. Go to the Department for Child Protection and Family Support website for a current list of the prescribed authorities: www.cpfs.wa.gov.au

² See the Department for Child Protection and Family Support publication *Working together for a better future for at risk children and families – A guide on information sharing for government and non-government agencies* www.cpfs.wa.gov.au

³ This applies to service providers funded by the Department for Child Protection and Family Support under a contract or agreement with the *Children and Community Services Ministerial Body*

to assist children, other individuals, families and communities.⁴

“Schools in the non-government sector” refers to independent private schools and those in the Catholic schools sector, being registered schools or school systems under Part 4 of the *School Education Act 1999*.

Only certain people can use s.28B to share

Only certain people within a non-government provider or non-government school (“authorised entities”) will be authorised to exchange relevant information with a prescribed authority. For non-government providers this is the CEO or principal officer (however described), and for non-government schools it is the governing body of the school or school system.

The same applies to prescribed authorities; only the CEO of a prescribed authority will be authorised to exchange relevant information using section 28B.

However, to support information exchange at a practice level, the information sharing powers can be delegated, in writing, to appropriate officers or employees of the prescribed authority, non-government provider or school governing body or school.

This means it is important for people wishing to request or disclose relevant information using section 28B to clarify if they are properly authorised to do so.

What information can be shared?

The new laws will allow “**relevant information**” to be shared. Relevant information is “*Information that is, or is likely to be, relevant to:*”

- (a) *the wellbeing of a child or a class or group of children; or*
- (b) *the safety of a person who has been subjected to, or exposed to, one or more acts of family and domestic violence.”*⁵

✚ The **wellbeing** of a child includes:

- (a) *the care of the child;*
- (b) *the physical, emotional, psychological and educational development of the child;*
- (c) *the physical, emotional and psychological health of the child;*
- (d) *the safety of the child.*⁶

✚ An **act of family and domestic violence** is defined section 6 of the *Restraining Orders Act 1997*.

What do ‘non-government providers’ and non-government schools need to do?

- ✚ Consider the implications of the new information sharing laws for your agency, service or school.
- ✚ Consider whether the authority to share relevant information using the new laws should be delegated, in writing, to officers or employees within your agency or school governing body or school, using the delegation powers in section 28C of the *Children and Community Services Act 2004*.
- ✚ Consider what information, policies or practice guidance is needed within your agency, service or school about the new information sharing laws.

⁴ The term ‘social services’ is defined in section 3, *Children and Community Services Act 2004*

⁵ Section 28A, *Children and Community Services Act 2004*

⁶ This definition is in section 3, *Children and Community Services Act 2004*

Further information

Other resources to support implementation of the new laws and good practice in information sharing will be available on the Department’s website at: www.cpfs.wa.gov.au

- ✚ Fact Sheet: *New laws supporting information sharing - s.28B of the Children and Community Services Act 2004*
- ✚ Suggested template for requesting relevant information
- ✚ An updated edition of the Department for Child Protection and Family Support publication *Working together for a better future for at risk children and families – A guide on information sharing for government and non-government agencies.*
- ✚ An up-to-date list of prescribed authorities at: www.cpfs.wa.gov.au

Relevant terms in *Children and Community Services Act 2004*

Definition	Explanation
Authorised entity – s.28A	
<p>Means -</p> <p>(a) the CEO of a non-government provider;</p> <p>(b) the governing body of registered school or school system under the <i>School Education Act 1999</i> Part 4.</p>	<p>Only the CEO of the service will be authorised to disclose information to or request information from a prescribed authority, if he or she considers the information is “relevant information”. Other staff of the service will only be able to request or disclose relevant information with prescribed authorities if they are delegated, in writing, under s.28C.</p> <p>Only the governing bodies of schools or school systems in the independent and Catholic schools sectors will be authorised to disclose information to or request information from a prescribed authority, if the governing body considers the information to be “relevant information”.</p> <p>As can (a) above, the governing body of an independent or Catholic school will be able to delegate its authority to an employee (or to a school principal) if considered appropriate.</p>
CEO – s.28A	
<p>Means –</p> <p>(a) ... (defines CEOs of prescribed authorities).</p> <p>(b) In relation to a non-government provider –</p> <p>(i) if the non-government provider is an individual – that individual; or</p> <p>(ii) otherwise – the principal officer (however described) of the non-government provider.</p>	<p>As above, CEOs will be the only people who will be authorised to exchange information under the amendments (unless they delegated their powers, in writing, to others within the service or agency).</p> <p>For non-government providers, if the service is not just an individual, the “CEO” is the principal officer of the service, however that position is described.</p>
Non-government provider - s.28A	
<p>Means –</p> <p>(a) a service provider; or</p> <p>(b) a person who provides social services under a contract or other agreement (excluding an agreement for a monetary grant) entered into between the person and a prescribed authority or an officer or employee of a prescribed authority.</p>	<p>The legislation uses the term “non-government provider” to define the relevant non-government services being included in the new framework. They are either:</p> <p>(a) “Service providers” funded through an agreement with the Minister for Child Protection (see definition of ‘service provider’ in s.3); or</p> <p>(b) organisations or individuals providing ‘social services’ under a funding agreement with one or more of the prescribed authorities. This does not include services provided solely with grants money from a prescribed authority.</p> <p>The term “social services” is defined in s.3 of the Act to include a broad range of services. See definition below.</p>

Definition	Explanation
Prescribed authority - s.28A	
Means a public authority (other than Department for Child Protection and Family Support) prescribed by the regulations for the purposes of this definition.	This refers to the State Government authorities prescribed in regulation 20A of the <i>Children and Community Services Regulations 2006</i> . Refer to Department for Child Protection and Family Support website for an up-to-date list of prescribed authorities: www.cpbs.wa.gov.au
Service provider - s.3	
Means a person who – (a) provides or promotes social services; or (b) conducts research and development, under an agreement referred to in section 15(1).	The term 'service provider' refers to services funded to provide or promote social services under a s.15(1) agreement with the Minister for Child Protection. Prescribed authorities will be able to exchange relevant information with these services also.
Social services - s.3	
Means services provided to assist children, other individuals, families and communities including, but not limited to, the following services – (a) preventative services (b) protective services (c) placement services (d) child care services (e) information and advisory services (f) education and training services (g) counselling services (h) therapeutic services (i) advocacy services (j) mediation services (k) crisis services (l) family & domestic violence services (m) support services.	This legal definition provides examples of types of services which are considered to be social services to give an indication of what is included in the term 'social services'. The term describes a broad range of services provided to children, individuals, families and communities.
Act of family and domestic violence – s. 3	
Has the meaning given in the <i>Restraining Orders Act 1997</i> section 6(1)	The definition is inclusive of a range of abusive tactics and behaviours including assault or causing injury, kidnapping or deprivation of liberty, damaging property, behaving in a way that is intimidating, offensive or emotionally abusive and threatening to do any of the aforementioned behaviours or acts. The definition acknowledges the broad range of family relationships within which family and domestic violence can occur. Click here , for a link to section 6(1) of the <i>Restraining Orders Act 1997</i>
Exposure to an act of family and domestic violence – s. 3	
Exposure to an act of family and domestic violence includes – (a) to see or hear the act of family and domestic violence; (b) to witness physical injuries resulting from the act of family and domestic violence;	The definition of 'exposure to an act of family and domestic violence' recognises that a child or adult exposed to an act family and domestic violence may be harmed, or at risk of harm, as a result of their exposure.