

KEEPING CHILDREN IN MIND AND IN VIEW

Practice Guide 7:

Understanding legislation that underpins practice



Acknowledgement of Country

The Centre acknowledges the past and present traditional custodians of the land on which we work. We pay respect to Elders past and present. We acknowledge that sovereignty was never ceded and that this was and always will be Aboriginal land.



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Acronyms

BICPM	Best Interest Case Practice Model
CISS	Child Information Sharing Scheme
CCYP	Commission for Children and Young People
CCYP Act	Commission for Children and Young People Act 2012
CSS	Child Safe Standards
CSW Act	Child Wellbeing and Safety Act 2005
CYFA	Children, Youth and Families Act 2005
FVISS	Family Violence Information Sharing Scheme
ISE	Information Sharing Entity
LBGTIQA+	lesbian, gay, bisexual, transgender, intersex, queer, asexual
MARAM	Multi Agency Risk Assessment Framework

Foreword

This guide is one in a series of practice guides written by the Centre for Excellence in Child and Family Welfare to enable practitioners to keep children first and foremost in service system responses. Funding for these guides has been provided by Family Safety Victoria.

The aim of the guides is to support key workforces involved in maintaining child safety and wellbeing to:

- use a child rights lens
- identify and prioritise what is in the child's best interests
- work in ways that promote children's participation in the decision making and processes that affect them
- document what happens to children so that they are kept in mind and in view.

The guides are intended to make sure that children and young people are at the centre of our thinking and our practice. They are not intended to replace leader or manager practice guidance or to replace existing agency protocols; rather, they are aimed at providing practical, simple and accessible information that will increase practitioner understanding of how to work with children and young people and enhance confidence in their ability to do so.

In engaging with children, particular attention needs to be paid to the safety and wellbeing of children who are non-verbal or very young, who have developmental challenges, who have a disability, who are from a non-English speaking background, who are Aboriginal or Torres Strait Islander, who have a parent with a disability or mental ill-health, who identify as LGBTIQ+, or who experience (and/or use) violence in the home.

The guides aim to address confidence and knowledge gaps for practitioners across the sector and promote the importance of effective and meaningful observation, communication and empowerment of children and young people. They are intended to be an easy to understand, practical reference tool for new practitioners, or for practitioners who have not had significant experience in working with children or young people.

Legislation underpinning practice

Legislation provides a framework for practice, particularly in relation to statutory responsibilities. Legislation can guide and support professionals in their decision making, often in complex and challenging situations, when working with service users. Legislation gives practitioners authority for the decisions they make.

This Practice Guide outlines some of the key legislation relevant to child and family services.

The Child Wellbeing and Safety Act 2005

The *Child Wellbeing and Safety Act 2005* (CWS Act) sets out principles to guide the development and provision of services for children and families, including (but not limited to) the following.

- Society as a whole shares responsibility for promoting the wellbeing of children.
- All children should be given the opportunity to reach their full potential regardless of family circumstances or background.
- Those who develop and provide services, as well as parents/caregivers, should give the highest priority to the promotion and protection of a child's safety, health, development, education and wellbeing.

Other principles relate to service design, service provider obligations and principles for compliance with Child Safe Standards. The CWS Act also establishes the Victorian Children's Council and Children's Services Coordination Board to provide oversight over entities with responsibilities to meet standards in relation to child safety, to allow for the sharing of information across entities who are responsible for meeting standards, and to allow for standards regarding misconduct and reportable conduct to keep children safe and professionals accountable.

Commission for Children and Young People Act 2012

The *Commission for Children and Young People Act 2012* (CCYP Act 2012) established a Commission for Children and Young People (CCYP) responsible for promoting continuous improvement and innovation in policies and practices relating to the safety and wellbeing of children and young people (including vulnerable children and young people) and to the provision of out-of-home care services for children.

The functions of the Commission which are outlined in the CCYP Act 2012 include providing advice to Ministers, Government departments, health services and human services about policies, practices and the provision of services relating to the safety or wellbeing of vulnerable children and young people.

Reportable Conduct Scheme

The CCYP is currently responsible for overseeing the Reportable Conduct Scheme and outlines the purpose of this function as being to:

- educate, provide advice, and otherwise improve the ability of entities to identify reportable conduct
- ensure that entities report and properly investigate reportable allegations
- work with entities, regulators and other relevant bodies to prevent reportable conduct from occurring in entities.

