

Disclosing Reportable Conduct Information

The NSW Reportable Conduct Scheme - Fact Sheet 11

October 2025

reportableconduct@ocg.nsw.gov.au

Under the NSW Reportable Conduct Scheme (Scheme), heads of “relevant entities” have a number of obligations in connection with allegations against their employees (including contractors and volunteers). These obligations are set out in the *Children's Guardian Act 2019* (the Act). In addition, the Act places restrictions on the way in which individuals may disclose reportable conduct information.

The purpose of the Scheme is to protect children by ensuring child abuse allegations (called “reportable allegations” and “reportable convictions”) are properly addressed, fostering a child safe culture and improving organisational responses to child safety concerns.

This fact sheet is designed to ensure relevant entities are aware of the circumstances under which they must, can, and must not disclose reportable conduct information, and are well positioned to inform parties to whom they disclose reportable conduct information about restrictions that apply.

DISCLAIMER: the content of this Fact Sheet is for general information purposes only and does not constitute legal advice. Please seek your own legal advice where appropriate.

What is reportable conduct information?

‘Reportable conduct information’ means all records associated with the administration¹ or execution² of the *Children’s Guardian Act 2019* (the Act) with regard to the Reportable Conduct Scheme under Part 4 of the Act. It also includes records associated with the analogous Reportable Conduct Scheme that was administered by the NSW Ombudsman under Part 3A of the *Ombudsman Act 1974* before the function was transferred to the Children’s Guardian upon commencement of the Act on 1 March 2020.

Reportable conduct information is highly sensitive.³ It includes personal and confidential information about children, employees and other individuals who intersect with reportable conduct investigations.

Limits on disclosure of reportable conduct information

Reportable conduct information is subject to strict non-disclosure laws that apply to everyone, such as section 159 of the Act.

Section 159 of the Act states that “a person who discloses information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made” in circumstances outlined in that section. These circumstances are covered in this Fact Sheet.

The non-disclosure provision at section 159 relates to “a person”, which means any person who receives or comes into possession of reportable conduct information in connection with the administration or execution of the Act. This includes employees of relevant entities, victims of reportable conduct and their families, witnesses to reportable allegations, legal representatives, counsellors, advocates and more.

The primary purpose of section 159 of the Act is to protect personal and confidential information and the integrity of functions performed under the Act, including reportable conduct investigations.

The Act makes clear that the non-disclosure provisions in the Act do not restrict disclosures of reportable conduct information that are required or permitted or by law. In this regard:

- Section 60 states that nothing in Division 11 of the Act (relating to reportable conduct information sharing) limits disclosure that is required or permitted by law⁴
- Section 159(1)(e) states that the general restriction against disclosing information obtained in connection with the administration or execution of the Act does not apply where the information is disclosed with a lawful excuse.

¹ The Act is administered by the Office of the Children’s Guardian (OCG).

² The Act is executed by the OCG and by relevant entities when they fulfill their reportable obligations under Part 4 of the Act.

³ The Act states that relevant entities are required to have systems in place for the secure receipt, handling and disclosure of reportable conduct information (see: sections 8D(2) and 54(2)(e)). It is the responsibility of the Head of the Relevant Entity to ensure these systems are in place.

⁴ Section 60 also makes clear that any restrictions on the disclosure of information imposed by the Privacy and Personal Information Protection Act 1998 and the Health Records and Information Privacy Act 2002 do not prevent disclosure that is authorised by, or under, the Act.

Reportable conduct information that is required to be disclosed under the Act

Under section 57 of the Act

Section 57(2) of the Act specifies that certain reportable conduct information (referred to in the Act as “relevant information”) must be disclosed to the child or children to whom the information relates and/or their parents, unless there is a public interest reason not to do so.

“Relevant information” is information relating to a reportable allegation, or conviction considered to be a reportable conviction (reportable conviction):

- nature of the reportable allegation or reportable conviction
- progress of the reportable conduct investigation
- findings of the investigation
- action taken in response to the findings.

The disclosure of “relevant information” to the child or children to whom the information relates, and/or their parents, is lawful if it complies with section 57(2) of the Act.

Fact Sheet 7 – Disclosing information to children and parents, outlines this information disclosure obligation on heads of relevant entities and their delegates.

Subpoena and Notice to Produce

If a relevant entity or an individual receives a subpoena to produce, or a notice to produce, reportable conduct information, they are required by law to comply with it. It is therefore lawful to disclose the information in those circumstances.

