Guidelines for Information Sharing Under Section 40 of the *Child and Youth Safe Organisations Act 2023* (Tasmania)

Information Sharing

Section 40 of the *Child and Youth Safe Organisations Act 2023* (the Act) allows for information sharing between specific people and organisations to promote the safety and wellbeing of children and young people. A relevant person or organisation can collect and keep information for the purposes of this Act without being subject to the *Personal Information Protection Act 2004* in relation to that information.

Purpose

These guidelines have been developed to assist those authorised under the Act to share information consistently, in a timely manner and appropriately in accordance with the legislation. Information sharing under the legislation is to protect and promote the best interests of children while balancing privacy considerations, procedural fairness and natural justice. Consideration of child safety is paramount.

1 Who do the Guidelines apply to?

The Guidelines apply to:

- The Independent Regulator;
- An entity regulator;
- Head of an entity (and if the worker who is the subject of a reportable allegation or conviction is a contractor, the head of the entity with whom the worker is engaged as a contractor);
- The Commissioner of Police or a commissioned police officer;
- An independent investigator (for the purposes of an investigation);
- The Registrar appointed under the Registration to work with Vulnerable People Act 2013;
- The Integrity Commissioner;
- A Minister of the Crown;
- The Police authority of the Commonwealth, another state or territory;
- A prescribed person or body.

2 What information should be shared?

Section 40 of the Act permits information to be shared in relation to the following:

- Non-compliance or concern about non-compliance with the Child and Youth Safe Standards or the Universal Principle;
- Reportable allegations or convictions;
- A concern that reportable conduct has been committed;
- An investigation relating to any of the above;
- The findings, reasons for the findings, and the recommendations made at the conclusion of an investigation and any action taken in response to those findings.

If a person or organisation shares any of the information above, it must relate to the promotion of safety and wellbeing of children or another prescribed purpose in the Act.

3 When and why should information be shared?

Information should be shared as early as practicable to:



Assess and identify risk and protect children;



Determine if a worker is suitable to work with children;



Facilitate the investigation of reportable conduct;



Satisfy mandatory reporting obligations;



Manage risks such as movement between organisations;



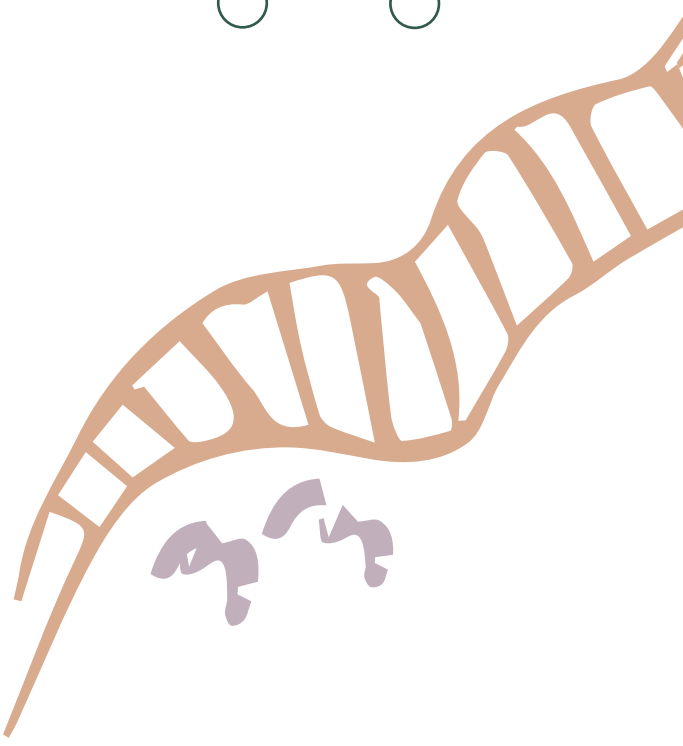
Ensure consistent risk management and decision making when multiple organisations are involved;



Support criminal investigations.

4 What questions should be considered before sharing information?

	YES	NO
Is child safety the paramount consideration?	○	○
Is the person/ organisation sharing the information and the person/ organisation receiving the information both authorised under Section 40?	○	○
Has cultural safety been considered?	○	○
Is all the information shared necessary and proportionate to the purpose of the disclosure (e.g. does it contain any irrelevant personal information that is not required for child safety purposes)?	○	○
Is the information up to date, accurate and as complete as reasonably possible?	○	○
Will sharing the information create any unacceptable risk such as prejudicing criminal investigations?	○	○



5 When and why should information not be shared?

The following examples illustrate circumstances in which information would **not** be shared under section 40 of the *Child and Youth Safe Organisations Act 2023*.

EXAMPLE

*When the request is from a person/organisation that is **not authorised under Section 40 of the Act.***

A journalist requests information about a particular reportable conduct allegation or investigation. The organisation does not disclose this information, as the journalist is not an authorised person under Section 40 of the Act.

