

INQUIRY INTO CHILD PROTECTION

Organisation: Office of the NSW Cross-Border Commissioner
Date received: 29 July 2016



Hon Greg Donnelly MLC
Chair, General Purpose Standing Committee No. 2
Legislative Council
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Mr Donnelly,

Re: Inquiry into Child Protection

As the NSW Cross-Border Commissioner my role is to advocate for cross-border communities and businesses, where state government policy, legislation and regulation can be very complex, and where services may be more logically obtained from the adjoining jurisdiction. I work closely with NSW Government agencies, NSW Members of Parliament, local stakeholders and neighbouring state governments to gain an understanding of cross-border issues and to develop a framework for the raising and resolution of these issues. This will improve service provision and make it easier for people to work and live in cross-border areas. Further details regarding the goals and strategies of my office are outlined in the Business Plan 2015-18: <http://www.industry.nsw.gov.au/contact-us/commissioners/office-of-the-nsw-cross-border-commissioner>

I have identified a number of cross-border issues that impact on disadvantaged and vulnerable constituents, especially children. I am working with NSW and interstate agencies to resolve some significant cross-border child protection issues, particularly legislative restrictions and associated agency policies and procedures in regard to the sharing of information and coordination of activity between jurisdictions. These issues are impacting on the safety and well-being of children and young people, and may warrant legislative amendment to allow for more effective information sharing between jurisdictions.

On-the-ground difficulties in sharing information cross-border

The Northern NSW Local Health District (NNSW LHD) have advised my office of their difficulty in sharing information about 'children at risk' between NSW and interstate health agencies. The information provided includes examples of bottlenecks and unwieldy procedures in information exchanges between NSW and QLD health, police, education and community welfare agencies, and the resulting impact on patient/child welfare. It appears that an inordinate amount of correspondence, telephone calls, emails and letters relating to single cases are required when seeking information, and requesting feedback. In some instances, children and infants present to the respective health services with serious health issues including life-threatening illness.

NSW Education, NSW Police and NSW Family and Community Services (FACS) support the NNSW LHD observations and agree that there are significant deficiencies in the exchange of relevant information between jurisdictions about at risk children and young people.

In addition to the information that has been provided to my office, I am also aware of a number of reviews that have been conducted into the area. One such review was commissioned in April 2015 by the NSW Department of Premier and Cabinet requesting the UNSW Social Policy Research Centre to report on the exchange of personal information between government agencies, and between jurisdictions. This report identified areas of possible improvement, including enhancing agency systems and improving organisational information sharing cultures.

Legislative barriers to information sharing

The *Children and Young Persons (Care and Protection) Act, 1998 (NSW) (CYPCP Act)* is the primary legislative instrument to ensure the safety and well-being of children and young people in NSW. The provisions of the *CYPCP Act* apply to all NSW Government agencies. Ch. 16A of the Act allows prescribed agencies to share information in specific circumstances relating to children and young persons at risk. s248 of the *CYPCP Act* defines prescribed agencies, including NSW Police, Health, TAFE and Education, specific private health providers, and a range of other organisations prescribed by regulation. s245A of the *CYPCP Act* notes that 'agencies that have responsibilities relating to the safety, welfare or well-being of children or young persons should be able to provide and receive information that promotes the safety, welfare or well-being of children or young persons'.

Part 5A of the *Education Act 1990 (NSW)* provides for the exchange of information between schools when a student moves, but is reliant on parental approval when moving to an interstate school. The provisions of Ch. 16A of *CYPCP Act* apply for at risk children, and if amended to allow for the interstate sharing of information, could provide greater traceability of students, better educational outcomes, and reduce the reliance on the parental information provision. NSW Education supports a review into the information sharing arrangements.

Interstate reporting arrangements need systematic change

While the provisions and requirements of mandatory reporting within NSW remain valid, the system of interstate information exchange is flawed, and increases the likelihood of harm or neglect for some at risk children. The *CYPCP Act* does not allow for agencies, including prescribed agencies, to directly share information with agencies in other jurisdictions. Agencies who have information concerning the safety, welfare or well-being of children or at risk persons must instead report the information via the NSW Child Protection Helpline. FACS staff then become the 'reporter', and after assessing the information, may pass to the FACS equivalent interstate for their action. There is a range of similarly circuitous reciprocal arrangements in interstate agencies making reports to responsible NSW agencies.