However, entities should obtain their own legal advice about any exceptions that may be applicable to the disclosure of the information or aspects of the information. This is particularly the case if the entity identifies concerns about the private and sensitive information relating to children being disclosed to parties to legal proceedings, or if a criminal or reportable conduct investigation might be compromised by the disclosure of the information.

Reportable conduct information that *may* be disclosed under the Act

There are several categories of exception to the non-disclosure provisions, pursuant to which reportable conduct information may be disclosed. Each of these categories is addressed below.

Lawful excuse

As discussed above, the Act makes clear that the non-disclosure provisions in the Act do not restrict disclosures of reportable conduct information that are permitted by law. Below are some examples.

Disclosure under section 57 of the Act

Section 57 relates to the disclosure of “relevant information” (discussed above).

The disclosure of “relevant information” is lawful if it is permitted under section 57 of the Act:

Authorised carers

The disclosure of “relevant information” to an authorised carer that provides out-of-home care to the child or children to whom the information relates is lawful, if the disclosure is for the purpose of promoting the safety, welfare or wellbeing of a child, or a class of children, to whom the information relates. See: sections 57(4)(a) and 57(4)(b)(iii) of the Act.

See [Fact Sheet 7 – Disclosing information to parents and carers](#), which details the ability of entities to provide that information to authorised carers under section 57(4) of the Act.

Person with daily care and control of the child

Where:

- a person has daily care and control of a child, under the *Children and Young Persons (Care and Protection) Act 1998* (**Care Act**), and
- the child is a “relevant child” (as defined in section 57(8) of the Act),

the disclosure of “relevant information” to the person is lawful, if the disclosure is for the purpose of promoting the safety, welfare or wellbeing of a child, or class of children, to whom the information relates. See: sections 57(4)(a) and 57(4)(b)(ii) of the Act.

Contractor entities

The disclosure of “relevant information” to the head of an entity that engages the subject employee as a contractor is lawful, if the disclosure is for the purpose of promoting the safety, welfare or wellbeing of a child, or class of children, to whom the information relates. See: sections 57(4)(a) and 57(4)(b)(i) of the Act.

Public health entities

Where the relevant entity is a public health entity (as defined in section 57(8) of the Act), it is lawful for the head of the relevant entity or an investigator for the relevant entity to disclose “relevant information” to another public health entity. See section 57(5) of the Act.

Employees and former employees

Unless the prohibition to disclosure at section 57(7) of the Act applies, it is lawful for a relevant entity to disclose the following information to the employee (or former employee) to whom a report of a reportable allegation or a reportable conviction relates:

- that the report has been made
- whether the head of the relevant entity has made a finding of reportable conduct or determination of reportable conviction
- the reasons for the finding or determination
- action taken, or to be taken, in response to the finding or determination.

See: section 57(6) of the Act.

Providing the above information to the subject employee is typical of a procedurally fair investigation. However, section 57(7) of the Act states that the information must not be disclosed to the employee (or former employee) where the head of the relevant entity reasonably believes disclosure would:

- put a person’s health or safety at serious risk; or

- put a person who made a report, complaint or notification, or other person, at risk of being harassed or intimidated; or
- prejudice an investigation or inquiry.

Any decision to invoke section 57(7) of the Act and the rationale and evidence should be clearly documented and provided to the OCG.

Chapter 16A of the Care Act

Chapter 16A of the Care Act (in particular, section 245C of the Care Act) permits the disclosure of information by a prescribed body (as defined in section 245B(1) of the Care Act) to another prescribed body in circumstances permitted by the provision.

It is lawful for relevant entities that are prescribed bodies to disclose reportable conduct information to another prescribed body if it is in accordance with Chapter 16A of the Care Act.

The Department of Communities and Justice (DCJ) provides guidance on the use of Chapter 16A, which can be found [on the DCJ website](#).

Government Information (Public Access) Act 2009 (GIPA Act)

Reportable conduct information is the “excluded information” of the OCG, and it is conclusively presumed that there is an overriding public interest against disclosure of such information unless the OCG consents to its disclosure (see: Schedule 2, clause 2 and Schedule 1, clause 6 of the GIPA Act).

This means that it is unlawful for **relevant entities to disclose reportable conduct information in response to a GIPA access application without the OCG’s consent**.

Please see [Fact Sheet 12 - GIPA Access Applications for Reportable Conduct Information](#) for more information about the requirement to obtain consent from the Children’s Guardian before disclosing reportable conduct information as part of a GIPA access application.

