

Information Sharing Protocol between:

**The Department of Health and Human Services,
the Magistrates' Court of Victoria, and
the Children's Court of Victoria**

Background

This Information Sharing Protocol ("**Protocol**") is between

The State of Victoria through the Department of Health and Human Services ("**DHHS**") (ABN 74 410 330 756) of 50 Lonsdale Street, Melbourne, VIC 3000

and

The Magistrates' Court of Victoria ("**Magistrates' Court**")

and

The Children's Court of Victoria ("**Children's Court**").

This Protocol has been developed in response to recommendation 28 of the Royal Commission into Family Violence and relates to information sharing to inform risk assessments pertaining to family violence.

1. Application of this Protocol

1.1 This Protocol applies where:

1.1.1 an application is made for a new or amended family violence intervention order under the *Family Violence Protection Act 2008 (FVPA)* in the Magistrates' Court or Children's Court; or

1.1.2 an application is made for an order under the *Family Law Act 1975 (Cth) (FLA)* in the Magistrates' Court; or

1.1.3 DHHS are conducting an investigation or have filed a protection application under the *Children, Youth and Families Act 2005 (CYFA)*.

1.2 Where the term "**Court**" is used in this Protocol, it applies to both the Magistrates' Court and Children's Court.

1.3 Where the term "**Child Protection**" is used in this Protocol, it refers to the Child Protection function within DHHS.

1.4 Where the term "**court official**" is used in this Protocol, it refers to the Principal Registrar, Registrar or Deputy Registrar, or any person employed by the offices of the Court as per the definition in section 3 of the *Magistrates' Court Act 1989* and section 3(1) of the *Children Youth and Families Act 2005*.

1.5 Where the term "**Secretary**" is used in this Protocol, it refers to the Secretary of DHHS.

2. Scope of this Protocol

2.1 This Protocol facilitates information sharing between DHHS and the Court in the context of proceedings or an investigation outlined in 1.1. It sets out the relevant legislative authority to share information and the operational process for the parties to the Protocol when requesting information.

3. Legislative basis for information sharing where the Court requests information from DHHS

- 3.1 For proceedings outlined in clause 1.1, the Court will, from time to time, be assisted by information held by DHHS (Child Protection). The Court may request information from DHHS in these circumstances.
- 3.2 Requests for information must be considered in accordance with section 192 of the CYFA. Section 192 allows the disclosure of information to certain people and entities where there is a reasonable belief that the disclosure is necessary as part of performing the Secretary's duties under the CYFA. The Secretary has an overarching responsibility to promote the prevention of child abuse and neglect and ensure any action taken is in the best interests of the child.
- 3.3 Confidentiality provisions in the CYFA will continue to operate. The most commonly applicable of these are sections 41, 191 and 209 of the CYFA which prevent DHHS from sharing information which would lead to the identification of a person who made a report or otherwise gave confidential information to the Secretary.
- 3.4 It is not necessary to consider whether the disclosure of child protection information under this Part is authorised by the Health Privacy Principles (HPPs) or the Information Privacy Principles (IPPs) where authorisation for disclosure is found in section 192 of the CYFA.

4. Legislative basis for information sharing where DHHS requests information from the Court

- 4.1 The Secretary in relation to her functions under the CYFA, and court officials within the meaning of section 3(1) of the Magistrates' Court Act 1989 and section 3(1) of the CYFA, have been prescribed as Information Sharing Entities ("ISE") for the purposes of Part 5A of the FVPA.
- 4.2 ISEs are permitted to disclose information to and request information from one another for a 'family violence protection purpose' as defined under section 144A of the FVPA (see sections 144LA and 144LB of the FVPA).
- 4.3 The Secretary has also been prescribed as a risk assessment entity, for the purposes of Part 5A of the FVPA, with respect to her functions under the CYFA.
- 4.4 An ISE may disclose information to a risk assessment entity, and a risk assessment entity may request information from an ISE, for a 'family violence assessment purpose' as defined under section 144A of the FVPA (see 144KA and 144KB of the FVPA).

5. Additional Notes

- 5.1 If a party to this Protocol is unsure of its legal obligations in relation to information sharing in any given circumstance, it should seek legal advice.

6. Principles of information exchange between the parties

- 6.1 The best interests of a child are better protected and promoted by the prompt exchange of relevant information between services and entities involved with the child and the child's family. Consideration must always be given as to whether the decision to disclose information is in the best interests of the child, and disclosure should not be made if doing so would cause more harm.
- 6.2 Public authorities must act in a way that is compatible with the Charter of Human Rights and Responsibilities Act 2006 (Charter). Therefore, consideration must be given, on a case by case basis, to whether the disclosure of information is compatible with the Charter.

