

7.02V PRIVACY AND CONFIDENTIALITY

QUALITY AREA 7 | VERSION 1.0

PURPOSE

This policy provides a clear set of guidelines:

- for the collection, storage, use, disclosure, and disposal of personal information, including photos, videos, and health information at LEVNT EC Services
- to ensure compliance with privacy legislation
- on responding to requests for information to promote child wellbeing or safety and/or assess and manage risk of family violence (mandatory)
- on sharing and requesting information to promote child wellbeing or safety and/or to manage risk of family violence.

POLICY STATEMENT

VALUES

LEVNT EC Services are committed to:

- responsible and secure collection and handling of personal information
- protecting the privacy of each individual's personal information
- ensuring individuals are fully informed regarding the collection, storage, use, disclosure, and disposal of their personal information, and their access to that information
- proactively sharing information to promote the wellbeing and/or safety of a child or a group of children, consistent with their best interests

SCOPE

This policy applies to the Approved Provider, persons with management or control, nominated supervisor, persons in day-to-day charge, parents/guardians, student educators, volunteers and contractors attending LEVNT EC Services.

BACKGROUND

Early childhood services are obligated by law, service agreements, and licensing requirements to comply with the privacy and health records legislation when collecting personal and health information about individuals.

The Health Records Act 2001 (Part 1, 7.1) and the Privacy and Data Protection Act 2014 (Vic) (Part 1, 6 (1)) include a clause that overrides the requirements of these Acts if they conflict with other Acts or Regulations already in place. For example, if there is a requirement under the Education and Care Services National Law Act 2010 or the Education and Care Services National Regulations 2011 that is inconsistent with the requirements of the privacy legislation, services are required to abide by the Education and Care Services National Law Act 2010 and the Education and Care Services National Regulations 2011.

In line with the Victorian Government's Roadmap for Reform, Education State reforms and broader child safety initiatives, Part 6A of the Child Wellbeing and Safety Act 2005 (the Act) was proclaimed in September 2018. The Act established the Child Information Sharing (CIS) Scheme, which enables sharing of confidential information between prescribed entities in a timely and effective manner in order to promote the wellbeing and safety of children. The Act also authorised the development of a web-based platform that will display factual information about children's participation in services known as the Child Link Register. The Child Link Register aims to improve child wellbeing and safety outcomes, monitor and support the participation in government-funded programs and services for children in Victoria.

Alongside the CIS Scheme, the Family Violence Protection Act 2008 includes the Family Violence Information Sharing (FVIS) Scheme and the Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework, which enables information to be shared between prescribed entities

to assess and manage family violence risk to children and adults. The MARAM Framework can be used by all services including ECEC services that come into contact with individuals and families experiencing family violence. The MARAM Framework aims to establish a system-wide shared understanding of family violence. It guides professionals across the continuum of service responses, across the range of presentations and spectrum of risk. It provides information and resources that professionals need to keep victim survivors safe, and to keep perpetrators in view and hold them accountable for their actions.

DEFINITIONS

The terms defined in this section relate specifically to this policy. For regularly used terms refer to the Definitions file of each LEVNT EC policy folder.

Child Information Sharing Scheme (CISS): enables Information Sharing Entities (ISE) to share confidential information about any person to promote the wellbeing and/or safety of a child or group of children. The CISS works in conjunction with existing information sharing legislative provisions. All Victorian children from birth to 18 years of age are covered. Unborn children are only captured when there has been a report to Child First or Child Protection. Consent is not required from any person when sharing under CISS. The CISS does not affect reporting obligations created under other legislation, such as mandatory reporting obligations under the Children, Youth and Families Act 2005.

Confidential information: For the purposes of this policy, the CISS and FVISS, the health information and identifiers for the Health Records Act 2001 and the personal information for the Privacy and Data Protection Act 2014, including sensitive information (such as a criminal record), and unique identifiers.

Data breach: Unauthorised access or disclosure of personal information, or loss of personal information.

Disclosure: In the context of the Schemes, this is defined as sharing confidential information for the purpose of promoting the wellbeing or safety of a child or group of children. In the context of family violence, this is defined as when someone tells another person about violence that they have experienced, perpetrated or witnessed.

Family Violence Information Sharing Scheme (FVISS): enables the sharing of relevant information between authorised organisations to assess or manage risk of family violence.

Freedom of Information Act 1982: Legislation regarding access and correction of information requests.

Health information: Any information or an opinion about the physical, mental, or psychological health or ability (at any time) of an individual.

Health Records Act 2001: State legislation that regulates the management and privacy of health information handled by public and private sector bodies in Victoria.