Disclosure in connection with the execution of the Act

According to section 159(1)(b) of the Act, the disclosure of reportable conduct information is lawful where it is made in connection with the execution of the Act or associated Regulations.

Below is a non-exhaustive list of example scenarios where the disclosure by a relevant entity of reportable conduct information is in connection with the entity’s execution of the Act – Disclosures of reportable conduct information to:

- the OCG, regardless of whether the disclosure is required under the Act or the OCG has otherwise issued a requirement to provide the information
- other employees within the relevant entity who have a need to know the information – such as delegates or support persons and persons with a role in ensuring risk management during the investigation
- external parties such as an investigator contracted to conduct the reportable conduct investigation
- the employee who is the subject of the reportable conduct investigation (beyond that permitted under section 57(6), per above, and as long as section 57(7) does not apply) *if it is necessary for the proper execution of the entity’s reportable conduct obligations* – for example, disclosure is required to ensure procedural fairness to the employee
- other parties to a reportable conduct investigation, such as alleged victims and witnesses, for the purpose of ensuring the proper investigation of the reportable allegations.

When emphasising to recipients of reportable conduct information the importance of maintaining

confidentiality, it is helpful to inform them that the unlawful disclosure of the information may be an offence under the Act. In this regard, the OCG may seek to prosecute a breach if, for example, the unlawful disclosure of information results in a breach of privacy, defamation or the compromising of a reportable conduct or police investigation. Circumstances where the OCG might seek to prosecute offences under section 159 include, but are not limited to:

- if an employee of a relevant entity discloses reportable conduct information to a journalist outside of the entity's media protocol
- if an individual posts reportable conduct information on social media
- if any person makes an unauthorised public announcement about a reportable allegation under investigation.

Similarly, it is helpful to make clear to recipients of reportable conduct information the types of disclosures you consent to – for example, disclosures to the person's lawyer, union representative, counsellor, family members, support person. See below, 'Consent'.

Consent to disclose

According to section 159(1)(a) of the Act, the disclosure of reportable conduct information is lawful where it is made "with the consent of the person from whom the information was obtained".

Relevant entities might seek consent to disclose reportable conduct information generated by the OCG or another relevant entity in circumstances where there is no other lawful excuse, including the other exceptions outlined in section 159 of the Act. Ordinarily, this will be a last resort, as relevant entities will typically rely on section 57 of the Act, Chapter 16A of the Care Act or the exception at section 159(b) of the Act (see above) for the lawful disclosure of reportable conduct information.

Importantly, consent can only be provided by the person from whom the information was obtained, which is not necessarily the person to whom the information relates.

Below is a non-exhaustive list of examples where relevant entities or other individuals might seek consent in order to lawfully disclose reportable conduct information:

- A relevant entity is approached by their media representative asking for comment about a reportable allegation the entity is investigating, to respond to a journalist. The Head of the Relevant Entity (or delegate) may consent to their media representative disclosing to the journalist that the allegation has been reported to the OCG and that the entity is following OCG guidance on responding to the matter.
- An individual requests that the relevant entity provide them with a copy of correspondence from the OCG, in circumstances where a disclosure of the correspondence could not be said to be captured by the exception at section 159(b) of the Act (that is, it is not information in connection with the execution of the Act). The relevant entity could seek consent from the OCG to the disclosure of the correspondence, either in full or in a redacted form.
- An employee who was the subject of a reportable conduct investigation asks a relevant entity whether they (the employee) can provide a new prospective employer with a copy of the letter regarding the outcome of the reportable conduct investigation. The entity may consent to the employee disclosing the information – in full or in a redacted form – for that purpose. However, the entity should only consent to the disclosure of information about the entity or the employee. If the outcome letter includes information about a victim or alleged victim – whether named or otherwise identifiable – any consent should be conditional on that information being redacted.

A relevant entity that discloses reportable conduct information to an individual pursuant to its execution of the Act may, when emphasising the importance of maintaining confidentiality, specify the types of people to whom the entity consents the individual to disclose to (such as lawyer, union representative, counsellor, family members, support person).

Other exceptions

Section 159 of the Act provides the other exceptions to the general prohibition against disclosure of reportable conduct information, which are primarily applicable to OCG employees:

- disclosure for purpose of legal proceedings, or a report about legal proceedings, arising out of this Act or the regulations; and
- disclosure made in accordance with a requirement imposed under the *Ombudsman Act 1974*.

Office of the Children's Guardian

www.ocg.nsw.gov.au

Switchboard: (02) 8219 3600