- 6.3 Information will be transmitted between the Parties securely and stored with the level of data security appropriate to other information of the type ordinarily held by the Parties.

7. Procedure under this Protocol

Court request for information

- 7.1 Where there is a current proceeding referred to in 1.1 involving a child, and the Court has reason to believe that there is, or has been, protective involvement with Child Protection, the Court may request information from the Child Protection central contact ("central contact") during business hours (9am to 5pm) (details at **Appendix 2**). The Court may request information about current protective intervention and the history and status of any Child Protection involvement.
- 7.2 The Court will request the information by electronically submitting the form at **Appendix 3** to the central contact at: magistrates.informationsharing@dhhs.vic.gov.au. The Court must include the timelines associated with the request.

Urgent requests

- 7.3 Where the request is urgent the central contact will endeavour to provide written information within two business hours of receiving the request via the template at Part A of Appendix 3.
- 7.4 Where an urgent request relates to an Aboriginal child subject to an authorisation under section 18 of the CYFA, the central contact will forward the request to the Aboriginal agency responsible for the child and discuss with the agency the legal authorisation, and the most appropriate means, for providing the information to the Court on a case by case basis. Information will be provided as soon as possible in the circumstances.
- 7.5 Should the Court determine after receiving the requested information that further detailed information is required this may be requested as per 7.6.

Non-urgent requests or requests for further, detailed information

- 7.6 For all other non-urgent matters or for matters where more detailed information than can be provided within two hours is required, the Court should make the information request by forwarding **Appendix 3** electronically to the central contact as per 7.2. DHHS will endeavour to provide the information in writing by returning Parts A and B of **Appendix 3** to the Court within seven business days of the request.
- 7.7 If the information request relates to a current open case; a case closed within the last four weeks, or an Aboriginal child subject to an authorisation under section 18 of the CYFA, the central contact will refer the request as soon as possible on the same day the request is received to:
- a. the allocated child protection practitioner, team manager or divisional contact for the child who is the subject of the request; or
 - b. to a child protection intake practitioner within the area office; or
 - c. the Aboriginal Agency responsible for the child; and
 - d. notify the Court of this via return email.
- 7.8 For information requests forwarded to the division, the division is responsible for completing the request and returning it to the central contact. The central contact will facilitate the provision of the information to the Court.
- 7.9 For information requests forwarded to an Aboriginal Agency, the central contact will discuss

with the agency the legal authorisation, and the most appropriate means, for providing the information to the Court on a case by case basis.

- 7.10 If the information request relates to a closed case (more than four weeks) the central contact will complete the information request.

Child Protection request for information

- 7.11 A child protection practitioner, in the course of his or her duties with respect to a particular child, may request information from the Court's Information Sharing team in order to carry out their duties under the CYFA.
- 7.12 A child protection practitioner may make a request for information by forwarding **Appendix 4** to the Court electronically, setting out the legislative basis upon which the information is sought. The request will include the urgency of the request. Based on the urgency of the request, and where there is a legislative basis to do so, the Court will return **Appendix 4** using best endeavours to meet the timeframe.

Risks

- 7.13 It is recognised that there are inherent risks arising from the disclosure of sensitive information in Court proceedings. The parties agree that any known risks will be managed in a way that minimises harm and prioritises the best interests of the child.
- 7.14 In providing information to the Court, DHHS will endeavour to be clear about the status and weight of the information, including whether a report has been substantiated. It will be a matter for the Magistrate and/or the parties to assess the relevance and weight of the information for the purposes of the Court proceedings.

8. Child Protection Practitioners should be made available to give evidence

- 8.1 The Court may determine that it would be appropriate for a child protection practitioner to attend and provide evidence in a proceeding where the information provided under this protocol is not sufficient, to inform the Court's understanding of the risk assessment or requires further clarification.
- 8.2 Circumstances in which Child Protection may be requested to attend court include where:
- a. the matter is complex; or
 - b. there is a significant concern for the safety of the child/ren the subject of the proceedings; or
 - c. the information cannot be provided in any other form.
- 8.3 Where possible, child protection practitioners should be notified in writing at least seven business days' prior to the date on which they will be required to give evidence in Court, and will make best endeavours to meet the request. The child protection practitioner may provide evidence via video conferencing where appropriate.
- 8.4 In the event the child protection practitioner is unable to attend due to unforeseen circumstances, the Team Manager or delegate will endeavour to attend. The Court will be notified of the departmental representative.

9. Governance

- 9.1 The DHHS Magistrates' Court Information Sharing Protocol Working Group will maintain oversight and governance of the Protocol and consists of the following representatives:
- a. DHHS including Assistant Director of Child Protection Policy; Assistant Director of

Information Sharing; Manager of Child Protection Service Design and Development Team 2; and Assistant Director, Legal Services; and,

- b. representatives of the Magistrates' Court and Children's Court including two Magistrates; representatives of the FV Branch and Children's Court.