Identifier/Unique identifier: A symbol or code (usually a number) assigned by an organisation to an individual to distinctively identify that individual while reducing privacy concerns by avoiding the use of the person's name.

Information Sharing Entities (ISE): are authorised to share and request relevant information under the Child Information Sharing Scheme and the Family Violence Information Sharing Scheme (the Schemes) and required to respond to requests from other ISEs. All ISEs are mandated to respond to all requests for information.

Multi-Agency Risk Assessment and Management Framework (MARAM): Sets out the responsibilities of the organisation in identifying, assessing, and managing families and guide information sharing under both CIS and FVIS schemes wherever family violence is present.

Notifiable Data Breaches scheme (NDB): a Commonwealth scheme that ensures any organisation or agency covered by the Privacy Act 1988 notifies affected individuals and the Office of the Australian Information Commissioner (OAIC) when a data breach is likely to result in serious harm to an individual whose personal information is involved.

Personal information: Recorded information (including images) or opinion, whether true or not, about a living individual whose identity can reasonably be ascertained.

Privacy and Data Protection Act 2014: State legislation that provides for responsible collection and handling of personal information in the Victorian public sector, including some organisations, such as early childhood services contracted to provide services for government. It provides remedies for interferences with the information privacy of an individual and establishes the Commissioner for Privacy and Data Protection.

Privacy Act 1988: Commonwealth legislation that operates alongside state or territory Acts and makes provision for the collection, holding, use, correction, disclosure, or transfer of personal information. The Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth) introduced on 12 March 2014 has made extensive amendments to the Privacy Act 1988. Organisations with a turnover of \$3 million per annum or more must comply with these regulations.

Privacy breach: An act or practice that interferes with the privacy of an individual by being contrary to, or inconsistent with, one or more of the Information Privacy Principles or the new Australian Privacy Principles or any relevant code of practice.

Public Records Act 1973 (Vic): Legislation regarding the management of public sector documents.

Risk Assessment Entity (RAE): Under FVISS, there is also a subset of specialist ISEs known as Risk Assessment Entities that are able to receive and request information for a family violence assessment purpose. RAEs have specialised skills and authorisation to conduct family violence risk assessment, examples include but are not limited to Victorian Police, child protection, family violence service and some Orange Door services.

Sensitive information: Information or an opinion about an individual’s racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual preference or practices, or criminal record. This is also considered to be personal information.

RESPONSIBILITIES

Actions which are legislated requirements of the ECEC sector are indicated with **LR**.

	Approved Provider and/or persons with	Nominated supervisor and persons in day-to-day	Early childhood teachers, educators and all other	Parents, guardians and carers	Contractors, volunteers and those on student
Ensuring all records and documents are maintained and stored in accordance with Regulations 181 and 183 of the Education and Care Services National Regulations 2011	LR	✓	✓		✓
Ensuring the service complies with the requirements of the Health Privacy Principles as outlined in the Health Records Act 2001, the Information Privacy Principles as outlined in the privacy and data protection act 2014 (Vic) and, where applicable, the Australia Privacy Principles as outlined in the Privacy Act 1988 (Cth) and the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth), by taking proactive steps to establish and maintain internal practices, procedures, and systems that ensure compliance with privacy legalisations including: <ul style="list-style-type: none"> identifying the kind of personal, sensitive, and health information that will be collected from an individual or a family communicating the reason why personal, sensitive, and health information is being collected, and how it will be 	LR	✓			

	Approved Provider and/or persons with	Nominated supervisor and persons in day-to-day	Early childhood teachers, educators and all other	Parents, guardians and carers	Contractors, volunteers and those on student
<p>stored, used, and disclosed, and managed and are provided with the service's privacy statement and all relevant forms</p> <ul style="list-style-type: none"> communicating how an individual or family can access and/or update their personal, sensitive, and health information at any time, to make corrections or update information communicating how an individual or family can complain about any breaches of the privacy legislation, and how the service will deal with these complaints 					
Ensuring a copy of this policy, including the Privacy Statement, is provided to all stakeholders, is prominently displayed at the service and/or electronically accessible, is up to date and available on request	LR	✓			
Reading and acknowledging they have read the Privacy and Confidentiality Policy, including the Privacy Statement	LR	✓	✓	✓	✓
The management of privacy risks at each stage of the information lifecycle, including collection, use, disclosure, storage, destruction or de-identification	LR	✓	✓		
Protecting personal information from misuse, interference, loss, as well as unauthorised access, modification or disclosure.	LR	✓	✓		
Identifying and responding to privacy breaches, handling access and correction requests, and receiving and responding to complaints and inquiries	LR	✓			
Providing regular staff training and information on how the privacy legislation applies to them and the service	LR	✓			
Appropriate supervision of staff who regularly handle personal, sensitive, and health information	LR	✓			
Ensuring that personal, sensitive, and health information is only collected by lawful and fair means, and is accurate and complete	LR	✓	✓		
Ensuring parents/guardians know why personal, sensitive and health information is being collected and how it will be used, disclosed and managed and are provided with the service's Privacy Statement and all relevant forms	LR	✓	✓		
Ensuring that an individual or family can have access to their personal, sensitive and health information at any time, to make corrections or update information	LR	✓	✓	✓	✓
Providing adequate and appropriate secure storage for personal, sensitive, and health information collected by the service, including electronic storage	LR	✓			
Ensuring that records and documents are kept in accordance with Regulation 183	LR	✓	✓		
Notifying an individual or family if the service receives personal sensitive and health information about them from another source as soon as practicably possible	LR	✓			
Ensuring that if personal, sensitive and health information needs to be transferred outside of Victoria, that the individual or family that it applies to has provided consent, or if the recipient of the personal information is subject to a law or binding scheme.	LR	✓			

