

Overview of changes to the information sharing provisions in the Oranga Tamariki Act 1989

On 1 July, the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (“new Act”) will come into effect, amending the Oranga Tamariki Act 1989 to increase information sharing to protect young people.

The new Act expands the range of people and organisations that can be mandatorily required to provide information under s 66 of the Oranga Tamariki Act, and also introduces a number of discretions which permit those individuals and agencies with key roles in protecting child wellbeing to share information.

Key points

- The new Act now contains a principle (s65A) that the wellbeing and best interests of a child or young person are the first and paramount consideration for agencies, and in general this takes precedence over any duty of confidentiality owed to the child, young person or person who has a domestic relationship with that child or young person.
- Agencies now have the duty to share information when lawfully requested by the Chief Executive of Oranga Tamariki, a care and protection coordinator, or a constable.
- Agencies covered by this change include all health sector ‘agencies’, including public and private providers and all registered health professionals.
- As well as a duty to provide information, agencies may receive information when consistent with specified purposes including preventing and or minimising risk, making risk assessments and arranging for services for the child.
- Agencies are also enabled to use information held about children and young people for a specified purposes (see section for more), irrespective of the original intent.
- Other changes enabled by the Act include the ability to use info held to create and combine datasets, as long as reporting requirements are met. Further changes would also come into effect when/if an information sharing code is established.

New information sharing principle that comes into effect on 1 July

From 1 July, all those that are involved in requesting or sharing information under the Oranga Tamariki information sharing provisions must take into account the principle in s 65A that the well-being and best interests of any child or young person, in general, take precedence over any duty of confidentiality owed by any person in relation to –

- the child or young person; or
- any person who is a family member of that child or young person or in a domestic relationship with that child or young person.

Amended duties that come into effect on 1 July

Section 66 requires agencies to comply with requests for information that relates to a child's health/wellbeing, when requested by:

- the Chief Executive of Oranga Tamariki
- a care and protection co-ordinator, or
- a constable.

Agencies hold duties to share information when lawfully requested under this section. The term "agency" is as defined in the Privacy Act. This definition is very broad, and includes all persons, companies and entities of any legal form, including those in the public or the private sector, unless the entity is explicitly excluded (no health sector entity is excluded). A wider range of entities are now required to provide information if requested – this provision was previously limited to government agencies, and now includes private and public parties.

New information sharing provisions that come into effect on 1 July

Definitions that apply to the new information sharing provisions

All sections in this part involve the provision of information by, and/or to, a "child welfare and protection agency" and an "independent person".

Child Welfare Protection Agencies

The full definition of Child Welfare Protection Agencies is provided in Appendix 1. In the Health Sector, child welfare protection agencies are the Ministry and all DHBs. Additionally, any person, body, or organisation that provides regulated services as specified in Schedule 1 of the Children's Act 2014 is also child welfare protection agency. This schedule captures many health sector providers, as regulated services are defined in Schedule 1 as including "health services" and "social or support services". It is likely that this will capture most providers.

Independent persons

The definition of independent persons includes all registered health practitioners. This appears to include individuals who are registered, but do not hold a current practicing certificate.

This definition also includes children's workers, a term defined in s 23 of the Children's Act 2014. This means a person who works in, or provides, a regulated service, in which the work may or does involve regular or overnight contact with a child or children (other than with children who are co-workers) and the work takes place without a parent or guardian of the child, or of each child, being present.

New discretion for constables and Oranga Tamariki to provide information to child welfare and protection agencies and/or independent persons

Health sector entities may wish to have a clear understanding of these provisions so they understand what the police and Oranga Tamariki may do with the information they provide in accordance with s 66. However, health sector entities do not need to know and understand these provisions in detail, as it is for the police and Oranga Tamariki to decide whether it is appropriate for information to be shared, and therefore it is for them to comply with these duties.

Section 66A permits the Chief Executive of Oranga Tamariki or a constable to provide information to a child welfare and protection agency or an independent person, where this is consistent with specified purposes, which predominantly relate to preventing/reducing risk, making risk assessments and arranging for services for the child (see section for full list).