9.2 The Working Group will meet six months from the signing of the protocol to review the operation of the Protocol and to invite Aboriginal Agencies authorised under section 18 of the CYFA to become a party to the protocol and join the working group. Thereafter it will meet every six months, or as agreed by the parties, to review the Protocol and assess and implement any necessary changes.

10. Variation

10.1 This Protocol may be varied by agreement by the parties.

10.2 Either party may terminate this Protocol by providing seven days written notice of termination to the other party.

10.3 This Protocol may be terminated immediately by agreement between the parties.

11. Representatives of the Parties

11.1 The parties' Representatives and their contact details are set out below:

Representative	Contact
Magistrates' Court of Victoria	
Director, Family Violence Branch Magistrates' Court of Victoria Mariela Diaz 1/350 Queen St Melbourne 7004 9776 mariela.diaz@courts.vic.gov.au	Senior Legal Policy Officer Magistrates' Court of Victoria Sabrina Colella 1/350 Queen St Melbourne 7004 9764 sabrina.colella@courts.vic.gov.au
Department of Health and Human Services	
Acting Director, Children and Families Policy Department of Health and Human Services Beth Allen 10/50 Lonsdale St, Melbourne 9096 6189 beth.allen@dhhs.vic.gov.au Director, Service Implementation and Support Department of Health and Human Services Stuart Lindner 10/50 Lonsdale St, Melbourne Stuart.lindner@dhhs.vic.gov.au 9096 7097	Acting Managing Principal Solicitor Department of Health and Human Services Emma Burchell 24/50 Lonsdale St Melbourne 9096 8348 emma.burchell@dhhs.vic.gov.au
Children's Court of Victoria	
Principal Registrar Children's Court of Victoria Leanne DeMorton	Family Violence Registrar Children's Court of Victoria Andrew Chidzey

5/436 Lonsdale St Melbourne 8638 3355 Leanne.demorton@childrenscourt.vic.gov.au	5/436 Lonsdale ST Melbourne 8638 3300 Andrew.chidzey@courts.vic.gov.au
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11.2 The parties will ensure that any changes to their respective representatives will be notified in writing to the other party as soon as possible after such person is appointed.

12. Dispute Resolution

12.1 Each of the parties will use its best endeavours to resolve disputes or issues that arise under this Protocol.

12.2 Any dispute arising under this Protocol must immediately be referred to each of the parties' Contacts, who will attempt to resolve the dispute.


12.3 If the dispute has not been resolved within fifteen business days of the matter being referred to the parties' Contacts, the matter will be referred to the representatives of each of the parties.

12.4 The parties will continue to comply with terms and conditions set out in the Protocol, if reasonable and practical in the circumstances, unless or until the dispute is resolved or the Protocol is terminated, whichever occurs first.

Endorsement

In accordance with the principles underlying this Protocol, we the undersigned, on behalf of our respective DHHS, Magistrates' Court and Children's Court, agree that this Protocol will provide guidelines for our staff to support outcomes that address family violence risk and protect children.

KYM PEAKE
SECRETARY to the DEPARTMENT OF
HEALTH AND HUMAN SERVICES




Signature

30/3/2019

Date

ANDREW TENNI
CHIEF EXECUTIVE OFFICER THE
MAGISTRATES' COURT OF VICTORIA



Signature of authorised representative


Andrew Tenni - CEO

Name and Position of authorised representative

30/4/19

Date

SIMON MCDONALD
CHIEF EXECUTIVE OFFICER THE
CHILDREN'S COURT OF VICTORIA



Signature of authorised representative

SIMON McDONALD - CEO

Name and Position of authorised representative

21/5/2019

Date

APPENDIX 1: MAGISTRATES' COURT OF VICTORIA CONTACT INFORMATION

EMAIL: informationsharing@courts.vic.gov.au

Phone: 7004 9761

Contacts:

Hayley Kiervan (Senior Implementation Officer)
Rachel Findlay (Assessment Officer)
Sabrina Colella (Senior Legal Policy Officer)

APPENDIX 2: CHILD PROTECTION CENTRAL CONTACT DETAILS

Child protection central contact

50 Lonsdale St

Melbourne, 3000

Ph: 9096 8764

Email: magistrates.informationsharing@dhhs.vic.gov.au

APPENDIX 3: INFORMATION REQUEST FROM MAGISTRATES/CHILDREN'S COURT TO CHILD PROTECTION

REQUEST FORM

Date of request	
Child/ren's (name, DOB and address)	
Parent / carer (name, DOB & address)	
Name of Applicant/Affected Family Member (if different to parent/carers)	
Name of Respondent	
Type of Proceeding	
Date of next Hearing	
What is the reason for the request?	