	Approved Provider and/or persons with	Nominated supervisor and persons in day-to-day	Early childhood teachers, educators and all other	Parents, guardians and carers	Contractors, volunteers and those on student
Ensuring the unique identifiers are not adopted, used or disclosed unless lawfully required to	LR	✓			
Complying with the Notifiable Data Breaches Scheme which imposes an obligation to notify individual whose personal information is in a data breach that is likely to result in serious harm	LR	✓			
Developing a data breach response plan that sets out the roles and responsibilities involved in managing a data breach, the steps taken if a data breach occurs and notifying the <i>Office of the Australian Information Commission</i> as appropriate.	LR				
Promoting awareness and compliance with the Child Safe Standards, and disclosing information to promote the wellbeing and safety of a child or group of children	LR	LR	LR		
Ensuring information sharing procedures abide by the CISS Ministerial Guidelines and exercising professional judgment when determining whether the threshold for sharing is met, what information to share and with whom to share it	LR	LR	LR		
Identifying which staff should be nominated as authorised point of contact(s) in relation to the CISS and the FVISS	LR	✓			
Ensuring the authorised point of contact undertakes appropriate training and is aware of their responsibilities under the CISS and FVISS	LR	✓			
Being aware of who the point of contact at the service under the CISS and FIVSS, and supporting them (if applicable) to complete the threshold test		LR	LR		
Communicating to staff about their obligations under the Information Sharing Schemes, and ensure they have read this policy	LR	✓			
Providing opportunities for identified ISE staff to undertake the appropriate training	LR	✓			
Engaging in training about information sharing schemes and the MARAM framework	✓	✓	✓		
Ensuring information sharing procedures are respectful of and have regard to a child's social, individual, and cultural identity, the child's strengths and abilities, and any vulnerability relevant to the child's safety or wellbeing	✓	✓	✓		
Ensuring any requests from ISE's are responded to in a timely manner and provide relevant information if the threshold test of the CISS or FVISS are met	LR	LR	LR		
Promoting a child's cultural safety and recognise the cultural rights and familial and community connections of children who are Aboriginal, Torres Strait Islander or both when sharing information under the CISS and FVISS	LR	LR	LR		
Giving precedence to the wellbeing and safety of a child or group of children over the right to privacy when sharing information under the CISS and the FVISS	LR	LR	LR		
Ensuring confidential information is only shared to the extent necessary to promote the wellbeing or safety of a child or group of children, consistent with the best interests of that child or those children.	LR	LR	LR		

	Approved Provider and/or persons with	Nominated supervisor and persons in day-to-day	Early childhood teachers, educators and all other	Parents, guardians and carers	Contractors, volunteers and those on student
Maintaining record keeping processes that are accurate and complete as set by Child Wellbeing and Safety (Information Sharing) Regulations concerning both written and verbal sharing of information and or complaints	LR	LR	LR		
Only sharing confidential information to the extent necessary to promote the wellbeing or safety of a child or group of children, consistent with the best interests of that child or those children	LR	LR	LR		
Working collaboratively with services that are authorised and skilled (including those located within The Orange Door) to determine appropriate actions and promote collaborative, respectful practice around families and children	LR	LR	LR		
Seeking and taking into account the views of the child and the child's relevant family members, if it is appropriate, safe and reasonable to do so when sharing information under the CISS and the FVISS	LR	LR	LR		
Providing notice to children and parents/guardians when photos/video recordings are going to be taken at the service	✓	✓	✓		✓
Ensuring that images of children are treated with the same respect as personal information, and as such are protected by privacy laws in the same way	LR	LR	LR	LR	LR
Ensuring the appropriate use of images of children, including being aware of cultural sensitivities and the need for some images to be treated with special care	✓	✓	✓	✓	✓
Being sensitive and respectful to parents/guardians who do not want their child to be photographed or videoed	LR	✓	✓	✓	✓
Being sensitive and respectful of the privacy of other children and families in photographs/videos when using and disposing of these photographs/videos	LR	✓	✓		
Establishing procedures to be implemented if parents/guardians request that their child's image is not to be taken, published, or recorded, or when a child requests that their photo not be taken	LR	✓	✓		
Including a confidentiality clause relating to appropriate information handling in the agreement or contract between a photographer and the service.	LR	✓			✓