Section 66B provides that information sharing is not permitted if the information was provided in a way that, but for s 66 permitting the disclosure, would have been a breach of professional duties, this is known by the constable or Oranga Tamariki, and the individual concerned or their representative has not consented.

Section 66B effectively extends the duty of confidentiality from (e.g.) a doctor who has provided information in confidence to the Chief Executive or a constable who receives it. It requires the recipient of the information to hold information in confidence, unless the person concerned has consented to the disclosure, though subject to a general overarching presumption that wellbeing should outweigh confidentiality.

If, in the circumstances, the Chief Executive of Oranga Tamariki or constable is not satisfied that the well-being and best interest of the child or young person outweighs the duty of confidence, then s 66B prohibits the Chief Executive of Oranga Tamariki or constable from sharing information received pursuant to s 66 if it is:

- a) Information that, but for s 66, would otherwise remained confidential and undisclosed; and

- b) The Chief Executive of Oranga Tamariki or constable is ought to reasonably be aware that such disclosure would have been a breach of a duty of confidence had it not been for s 66; and
- c) The person to which the information relates to has not consented to its disclosure.

New discretion to use information held about children and young people for defined purposes

Section 66C explicitly allows child welfare and protection agencies and independent people to use information held about children and young people for the following defined purposes, irrespective of the original purpose for which the information was obtained:

- preventing or reducing risk
- making risk and need assessments
- making/monitoring plans which relate to activities and functions of the department
- providing and reviewing services provided to the child and family/whanau
- providing family group conferences and care or protection functions
- disclosing to other child welfare and protection agencies and independent people for the listed purposes.

This provision is about both use and disclosure. Disclosure of information must be:

- for one of the listed purposes; and
- to another child welfare and protection agency and/or independent person, as these terms are defined.

Because of the breadth of the definitions of “child welfare and protection agency” and “independent persons”, in practice, this will enable significant sharing of information throughout the health and social sector.

New discretion to use information to create and analyse combined datasets

Section 66D provides that child welfare and protection agencies can use information about children/young people to create and analyse combined datasets, provided that they post certain information about this on their website on a yearly basis (such as information about privacy safeguards). The Privacy Act permits data to be used for research purposes already. The Privacy Act restrictions on the use of individual identifiers would appear to remain in place, this should be a condition of any disclosure of information.

Summary

What we need to do before 1 July:

- Increase awareness that a wider array of agencies/entities and individuals may be asked for information under s 66 of the Act. This includes the Ministry, DHBs, PHOs, health care businesses and individuals – if information is properly sought, this must be disclosed.
- Increase awareness of how information can be shared and requested under the new provisions, which allow for information to flow between some agencies, providers and health practitioners.
- Ensure everyone is aware who is captured by the definitions in the new provisions
- Clarify what to do when information sharing could be permitted under both the family violence provisions and the OT provisions.

Appendix 1: Definitions included in the Act

“child welfare and protection agency” means —

- (a) the department [i.e. Oranga Tamariki]
- (b) the Department of Corrections
- (c) the Ministry of Health
- (d) the Ministry of Social Development
- (e) the Ministry of Education
- (f) the Ministry of Justice
- (g) the New Zealand Police
- (h) Housing New Zealand Corporation
- (i) every registered community housing provider (as defined in section 2(1) of the Housing Restructuring and Tenancy Matters Act 1992)
- (j) every DHB
- (k) every school board (as defined in section 15(1) of the Vulnerable Children Act 2014)
- (l) every early childhood service (as defined in section 309 of the Education Act 1989)
- (m) any person, body, or organisation that provides regulated services (as specified in Schedule 1 of the Vulnerable Children Act 2014 - see below)
- (n) any organisation or class of organisation designated as a child welfare and protection agency by regulations made under section 447(1)(ga)(i).

