Confidentiality and Privacy Policy

Mandatory – Quality Area 7

Purpose

This policy will provide guidelines:

- for the collection, storage, use, disclosure and disposal of personal information, including photos, videos and health information at all Shine Bright EYM 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 manage risk of family violence.

Policy statement

1. Values

Shine Bright EYM is 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

2. Scope

This policy applies to the Approved Provider, or Persons with Management or Control, Nominated Supervisor, Persons in Day to Day Charge, educators, staff, students on placement, volunteers, parents/guardians, children and others attending the programs and activities of Shine Bright EYM services including during offsite excursions and activities.

3. Background and legislation

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 *Information 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 (to become operational by December 2021). 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

Legislation and standards

Relevant legislation and standards include but are not limited to:

- 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: Governance and Leadership 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)
- *Public Health and Wellbeing Act 2008 (Vic)*

4. Definitions

The terms defined in this section relate specifically to this policy. For commonly used terms e.g. Approved Provider, Nominated Supervisor, Regulatory Authority etc. refer to the *General Definitions* section of this manual.

Child Information Sharing Scheme (CISS): enables Information Sharing Entities (ISE) (refer to Definitions) 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.

Child Safe Standards: Promotes the safety of children, prevent child abuse, and ensure organisations have effective processes in place to respond to and report all allegations of child abuse.

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.

Discloser: 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.

Education worker:

(i) any person who is employed by an *education operator* to work in an *education facility* (including teachers, early childhood educators and educational support staff);

(ii) a person contracted to work at an *education facility* and who will or may be in close proximity to children, students or staff, whether or not engaged by the *education operator* (including casual relief teachers, Breakfast Club suppliers, IT personnel, NDIS providers and auditors, but does not include delivery personnel or contractors);

(iii) staff of the Department of Education and Training who attend an *education facility* (such as allied health personnel or Authorised Officers);

(iv) staff of any other entity who attends an *education facility*;

(v) volunteers that attend an *education facility* and that work in close proximity to children, students or staff (including parent helpers); and

(vi) students on placements at an *education facility.*

***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 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 from 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 (refer to Attachment 2: *Privacy principles in action*) or the new Australian Privacy Principles (Attachment 7) 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 can include but 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 party, 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.

5. Sources and related policies

Sources

- 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
- 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

- ELAA Early Childhood Management Manual: www.elaa.org.au
- 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
- Guidelines to the Information Privacy Principles: www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/
- 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
- Ministerial Guidelines for the Family Violence Information Sharing Scheme: www.vic.gov.au/family-violence-information-sharing-scheme
- 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 Health Complaints Commissioner: https://hcc.vic.gov.au
- 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

Office of the Victorian Information Commissioner: https://ovic.vic.gov.au

- Department of Health and Human Services https://www.dhhs.vic.gov.au/coronavirus
- Department of Education and Training https://www.coronavirus.vic.gov.au/early-childhood-education-and-care
- Privacy Guide, 2020: www.nfplaw.org.au/privacy

Service policies

- *Child Safe Environment Policy*
- *Code of Conduct Policy*
- *Complaints Policy*
- *Delivery and Collection of Children Policy*
- *Enrolment and Orientation Policy*
- *Information Technology Policy*
- *Staffing Policy*
- *Inclusion and Equity Policy*

Procedures

- 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*
- 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:
  - 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 stored, used, and disclosed, and managed and are provided with the service's *Privacy Statement* (refer to Attachment 4) and all relevant forms
  - 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 (refer to Attachment 4)
  - 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 prominently displayed at the service and/or electronically accessible, is up to date and available on request
- the management of privacy risks at each stage of the information lifecycle, including collection, use, disclosure, storage, destruction or de-identification
- protecting personal information from misuse, interference, loss and unauthorised access, modification or disclosure, as well as unauthorised access, modification or disclosure.

- identifying and responding to privacy breaches, handling access and correction requests, and receiving and responding to complaints and inquiries
- providing regular staff training and information on how the privacy legislation applies to them and the service
- appropriate supervision of staff who regularly handle personal, sensitive, and health information
- ensuring that personal, sensitive, and health information is only collected by lawful and fair means, and is accurate and complete
- providing adequate and appropriate secure storage for personal, sensitive, and health information collected by the service, including electronic storage (refer to Attachment 2)
- ensuring that records and documents are kept in accordance with Regulation 183
- notifying an individual or family if the service receives personal, sensitive and health information about them from another source as soon as practicably possible
- 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.
- ensuring that unique identifiers are not adopted, used or disclosed unless lawfully required to (refer to Attachment 2)
- ensuring reasonable steps to destroy personal and health information and ensure it is de-identified if the information is no longer required for any purpose as described in Regulations 177, 183, 184 (refer to Attachment 1)
- complying with the *Notifiable Data Breaches Scheme* (refer to *Definitions*) which imposes an obligation to notify individual whose personal information is in a data breach that is likely to result in serious harm.
- developing a data breach (refer to *Sources*) response plan that sets out the roles and responsibilities involved in managing a data breach, the steps taken if a data breach occurs (refer to *Sources*) and notifying the Office of the Australian Information Commission as appropriate.
- promoting awareness and compliance with the Child Safe Standards (refer to *Definitions*), and disclosing information to promote the wellbeing and safety of a child or group of children
- ensuring information sharing procedures abide by the CISS Ministerial Guidelines (refer to *Sources*) and exercising professional judgment when determining whether the threshold for sharing is met, what information to share and with whom to share it (refer to Attachment 7).
- identifying which staff should be authorised point of contact in relation to the CISS and the FVISS
- ensuring the allocated point of contact undertakes appropriate training and is aware of their responsibilities under the CISS and FVISS
- communicating to staff about their obligations under the Information Sharing Schemes (refer to *Definitions*), and ensure they have read this policy
- providing opportunities for identified ISE staff to undertake the appropriate training
- 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
- 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
- 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
- ensuring confidential information (refer to *Definitions*) 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.
- developing 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 (refer to Attachment 7)
- ensuring actions are taken when an ISE becomes aware that information recorded or shared about any person is incorrect, and is corrected in a timely manner
- 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
- working collaboratively in a manner that respects the functions and expertise of each information sharing entity
- 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.
- 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
- ensuring all employees, students and volunteers are provided with a copy of this policy, including the Privacy Statement of the service (refer to Attachment 4)
- 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