EXAMPLE

*Where the **information is not required, necessary or relevant to the purpose of the Act**.*

A regulator listed in section 40 asks the Independent Regulator for information about systemic matters in relation to complaint handling by the organisations the entity regulator regulates. Since the entity regulator seeks the information to address systemic issues, personal information contained in the complaint handling matters is unnecessary and irrelevant to the purpose of the request and should be removed before the information is shared.

Need assistance? Contact OIR

If you are unsure whether information can be shared under section 40, or what information is necessary and proportionate in the circumstances, contact the Office of the Independent Regulator for guidance.

1800 754 728

contact@oir.tas.gov.au

Appendix 1 – Case Studies: Information Sharing under Section 40

The following case studies illustrate circumstances in which information may be shared under Section 40 of the *Child and Youth Safe Organisations Act 2023*.

They are intended to assist organisations to recognise when information sharing may be appropriate to promote the safety and wellbeing of children, including where information needs to be shared between organisations.

The case studies are not exhaustive and are provided to demonstrate that information sharing should:

- comply with the legislation,
- be focussed on child safety as the main purpose;
- be necessary and;
- be proportionate.

Child safety should be the paramount consideration

Case Study 1: Facilitate the Investigation of Potential Reportable Conduct
Section 40 may be used where multiple organisations hold information relevant to the same child safety concerns. Information sharing is necessary to assess allegations, identify risks to children and determine whether reportable conduct may have occurred.
Scenario
Organisation 'A' receives a concern from a parent about a child's care involving several workers from multiple organisations. The concerns include possible neglect and inappropriate staff conduct. Organisation 'A' identifies that other organisations may hold information relevant to assessing the concerns and determining whether reportable conduct may have occurred.
Information Shared
Organisation 'A' uses Section 40 to seek relevant information from the other organisations whose workers are identified in the concern. Information shared between the organisations includes: • allegations raised by the parent regarding the child's care and treatment • records, observations and information gathered during preliminary enquiries • information relating to concerns previously assessed by another organisation • relevant documents, evidence and records held by each organisation • requests for additional information that may assist in understanding the allegations and identifying the involvement of workers across both organisations.

Case Study 2: Sharing Information to Determine Worker Suitability

Section 40 may be used where information may assist an organisation to determine whether a worker is suitable to work with children and to identify and manage associated child safety risks.

Scenario

A worker was let go by Organisation 'A' after a substantiated (proven) allegation of physical violence and causing significant emotional and psychological harm to a child.

A month later, the employer became aware that the worker had commenced a new job with organisation 'B' working with children.

The previous findings may be relevant to how the new employer manages child safety risks and assesses the worker's ongoing suitability to work with children.

Information Shared

The former employer shared information relevant to the identified child safety concerns, including:

- details of the allegations involving the worker
- relevant investigation reports and findings
- information about identified child safety risks
- information about actions taken in response to the findings, including relevant employment outcomes.

The information shared was limited to information necessary and proportionate to assisting the new employer to assess the worker's suitability and manage any identified risks to children.

Case Study 3: Sharing Information About Historical Concerns and Potential Patterns of Behaviour

Section 40 may be used where historical information held by one organisation may assist another organisation to identify a potential pattern of behaviour, assess risks to children and determine whether protective measures are required.

Scenario

An organisation receives concerns about a worker taking photographs of children on a personal phone and offering babysitting services to parents, despite the organisation having policies that prohibit this conduct. The organisation becomes aware that similar concerns were previously raised while the worker was employed by another organisation. Information from the former organisation may assist in determining whether the concerns indicate a pattern of behaviour and an ongoing risk to children.

Case Study 3: Sharing Information About Historical Concerns and Potential Patterns of Behaviour

Information Shared

The organisation requests information to be shared relevant to the child safety concerns, including:

- records relating to previous allegations or concerns about the worker's interactions with children
- relevant investigation reports and findings
- evidence relevant to the previous concerns and findings
- relevant actions taken in response to the concerns, including risk management measures and employment-related decisions.

The information shared is limited to what is necessary and proportionate to assessing the concerns, identifying any potential pattern of behaviour and managing risks to children.

Case Study 4: Sharing Information Where Multiple Organisations Have Responsibility for a Child's Care

Section 40 may be appropriate where one organisation identifies concerns that may lead to a reporting obligation involving workers, contractors or representatives of another organisation, and relevant information needs to be shared to support the making of a report, assess immediate risks and coordinate the child safety response.

Scenario

Organisation 'A' becomes aware of conduct by a worker in Organisation 'B' that may constitute reportable conduct.

Organisation 'A' holds information about the incident because their workers witnessed the conduct. Organisation 'A' makes a disclosure to the OIR about Organisation 'B' and uses Section 40 to share relevant information with Organisation 'B' to support their reporting obligations, risk assessment and protective action.

Information Shared

Organisation 'A' shares relevant information about the incident and the conduct of Organisation 'B's workers, including:

- details of the incident including time and date to support Organisation 'B' to identify the workers involved
- observations made by staff about the workers' conduct and interactions with the child
- information about any immediate risks to the child or other children
- information about any protective measures already taken in response to the incident.