Regulated Services, as defined in Schedule 1 of the Vulnerable Children Act 2014

Welfare, support, and justice services:

- (1) services provided (including the performance or exercise of functions and powers) under the Oranga Tamariki Act 1989 by the department responsible for the administration of that Act, or by any care and protection co-ordinator or youth justice co-ordinator
- (2) services provided at, or in relation to the operation of, any residence within the meaning of section 2(1) or 364 of the Oranga Tamariki Act 1989 (excluding, for the avoidance of doubt, services provided by an individual with whom a child is placed under section 362 of that Act)
- (3) services provided by any person, organisation, or body approved under section 396 or 403 of the Oranga Tamariki Act 1989
- (4) services provided (including the performance or exercise of functions and powers) under any order, direction, or recommendation of a court made under the Oranga Tamariki Act 1989, the Care of Children Act 2004, or the Adoption Act 1955 by –
 - (i) the department responsible for the administration of the Oranga Tamariki Act 1989; or
 - (ii) any other person, organisation, or body
- (5) services provided by any person, body, or organisation pursuant to any decision, recommendation, or plan made by a family group conference under the Oranga Tamariki Act 1989
- (6) services provided at prisons, secured facilities, and children’s health camps

- (7) services provided as part of a condition of bail made under the Bail Act 2000
- (8) services and facilities of the kind referred to in sections 4(1)(a) and 7(2)(b)(i) of the Oranga Tamariki Act 1989
- (9) social or support services, including (but not limited to) victim support services, drug and alcohol rehabilitation services, and childcare services
- (10) mentoring and counselling services
- (11) youth services and youth work
- (12) participating in a telephone communication service that is likely to be used wholly or mainly by children
- (13) moderating an electronic interactive communication service that is likely to be used wholly or mainly by children (but a person does not moderate a public electronic interactive communication service unless he or she has access to the content of the matter or contact with users of the service)
- (14) services provided to escort, track, or transport children for the purposes of the Oranga Tamariki Act 1989
- (15) out-of-school care and recreational services

Health services:

- (16) services provided at a public hospital
- (17) services provided at a publicly funded medical practice or facility, including blood and cancer centres, treatment centres, outreach clinics, and mental health services
- (18) services provided through medical practices belonging to primary health organisations (PHOs)
- (19) services provided by health practitioners
- (20) Well Child Tamariki Ora (WCTO) services (eg, Plunket)
- (21) home-based disability support services
- (22) residential disability support services
- (23) ambulance services
- (24) maternity services, including lead maternity carers and midwives

Education services:

- (25) services provided at a registered school (as defined in section 2(1) of the Education Act 1989)
- (26) services provided at an early childhood service (as defined in section 309 of the Education Act 1989)
- (27) services provided by a trades academy, a service academy, or an alternative education provider for or on behalf of a school
- (28) services provided at any off-site location for or on behalf of a registered school or early childhood service, including teen parent units, school camps, and learning centres
- (29) services provided to ensure enrolment and attendance at school in accordance with sections 20 and 25 of the Education Act 1989
- (30) services provided at a playgroup (as defined in section 309 of the Education Act 1989)
- (31) services provided at any location on behalf of a limited child care centre (as defined in section 2(1) of the Health and Safety in Employment Act 1992)
- (31A) services provided at a hostel (as defined in section 2(1) of the Education Act 1989)

Transport services:

(32) work driving a vehicle that is being used only for the purpose of conveying children and any persons supervising or caring for the children (for instance, school bus services)

Policing services:

(33) specialist child and family policing services provided by Police employees (as defined in section 4 of the Policing Act 2008)

Local authority services:

(34) social and support services, including (but not limited to) mentoring and counselling services and community outreach, advocacy, and engagement services:

(35) education services, including (but not limited to) learn-to-swim programmes and digital literacy programmes

(36) services provided at community facilities, including (but not limited to) sports and recreation centres, libraries, swimming pools, galleries, and community centres

(37) services provided in public environments, including (but not limited to) surf and beach patrols, skate park guardians, and road safety co-ordinators.