The Reportable Conduct Scheme is also intended to build the capacity of organisations to be able to respond to allegations of child abuse and child-related misconduct effectively and appropriately.

All professionals and volunteers are required to adhere to rules regarding conduct that promotes the safety and wellbeing of children. Organisations are responsible for reporting concerns regarding misconduct or perceived misconduct from volunteers or professionals associated with their organisation.

Child Safe Standards

This legislation also allows for the Commission to oversee the Child Safe Standards (CSS). All organisations in Victoria which provide services for children are required to comply with the CSS to ensure that the safety of children is promoted, child abuse is prevented and allegations of child abuse are properly responded to. The new CSS in Victoria came into effect in July 2022.

Children, Youth and Families Act 2005

The purpose of the *Children, Youth and Families Act 2005* (CYFA) is to:

- provide for community services to support children and families
- provide for the protection of children
- make provision in relation to children who have been charged with, or who have been found guilty of, offences, and
- continue the Children’s Court of Victoria as a specialist court dealing with matters relating to children.

The legislation underpins principles and procedures for work undertaken by professionals working across the sector on a daily basis. The legislation is intended to uphold the inherent value of protecting children and young people and providing services to vulnerable children and families in the community.

Section 10 Best Interest Principles

Section 10 of the CYFA states the best interests of a child must always be paramount when making a decision or taking action in relation to a child or young person. This section of the Act underpins the Best Interest Case Practice Model (BICPM), and requires professionals to consider the following needs of a child/young person when making a decision:

- to protect the child/young person from harm
- the need to protect the child’s rights
- to promote the child/young person’s development (taking into account their age, stage of development, culture and gender)
- the Children’s Court, child protection and family services sector must comply with the Best Interests Principles in taking any action or making a decision about a child/young person.

The Best Interest Principles guide decisions made by professionals in statutory and non-statutory roles in the sector. The principles provide a foundation for making sure that the needs of children and young people across multiple facets of their lives are promoted, recognising children as individuals in their own right with their own particular needs.

Section 12 Additional decision-making principles

Section 12 of the CYFA recognises the principle of Aboriginal self-management and self-determination when decisions or actions are required in relation to Aboriginal children. In making decisions, consideration must be given to the following principles.

- Opportunity, where relevant, should be given to appropriate members of the Aboriginal community and/or other respected Aboriginal person to provide their views on the decision making.
- Significant decisions including placement decisions relating to an Aboriginal child should involve a meeting called by an Aboriginal convenor approved by an Aboriginal agency or organisation, as approved by the Secretary.
- Meetings convened, as mentioned above, should wherever possible include the child/young person, the child/young person's parents, extended family members, and other members of the Aboriginal community, as determined by the child/young person's parent.
- In considering placing a child in out-of-home care, an Aboriginal agency must be consulted, and the Aboriginal Child Placement Principle must be applied.

Section 13 Aboriginal Child Placement Principle

Section 12 of the CFYA outlines the intent of the Aboriginal Child Placement Principle. If it is deemed necessary for an Aboriginal child to be placed in out-of-home care, then these principles must be considered.

- That the decision is made after having received advice from the relevant Aboriginal agency.
- That priority is given to placing the child/young person within their Aboriginal extended family or relatives.
- If this is not possible, then consideration may be given to other extended family members.
- If those options are not available, then consideration may be given to an Aboriginal family from a community within close proximity to the child/young person's family.
- Placing the child/young person in the care of a family of a non-Aboriginal background can only be considered once other options have been determined to be not available or appropriate. Any non-Aboriginal placement must ensure that a commitment to the child's culture and identity and contact with family are maintained.

The principles are in place to ensure that Aboriginal self-management and self-determination are recognised when significant decisions are required for Aboriginal children. Every effort is required to make sure that the relevant Aboriginal services and organisations are consulted so that the best possible decisions are made for Aboriginal children, promoting their connection to culture, identity and family.

Section 21 Concern about wellbeing of child

As stipulated in the CYFA, the purpose of section 21 is to allow for provision for community-based child and family services:

- to work with integrated, localised services which provide greater accessibility and allow for early intervention from agencies and organisations that can provide support to children, young people and their families

- to provide a point of entry for vulnerable children and families where significant concerns exist for their safety and wellbeing
- to be able to undertake risk and needs assessments relating to children, young people and their families, determining if the child/young person is in need of greater protection and to provide support based on what is assessed as necessary
- to be able to make referrals to other relevant agencies to provide additional support and assistance, if deemed necessary
- to be able to promote and facilitate localised service networks to take a coordinated and collaborative approach to the provision of support and protection for children, young people and their families.