NSW agencies receiving requests for information from interstate agencies are required to refer the requesting agency through to NSW FACS for the request to be actioned. This often causes response delays and the potential for harm or neglect to continue, or be exacerbated.

In these systems there are multiple points of delay and failure, and no feedback mechanisms available to original reporters (i.e. the person who provided information to the NSW Child Protection Helpline).

There is also risk for NSW public servants who choose to circumvent the reporting system by not reporting via the NSW Child Protection Helpline or who provide information directly to external agencies. This action removes the legislative protection of s245G of the *CYPCP Act*

if they act independently or directly. As an example, if staff from NNSW LHD make a report to Queensland Child Safety or other Queensland Government agencies, except under subpoena or where the patient/client (or their parent if the subject is a child) has consented to the release of information, the staff member may be liable for prosecution for releasing personal information. In addition legal proceedings in NSW or other states may be endangered.

NSW FACS

NSW FACS recently released a discussion paper on a proposed suite of reforms to legislation and practice as NSW "needs a contemporary child protection system that is more flexible and better able to respond" to child protection issues, however the discussion paper did not include reference to interstate information exchange.

I have met with relevant officers within FACS and discussed the interstate information exchange situation. FACS staff indicated that relevant departmental Secretaries across the Commonwealth were working to advance the issue of active sharing of information between states, but that progress was slow and success limited. FACS staff were also aware of a previous attempt in 2012 to amend the provisions of Ch. 16A of the *CYPCP Act*, but were unaware of the reasons for this proposal not proceeding. Officers from FACS agreed that the most effective method to improving interstate information sharing arrangements was to amend the provisions of Ch. 16A to include prescribed agencies from other states. Given this, any enhanced provisions within NSW should be accompanied by similar provisions interstate.

Other NSW Government agencies and stakeholders

I have also engaged with representatives from NSW Police, NSW Health, NSW Education and a range of non-government stakeholders, all of whom admitted to deficiencies in the current interstate reporting and notification arrangements, and the potential for these deficiencies to result in inadequate responses. All NSW Government agencies consulted in these meetings agreed that legislative amendment provides for the most enduring solution, but that any legislative amendment must be accompanied with parallel amendment of agency policies and procedures, technical services and suitable training for staff.

NSW Police noted that expansion of the current information sharing arrangements to agencies outside of NSW carried some risks associated with inappropriate or unauthorised use of information. These risks may include the illegal or inadvertent provision of reporter details and other information to unauthorised recipients (including defendants and their associates), the possible misuse of information for criminal means, and the possible impact on judicial proceedings.

Privacy issues need to be addressed

The issue of enhancing interstate information sharing arrangements has also been discussed with the NSW Privacy Commissioner. The Privacy Commissioner has no objection to the expansion of the provisions of Ch. 16A of the *CYPCP Act* *per se* but requested that an independent assessment of the privacy impacts of this be conducted. The Privacy Commissioner emphasised the need to identify how information would be accessed, used and stored in other jurisdictions so as to ensure appropriate alignment with privacy provisions. This request was supported in principle by FACS.

On 18 November 2015 the *Privacy and Personal Information Protection Amendment (Exemptions Consolidation) Bill 2015* passed Parliament, and has been assented. It is understood that the associated regulation is under development, but that that these amendments and regulations do not permit the sharing of information about at risk children across state borders. Vide direction from the Attorney General to the Privacy Commissioner in 2014 there is no current requirement for a Transborder Privacy Code.

Case studies of information sharing difficulties impacting children and young people at risk

A range of examples have been provided to my office concerning the observation of inadequate provisions for information sharing between jurisdictions. These examples can be furnished to the Committee if required.

Should you wish to discuss these comments in further detail, please contact me directly on
or via email

Yours sincerely,

James McTavish CSC ESM

NSW Cross-Border Commissioner

28 July 2016