

# Providing support to vulnerable children and families

An information sharing guide for registered medical practitioners and nurses, and people in charge of relevant health services, in Victoria

**every child every chance**

a good childhood is in everyone's best interests





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and people in charge of relevant health services, in Victoria

Department of Human Services

Published by the Victorian Government Department of Human Services, Melbourne, Australia  
February 2007

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Authorised by the Victorian State Government, 50 Lonsdale Street,  
Melbourne, Victoria 3000

Also published on [www.dhs.vic.gov.au/everychildeverychance](http://www.dhs.vic.gov.au/everychildeverychance)

ISBN 0731162676

Printed on sustainable paper by

Impact Printing, 69-79 Fallon Street, Brunswick.

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## Glossary

|   |   |
|---|---|
| <b>Child</b>  | For the purposes of the relevant parts of the <i>Children, Youth and Families Act 2005</i> , this is a person who is under 17 years of age or, if subject to a Protection Order, under 18 years of age.   |
| <b>Child in need of protection</b>  | A child who has suffered, or who is likely to suffer, significant harm from sexual abuse, physical injury, emotional or psychological harm, neglect or abandonment, and where the parents have not protected or are unlikely to protect them. This may be the result of one abusive or neglectful incident, or the cumulative result of many instances, or a general pattern of behaviour or circumstances.   |
| <b>Child FIRST<br/>(Family Information Referral<br/>and Support Team)</b> | A team run by a registered community service in a local area (for example, two or three local government areas) that can receive confidential referrals about a child of concern. It does not have any statutory powers to protect a child but can refer matters to family services or other services who will then try to engage the child or family. Such other services include disability, family violence, mental health and drug or alcohol treatment services. |
| <b>Child Protection</b>   | The Victorian Government agency that protects children at risk of significant harm and that is provided by the Department of Human Services from regional offices. Child Protection has statutory powers and can use these to protect a child.  |
| <b>Children’s Court Protection Order</b>                                  | An order made by the Children’s Court when a child is found to be in need of protection. The order may specify such things as where the child lives, what services the child and family must receive, and what actions they must take.  |
| <b>Community service</b>  | A registered family service or out of home care service.  |
| <b>Family service</b>   | A registered community service that provides advice, support and assistance to children and their families. This may include family support services, counselling services, parent education, and practical and other assistance.   |
| <b>(Authorised) Health Professional</b>                                   | A registered medical practitioner, registered nurse, or person in charge of a relevant health or psychiatric service. Each of these professionals is authorised as an Information Holder under the <i>Children, Youth and Families Act 2005</i> .   |
| <b>Information Holder</b>   | A person authorised to share information with Child Protection and Child FIRST under certain circumstances by the <i>Children, Youth and Families Act 2005</i> , as described in this guide.  |
| <b>Mandatory report</b>   | A report made to Child Protection by a mandated reporter (medical practitioner, nurse, teacher, principal, police) that is based on a reasonable belief that a child is in need of protection from sexual abuse or physical injury.   |
| <b>Out of home care service</b>   | A registered community service that provides foster care or residential care for children away from home.   |

|   |   |
|---|---|
| <b>Person in charge (of a relevant health or mental health service)</b> | <p>This can be the person who is in charge of the hospital, community health centre or relevant health service at that time on that day.</p> <p>However, in a large and complex organisation such as a hospital, the person in charge may not be able to personally make all decisions about information sharing.</p> <p>The hospital's policies will need to indicate who is to be authorised by the person in charge to make disclosures under the Act on their behalf. In practice, this role may be conferred on the person in charge of a department, ward or inpatient unit, but health professionals and other staff working at a hospital should check to see who is authorised to disclose hospital information.</p> |
| <b>Registered nurse</b>   | A nurse registered under the <i>Nurses Act 1993</i> .   |
| <b>Relevant health service</b>  | <p>A health service within the meaning of section 141 of the <i>Health Services Act 1988</i>, including:</p> <ul style="list-style-type: none"> <li>• a public hospital</li> <li>• a denominational hospital</li> <li>• a private hospital</li> <li>• a multi-purpose service</li> <li>• a day procedure centre</li> <li>• a community health centre.</li> </ul>  |
| <b>Relevant mental health service</b>                                   | <p>A psychiatric service within the meaning of section 120A of the <i>Mental Health Act 1986</i>, including:</p> <ul style="list-style-type: none"> <li>• an approved mental health service</li> <li>• a child and adolescent psychiatry service</li> <li>• an agency providing community support services</li> <li>• any premises licensed under section 75</li> <li>• a hospital admitting or caring for people with a mental disorder</li> <li>• any mental health service of a community health centre</li> <li>• a psychiatric out-patient clinic</li> <li>• a community mental health service.</li> </ul>   |
| <b>Statutory power</b>  | A power conferred by an Act of parliament. For example, the <i>Children, Youth and Families Act</i> empowers Child Protection workers to take action to protect a child by placing a child in a safe place until the matter can be heard in the Children's Court.   |

## Summary of the guide

### As a registered medical practitioner or nurse you must:

- make a report to Child Protection if you form a reasonable belief that a child is in need of protection from physical injury or sexual abuse (a mandatory report).

