



# Information on Chapter 16A and Confidentiality

This factsheet outlines the legal basis for information sharing between agencies under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* at the school level.

## Definitions

**Duty of Care:** ‘the legal obligation to provide reasonable care while performing any acts or making any omissions that could foreseeably harm others’ (NSW Department of Education & Training Code of Conduct).

**Mandatory Reporting:** ‘Mandatory reporting is the term used to describe legislative requirements imposed on selected classes of people to report suspected cases of child abuse and neglect to government authorities. In NSW this means that the mandatory reporter ‘suspects on reasonable grounds that a child is at risk of significant harm, in cases such as physical abuse, sexual abuse, emotional/psychological abuse, neglect, or exposure to domestic violence.

In NSW, those mandated to report are; A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children; and a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children’ (Australian Government Australian Institute of Family Studies – Child Family Community Australia, 2016).

## Changes to Chapter 16A

Chapter 16A allows for information to be exchanged between prescribed bodies without Community Services involvement.

This means that there can be an exchange of information between prescribed bodies (whether Government or NGO), and requires organisations to take appropriate steps to coordinate the provision of services with other organisations without Community Services involvement. The 4 key principals of this exchange of information are:

1. Organisations that have responsibilities for children or young persons should be able to provide and receive information that promotes the safety, welfare or wellbeing of children or young persons.
2. Organisations should work collaboratively and respect each other's functions and expertise.
3. Organisations should be able to communicate with each other to facilitate the provision of services to children and young persons and their families.
4. The needs and interests of children and young person's, and of their families, in receiving services relating to the care and protection of children or young people takes precedence over the protection of confidentiality or of an individual's privacy (Family and Community Services, 2017).



Prescribed bodies can also share certain information without having to use Community Services as an intermediary, which includes government schools or a registered non-government school or a TAFE, the NSW Police Force, etc. In May 2016, the Children and Young Persons (Care and Protection) Act 1998 was amended to now allow private health professionals including registered psychologists, enrolled and registered nurses, registered medical practitioners, occupational therapists, and speech pathologists, to lawfully allow exchange of information.

If a person is acting in good faith when providing information under Chapter 16A, they:

- Are not liable to any civil or criminal action, or any disciplinary action, for providing the information.
- Can't be held to have breaches of any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

(Family and Community Services, 2017)

If reporting to Community Services, education staff, including counsellors, are not in breach of duty of confidentiality and the reporter cannot be liable in any civil, criminal or administrative proceeding (Australian Government Australian Institute of Family Studies, 2016).

The changes regarding Chapter 16A allows for this exchange of information despite other laws that prohibit or restrict the disclosure of personal information. This includes the Privacy and Personal Information Protection Act 1998, the Health Records and Information Privacy Act 2002, and the Commonwealth Privacy Act 1988. This is due to the fact that the needs of children and young people, including their families and carers, receiving services in relation to the care and protection of children and young people take precedence over the protection of an individual's confidentiality.

While consent is not necessary for exchange of information under Chapter 16A, it is best practice to keep families and carers informed of any exchange of information in order to maintain and maximise client engagement. The new changes mean that it is no longer necessary to need the consent of parents and carers, children or young people to exchange information about the safety or welfare of a child or young person, however it is best practice to keep them informed. [Family and Community Services \(FACS\)](#) offer documents pertaining to requesting information under Chapter 16A should anyone wish to access them.

Mandatory reporters include those working in education including teachers, counsellors and principals, health care, welfare, children's services, residential services and law enforcement. In NSW mandatory reporting is regulated by the Children and Young Persons (Care and Protection) Act 1998.

The [Mandatory Reporting Guide \(MRG\)](#) is a structured tool which assists mandatory reporters to deduce if their concerns about a child or young person are warranted and whether they should ring the [Child Protection Helpline \(CPH\)](#). If the risk of significant harm is not as high and therefore does not warrant a report to the CPH, it assists the person to respond appropriately for that situation.

Mandatory reporting needs to occur if a person thinks that a child is at risk of significant harm, including physical abuse, sexual abuse, emotional/psychological abuse, being neglected, being exposed to domestic violence, or are at significant risk of harm to themselves or others.

Under the Children and Young Persons (Care and Protection) Act 1998, a child is a person under 16 years of age and a young person is above 16 and under 18. In NSW



the legislative requirement, grounds for intervention covers up to 18 years, therefore if a young person is 16 or 17, there is still a mandatory obligation to report.

Under the NSW Department of Education, [Protecting and Supporting Children and Young People Policy](#), education staff need to adhere to mandatory procedures for conveying risk of harm concerns to the principal, and report these to FACs if the principal has not done so. Education staff may also report to FACs if they believe that the principal has not reported risk of significant harm concerns to FACs and they still have concerns about risk of harm.

If a child, young person or their family believes that there has been a misuse of Chapter 16A or a reasonable breach of privacy, the organisation should be advised of this complaint. However, if this is not resolved then a complaint can be made to the [NSW Ombudsman](#).

## [Helpful Resources](#)

- Family and Community Services (2017) 'Providing and Requesting Information Under Chapter 16A'. [Click here](#) to access.
- NSW Ombudsman: 02 9286 1000. [Click here](#) to access.
- Under the Children and Young Persons (Care and Protection) Act 1998. [Click here](#) to access.
- NSW DoE 'Protecting and Supporting Children and Young People Policy'. [Click here](#) to access.
- ChildStory Reporter, 'Mandatory Reporter Guide'. [Click here](#) to access.
- Family and Community Services (2017), 'Responding to Information Requests or Directions Chapter 16A and section 248'. [Click here](#) to access.
- Australian Government Australian Institute of Family Studies: Child Family Community.
- Australia (2016), 'Mandatory Reporting of Child Abuse and Neglect'. [Click here](#) to access.

## [References](#)

- ACT Government (2017), 'Progressing Parental Engagement School Fact Sheet'. [Click here](#) to access.
- Australian Government Department of Education and Training (2017), 'Engaging Parents in Education'. [Click here](#) to access.
- Beyondblue (2017), 'Having the Conversation with Young People About Anxiety and Depression', [Click here](#) to access
- Beyondblue (2017), 'Help someone you know'. [Click here](#) to access.
- Beyondblue (2017), 'What to say and why'. [Click here](#) to access.
- Department of Education & Training Code of Conduct (2017), 'Employee Responsibility Duty of Care', [Click here](#) to access.
- Family and Community Services (2017), 'Providing and Requesting Information Under Chapter 16A'. [Click here](#) to access.
- Friends for Mental Health (2017), 'Normal teenage behaviour vs. early warning signs of mental illness', [Click here](#) to access.
- Headspace (2017), 'Information for parents and carers'. [Click here](#) to access.
- 'Parental Engagement in Child's Learning and Development' (2017). [Click here](#) to access.
- Reachout (2017), 'Mental Health Support Tips for Teachers', [Click here](#) to access.
- SANE (2017), 'Mental Illness in Younger People', [Click here](#) to access.
- Victoria State Government: Education and Training (2017), Mental Health. [Click here](#) to access.



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