EVALUATION

In order to assess whether the values and purposes of the policy have been achieved, the Approved Provider will:

- regularly seek feedback from everyone affected by the policy regarding its effectiveness
- monitor the implementation, compliance, complaints and incidents in relation to this policy
- assess whether a satisfactory resolution has been achieved in relation to issues arising from this policy
- keep the policy up to date with current legislation, research, policy and best practice
- revise the policy and procedures as part of a policy review cycle, or as required
- notify all stakeholders affected by this policy at least 14 days before making any significant changes to this policy or its procedures, unless a lesser period is necessary due to risk

AUTHORISATION & REVIEW

This policy was adopted by Lutheran Education VIC, NSW, TAS and ACT Ltd as Approved Provider for this service on 8 December 2022.

REVIEW DATE March 2024 or earlier as required.

REFERENCES

LEGISLATION & STANDARDS

- Associations Incorporation Reform Act 2012 (Vic)
- Child Wellbeing and Safety Act 2005
- Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2020
- Education and Care Services National Law Act 2010
- Education and Care Services National Regulations 2011: Regulations 181, 183
- Family Violence Protection Amendment (Information Sharing) Act 2017
- Freedom of Information Act 1982 (Vic)
- Health Records Act 2001 (Vic)
- National Quality Standard, Quality Area 7: Leadership and Service Management
- Standard 7.3: Administrative systems enable the effective management of a quality service
- Privacy Act 1988 (Cth)
- Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)
- Privacy and Data Protection Act 2014 (Vic)
- Privacy Regulations 2013 (Cth)
- Public Records Act 1973 (Vic)

The most current amendments to listed legislation can be found at:

- Victorian Legislation – Victorian Law Today: www.legislation.vic.gov.au
- Commonwealth Legislation – Federal Register of Legislation: www.legislation.gov.au

SOURCES

- Child Care Service Handbook Version 2, 2019: www.dese.gov.au/resources-child-care-providers/resources/child-care-provider-handbook
- Child Information Sharing Scheme Ministerial Guidelines: www.vic.gov.au/guides-templates-tools-for-information-sharing
- Ministerial Guidelines for the Family Violence Information Sharing Scheme: www.vic.gov.au/family-violence-information-sharing-scheme
- Guidelines to the Information Privacy Principles: www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/
- ELAA Early Childhood Management Manual: www.elaa.org.au
- Office of the Health Complaints Commissioner: <https://hcc.vic.gov.au/>
- Privacy Guide, 2020: www.nfplaw.org.au/privacy
- Australia Not-for-profit Law Guide (2017), Privacy Guide: A guide to compliance with privacy laws in Australia: www.nfplaw.org.au/sites/default/files/media/Privacy_Guide_Cth.pdf
- Office of Australian Information Commissioner, Data breach preparation and response: www.oaic.gov.au/privacy/guidance-and-advice/data-breach-preparation-and-response
- Office of the Victorian Information Commissioner: <https://ovic.vic.gov.au>
- Information Sharing and Family Violence Reforms Contextualised Guidance: www.education.vic.gov.au/childhood/professionals/health/childprotection/Pages/ecunderstanding.aspx
- Information Sharing and Family Violence Reforms Toolkit: www.vic.gov.au/guides-templates-tools-for-information-sharing
- Office of the Victorian Information Commissioner, Child information sharing scheme and privacy law in Victoria: <https://ovic.vic.gov.au/wp-content/uploads/2019/01/20190109-Child-information-sharing-scheme-FAQs-1.pdf>
- Family Violence Multi-Agency Risk Assessment and Management Framework: www.vic.gov.au/sites/default/files/2019-01/Family%20violence%20multi-agency%20risk%20assessment%20and%20management%20framework.pdf

RELATED POLICIES

- 1.03V Inclusion and Equity
- 2.10V Delivery and Collection of Children
- 2.11V Child Safe Environment and Wellbeing
- 4.01V Code of Conduct
- 4.04V Staffing
- 6.01V Enrolment and Orientation
- 7.04V Compliments and Complaints
- 7.05V Information, Communication and Technology