RESPONSE FORM

PART A: TWO BUSINESS HOUR RESPONSE

Is the affected child in this matter known to Child Protection?	<u>Yes / No</u>
Is this child an open case?	<u>Yes/No</u>
The name of the allocated Child Protection Practitioner or responsible team manager	
Current phase of open case including	

investigation outcome or Date and last phase of closed case	
Whether there is a child protection order in place, if so, the type of child protection order and relevant conditions Details of any other known Court order	<u>Yes/No</u> <u>Type of Order:</u>

PART B: SEVEN BUSINESS DAY RESPONSE

<p>Details as per two hour request and:</p> <p>Statement of Child Protection history –</p> <ul style="list-style-type: none"> • Number of reports and outcomes including with alleged harm type and substantiation outcome <p>Summary of protective intervention including if voluntary or statutory</p> <ul style="list-style-type: none"> • Include relevant Court proceedings <p>Statement of current protective concerns and outcomes</p> <p>Statement regarding whether a person named in the request form has been identified as a 'person responsible for harm' in relation to the child</p> <p>Concluding statement summarising risk assessment and case plan objective and potential risk to applicant/affected family members if the information is disclosed in Court</p> <p>Any comments on the matter before the Magistrates' Court</p> <p>COMMENTS/ALERTS RE ANY MATTERS</p>	
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PERTAINING TO THE MANAGEMENT OF RISK FOR THE CHILD/VICTIM	
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Please provide the response to this request to: informationsharing@courts.vic.gov.au

APPENDIX 4: INFORMATION REQUEST FROM CHILD PROTECTION TO MAGISTRATES' COURT/ CHILDREN'S COURT, VICTORIA.

REQUEST EMAIL

REQUEST MADE UNDER PART 5A OF THE <i>FAMILY VIOLENCE PROTECTION ACT 2008</i> (FVPA)	
Request for family violence information to be forwarded to: informationsharing@courts.vic.gov.au	
Name and position title	
Risk Assessment Entity under the FVPA	
Information sharing entity under the FVPA	
Name of the parties to the proceeding and whether they are an AFM, Respondent or child	
What information is being requested	
Is the request urgent	

Please provide the response to this request to: [Insert Child Protection contact details]

Child Protection division:

Child Protection office address:

Child Protection Office phone number:

Child Protection Practitioner:

Name:

Title:

Mobile number:

APPENDIX 5: CHILD PROTECTION INTAKE SERVICES AND AREA OFFICE DETAILS

Child Protection Intake

Business Hours 8:30am – 5:30pm Monday to Friday

During business hours, ring the number covering the local government area (LGA) where the child lives.

North Division – 1300 664 977

North Division has one Child Protection intake located at DHHS Preston covering the following LGAs: Banyule, Buloke, Darebin, Campaspe, Central Goldfield, Gannawarra, Greater Bendigo, Hume, Loddon, Macedon Ranges, Mildura, Moreland, Mount Alexander, Nillumbik, Swan Hill, Whittlesea, Yarra.

South Division – 1300 655 795

South Division has one Child Protection intake located at DHHS Dandenong, and covers the following LGAs: Bass Coast, Baw Baw, Bayside, Cardinia, Casey, East Gippsland, Frankston, Glen Eira, Greater Dandenong, Kingston, Latrobe, Mornington Peninsula, Port Phillip, South Gippsland, Stonnington, Wellington.

East Division – 1300 360 391

East Division has one Child Protection intake located at DHHS Box Hill covering the following LGAs: Alpine, Benalla, Boroondara, Greater Shepparton, Indigo, Knox, Manningham, Mansfield, Maroondah, Mitchell, Moira, Monash, Murrindindi, Strathbogie, Towong, Wangaratta, Whitehorse, Wodonga, Yarra Ranges.

West Division – rural and regional only – 1800 075 599

West Division (rural and regional) has one Child Protection intake located at DHHS Geelong covering the following LGAs:

Ararat, Ballarat, Colac-Otway, Corangamite, Glenelg, Golden Plains, Greater Geelong, Hepburn, Hindmarsh, Horsham, Moorabool, Moyne, Northern Grampians, Pyrenees, Queenscliffe, Southern Grampians, Surf Coast, Warrnambool West Wimmera, Yarriambiack.

West Division – metro area – 1800 664 977

West Division (metro) reports are managed by North Division Intake located at DHHS Preston for the following LGAs:

Brimbank, Hobsons Bay, Maribyrnong, Melbourne, Melton, Moonee Valley, Wyndham.

After hours Child Protection Emergency Services Statewide – 13 12 78

24 hours a day, 7 days a week

State-wide after hours emergency service that receives new reports, as well as concerns for existing Child Protection clients who are considered to be at immediate risk and require urgent after hours service.