- when engaging with a professional photographer, a confidentiality clause relating to appropriate information handling is included in the agreement or contract between the photographer and the service.
- Shine Bright is required to collect, record and hold vaccination information about education workers.

The nominated supervisor or persons in day-to-day charge is responsible for:

- assisting the approved provider to implement this policy
- reading and acknowledging they have read the Privacy and Confidentiality Policy (refer to Attachment 3)
- 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*
- protecting personal information from misuse, interference and loss and from unauthorised access, modification or disclosure, as well as unauthorised access, modification or disclosure.
- ensuring that personal, sensitive and health information is only collected by lawful and fair mean, is accurate and complete
- 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* (refer to Attachment 4) and all relevant forms
- ensuring that records and documents are kept in accordance with Regulation 183
- ensuring reasonable steps to destroy personal and health information and ensure it is de-identified if the information is no longer required for any purpose as described in Regulations 177, 183, 184 (refer to Attachment 2)
- 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 (refer to Attachment 4)
- providing notice to children and parents/guardians when photos/video recordings are going to be taken at the service
- ensuring early childhood teachers, educators and staff are provided a copy of this policy and that they complete the Letter of acknowledgment and understanding (refer to Attachment 3)
- 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 (refer to *Definitions*)
- ensuring that before disclosing information under the CISS or FVISS (refer to *Definitions*), confirm that the receiving organisation or service is also an information sharing entity (refer to Attachment 7)
- ensuring any requests from an ISE's are responded to in a timely manner and provide relevant information if the threshold test of the CISS or FVISS are met (refer to Attachment 7)
- engaging with services that are authorised and skilled (including those located within The Orange Door) to determine appropriate actions and promote collaborative practice around families and children.
- 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
- working collaboratively in a manner that respects the functions and expertise of each information sharing entity
- 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 (refer to *Definitions*)
- being 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 when sharing information under the CISS and FVISS (refer to *Definitions*)
- promoting a child's cultural safety and recognising 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 (refer to *Definitions*)
- maintaining record keeping processes that are accurate and complete as set by *Child Wellbeing and Safety (Information Sharing) Regulations* in relation to both written and verbal sharing of information (refer to Attachment 7)
- 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.
- obtaining informed and voluntary consent of the parents/guardians of children who will be photographed or videoed.

Early childhood teacher, educators and all other staff are responsible for:

- reading and acknowledging they have read the Privacy and Confidentiality Policy (refer to Attachment 3)
- recording information on children according to the guidelines set out in this policy
- ensuring that personal, sensitive and health information is only collected by lawful and fair mean, is accurate and complete

- ensuring they are aware of their responsibilities in relation to the collection, storage, use, disclosure, disposal of personal and health information and the requirements for the handling of personal and health information, as set out in this policy
- ensuring when sharing information 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 (refer to *Definitions*)
- engaging in training about information sharing schemes and the MARAM framework
- being aware of who the point of contact at the service under the CISS and FIVSS (refer to *Definitions*), and supporting them (if applicable) to complete the threshold test (refer to Attachment 7)
- ensuring when sharing information to promote children's wellbeing and safety, taking into consideration the child's best interests; promote collaborative practice; and give precedence to the wellbeing and safety of a child or group of children over the right to privacy
- 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 (refer *to Definitions*)
- being 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 when sharing information under the CISS and FVISS (refer to *Definitions*)
- working collaboratively in a manner that respects the functions and expertise of each information sharing entity
- 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 (refer to *Definitions*)
- 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.
- respecting parents' choices about their child being photographed or videoed, and children's choices about being photographed or videoed.

Parents/guardians are responsible for:

- providing accurate information when requested
- maintaining the privacy of any personal or health information provided to them about other individuals, such as contact details
- completing all permission forms and returning them to the service in a timely manner
- being sensitive and respectful to other parents/guardians who do not want their child to be photographed or videoed
- being sensitive and respectful of the privacy of other children and families in photographs/videos when using and disposing of these photographs/videos.
- being aware of CISS and FVISS guidelines (refer to *Definitions*).

Volunteers and students, while at the service, are responsible for following this policy and its procedures.

Evaluation

In order to assess whether the values and purposes of the policy have been achieved, the Approved Provider, Shine Bright EYM, 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
- keep the policy up to date with current legislation, research, policy and best practice
- revise the policy and procedures as part of the service's policy review cycle, or as required
- notify parents/guardians at least 14 days before making any changes to this policy or its procedures.

Attachments

- Attachment 1: Record keeping and privacy laws
- Attachment 2: Privacy Principles in action
- Attachment 3: Letter of acknowledgment and understanding
- Attachment 4: Privacy Statement
- Attachment 5: Permission form for photographs and videos
- Attachment 6: Special permission notice for publications/media

- Attachment 7: Sharing information and record keeping under the Chid Information and Family Violence Sharing Scheme
- Attachment 8: Parent Authority to Share Child Information
- Attachment 9: Service Photographer Consent Form

Authorisation

The Approved Provider Shine Bright EYM adopted this policy on July 2022

Review date: 2026