United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child 2012 includes articles that relate to upholding and promoting the rights of children and young people under the age of 18 years. As Australia is a signatory to this convention, our practice is guided by these articles. The Convention on the Rights of the Child covers a wide range of different human rights (civil, political, economic, social and cultural) and sets out the specific ways these rights should be achieved for children and young people, with 42 of the 54 articles relating to children and young people.

In addition to the human rights laid out in the Universal Declaration of Human Rights, children and young people are entitled to additional rights which recognise that young people have special needs to help them survive and develop to their full potential. Children also have the right to special protection because of their vulnerability to exploitation and abuse. The specific rights of children are laid out in the Convention on the Rights of the Child.

Family Violence Protection Act 2008

The *Family Violence Protection Act 2008* aims to maximise the safety of children and adults who have experienced family violence, prevent and reduce family violence to the greatest extent possible, and promote the accountability of perpetrators of family violence for their actions. The Act is also intended to define family violence, setting out procedures for family violence Intervention Orders and the punishment for their contravention.

Under section 2 of the legislation, the purpose is set to be achieved through:

- providing an effective and accessible system of family violence intervention orders and family violence safety notices
- providing for the sharing of information that is relevant to assessing and managing a risk of family violence
- creating offences for contraventions of family violence intervention orders and family violence safety notices, and
- providing a framework for achieving consistency in family violence risk assessment and management.

The legislation also provides for the use of the Multi Agency Risk Assessment Framework (MARAM) as well as the Family Violence Information Sharing Scheme and Child Information Sharing Scheme as mentioned below.

Multi Agency Risk Assessment Framework

The MARAM Framework was established and commissioned under Part 11 of the *Family Violence Protection Act 2008* to increase the safety and wellbeing of Victorians by ensuring relevant services can effectively identify, assess and manage family violence risk. The legislation also has provision to ensure that authorised organisations which provide a funded service to family violence risk assessment and management, align their policies, procedures, practice guidance and tools to the Framework.

The MARAM Framework is intended to support prescribed organisations and their professionals to:

- recognise a wide range of risk indicators for children, older people and diverse communities, across identities, family and relationship types
- keep perpetrators in view and hold them accountable for their actions and behaviours
- have a shared understanding of risk assessment and management
- have the skills and a framework to guide appropriate risk management action
- coordinate and implement safety and accountability planning.

Family Violence Information Sharing Scheme

Established under Part 5A of the *Family Violence Protection Act 2008*, the Family Violence Information Sharing Scheme (FVISS) enables authorised organisations and services to share information to facilitate assessment and management of family violence risk to children and adults. The FVISS assists the service system to manage victim survivor safety and hold perpetrators in view and accountable for their actions and behaviours. MARAM guides information sharing in a family violence context.

Information sharing requests made under the FVISS must relate to one of the following purposes:

- a family violence assessment purpose
- a family violence protection purpose (to manage risk, including ongoing risk assessment).

Consent is not required from anyone to share information when a child/young person is at risk. However, the child/young person and/or any adult victim survivors should be consulted about the sharing of the information, where it is appropriate, safe and reasonable to do so. Where no children/young people are at risk, consent from the adult victim survivor is required to share their information, unless it is necessary to share that information to lessen or prevent a serious threat.

Under the FVISS, prescribed organisations/workforces can share perpetrator information without consent. If the person is an alleged perpetrator, information may still be shared with Risk Assessment Entities for a family violence risk assessment purpose to determine if they are a perpetrator. This includes information about adolescents who use violence in the home.

The Child Information Sharing Scheme

The Child Information Sharing Scheme (CISS), established under Part 6A of the *Child Wellbeing and Safety Act 2005*, enables prescribed information sharing entities to share information with each other in order to promote the broader wellbeing and/or safety of a child or a group of children or young people.

Sharing information using the CISS can help provide wraparound support services through integrated service provision to children facing disadvantage, promote early identification of needs and risks, support making prompt and effective interventions, and improve outcomes to children and families.

The CISS prioritises wellbeing and/or safety over privacy. Consent from a child is not required to share information if it is considered that the sharing of information would promote the wellbeing and/or safety of a child/young person. However, where it is safe, appropriate, and reasonable, a child or young person should be directly engaged with to obtain consent, if possible.

For the purposes of managing risk to a child's safety, the CISS permits sharing with an adult with parental/caring responsibility (who is not the perpetrator).

Information Sharing Entities and Risk Assessment Entities

An Information Sharing Entity (ISE) is a service or organisation that is prescribed under FVISS and/or CISS. Only services and organisations that are prescribed as ISEs can share information under FVISS and CISS.

An ISE sharing information with another ISE needs to verify that the person they are sharing with is from the respective ISE. Under the FVISS, an ISE can also share perpetrator information with a victim survivor to assist them manage their risk.

Mental Health Act 2014

While the *Mental Health Act 2014* authorises compulsory treatment in certain circumstances, the Act is intended to promote recovery-oriented practice, minimise compulsory treatment and protect and support the rights of people living with mental illness. These include rights to:

- make advance statements
- communicate privately with people outside a mental health service, including lawyers specifically, and have visitors
- nominate support people, who can receive information and support decision-making
- request psychiatric second opinions
- be given a statement of rights when being assessed or having an order made about their treatment for mental illness.

The Act holds particular relevance regarding capacity to provide informed consent, as defined under Section 69 of the Act, stating that a person gives informed consent to treatment or medical treatment under the Act if they:

- have the capacity to give informed consent to the treatment or medical treatment proposed
- have been given adequate information to enable the person to make an informed decision
- have been given a reasonable opportunity to make the decision
- have given consent freely without undue pressure or coercion by any other person, and
- have not withdrawn consent or indicated any intention to withdraw consent.

Disabilities Act 2006 and Disability Amendments Act 2019

The *Disabilities Act 2006* and *Disability Amendments Act 2019* are guided by human rights and provide the framework for a whole-of-community, and whole-of-government approach to improving the economic and social participation of people with disability in the community.

The key objectives of these Acts are to:

- advance the inclusion and participation in the community of people with disability
- promote and protect the rights of people with disability
- support the delivery of high-quality services and make disability service providers accountable to people accessing their services
- provide a process for authorising the proper use of restrictive practices on people with disability.

References to legislation and frameworks

There are many pieces of legislation that underpin practice to guide policy and procedure to maintain the rights of vulnerable members of the community and to keep professionals accountable.

For full details of the legislation and frameworks described above, please see below for quick reference:

- Authorised Version No. 016 Commission for Children and Young People Act 2012 No. 79 of 2012 Authorised Version incorporating amendments, <https://www.legislation.vic.gov.au/in-force/acts/commission-children-and-young-people-act-2012/016>
- Reportable Conduct Scheme, <https://ccyp.vic.gov.au/reportable-conduct-scheme/>
- Child Safe Standards (CSS), <https://ccyp.vic.gov.au/child-safe-standards/>
- Authorised Version No. 121 Children, Youth and Families Act 2005 No. 96 of 2005 Authorised Version incorporating amendments as at 21 October 2020, <https://content.legislation.vic.gov.au/sites/default/files/2023-10/05-96aa136-authorised.pdf>
- Summary of the United Nations Convention on the Rights of the Child, <https://www.savethechildren.org.uk/content/dam/gb/reports/humanitarian/uncrc19-summary2.pdf>
- Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- Authorised Version No. 060, Family Violence Protection Act 2008, No. 52 of 2008, Version incorporating amendments as at 1 June 2022, <https://content.legislation.vic.gov.au/sites/default/files/2023-05/08-52aa061-authorised.pdf>
- Multi Agency Risk Assessment Framework (MARAM), <https://www.vic.gov.au/family-violence-multi-agency-risk-assessment-and-management>
- Family Violence Information Sharing Scheme (FVISS), <https://www.vic.gov.au/family-violence-information-sharing-scheme>
- The Child Information Sharing Scheme (CISS), <https://www.vic.gov.au/child-information-sharing-scheme>

- Authorised Version No. 022 Mental Health Act 2014 No. 26 of 2014 Authorised Version incorporating amendments as at 1 March 2020, <https://content.legislation.vic.gov.au/sites/default/files/2020-02/14-26aa022%20authorised.pdf>
- Authorised Version No. 044 Disability Act 2006 No. 23 of 2006 Authorised Version incorporating amendments as at 1 July 2021, <https://content.legislation.vic.gov.au/sites/default/files/2021-06/06-23aa044%20authorised.pdf>