### As a registered medical practitioner or nurse, or as the person in charge of a relevant health service you must:

- provide information relevant to the protection or development of a child who is subject to a Children's Court protection order where properly directed to do so
- only share information as authorised by privacy legislation (such as the *Health Records Act 2001* and *Information Privacy Act 2000*) where you are not specifically authorised by the *Children, Youth and Families Act 2005* as described in this guide.

### As a registered medical practitioner or nurse, or as the person in charge of a relevant health service you should:

- give priority to a child's best interests, including consideration of the need to protect a child from harm, protect their rights and promote their development

- seek consent, where this is possible, before sharing information and where this does not place the child or another person at risk
- exercise professional judgment – using your professional skills, knowledge and experience – when deciding what action to take in regard to a vulnerable child
- consult with your manager where you are unsure what to do and, if necessary, seek the advice of your professional association or union, medical defence insurer or legal counsel
- make a referral to a Child FIRST team where you have a significant concern for a child's wellbeing
- make a report to Child Protection where you form a reasonable belief that a child is in need of protection (registered medical practitioners and nurses must make a report to Child Protection where this involves physical injury or sexual abuse)
- share relevant information with Child FIRST or Child Protection workers to help them complete the assessment of a referral or report they have received
- share relevant information with Child Protection where a child is subject to Child Protection investigation, further Child Protection intervention or a Children's Court Protection Order.

### As a registered medical practitioner or nurse, or as the person in charge of a relevant health service or you are:

- protected when you share information in good faith with Child FIRST or Child Protection as authorised. You cannot be successfully sued or suffer formal adverse consequences in your work. Your identity will be protected, unless you consent to its disclosure or if disclosure is required by law.

If you work for, or at, an organisation you should generally consult with your manager before disclosing information about a child or their family without their consent – except in very urgent situations. Organisations have a legal responsibility to protect patient information from inappropriate disclosure. An organisation's policies on information sharing should therefore also be consulted.



# Section 1

## Providing support to vulnerable children and their families

### *The Children, Youth and Families Act 2005*

The Victorian Government believes in a society where every child thrives, learns and grows, is respected and valued, and becomes an effective adult member of the community – a community in which the safety, stability, health, development and learning of every child is protected and promoted throughout childhood.


The *Children, Youth and Families Act* came into effect in 2007 and provides the legislative basis for the system of services that provide support to vulnerable children<sup>1</sup> and their families and, where necessary, protect children from significant harm.

The service system includes a range of prevention and early intervention services that help to ensure vulnerable children and their families receive the assistance they need, so that children can develop in a healthy way, and so that situations do not deteriorate to the point where a child is harmed.

All children and families rely on community support – relatives, friends, neighbours and informal networks. They also rely on services such as maternal and child health services, child-care services, medical services, dental services and school education services.

Some children and families need services, such as foster care, family violence support, or a parenting skills

service, that are specifically provided for the most vulnerable in our community. It is these children and families who you are authorised to share information about, as described in this guide.

 Further information about services available in Victoria for vulnerable children and their families can be found at: [www.dhs.vic.gov.au/everychildeverychance](http://www.dhs.vic.gov.au/everychildeverychance)

### Agreements between the health sector and Child and Family Services

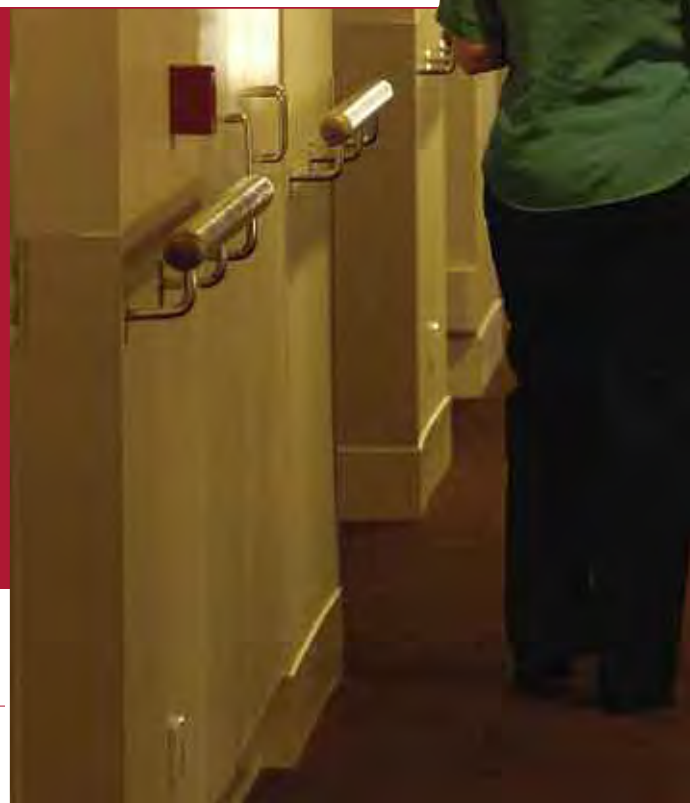
The following protocols existed at the time of publication:

- Child Protection and the Royal Children's Hospital
- After Hours Child Protection Service and the Royal Children's Hospital
- Child Protection and the Victorian Association of Alcohol and Drug Agencies

These protocols will be progressively revised and updated, and new protocols will be developed.

This guide supersedes any advice on information sharing contained in protocols finalised prior to January 2007.

1. As in the relevant parts of the *Children, Youth and Families Act*, the terms 'child' or 'children' in this guide refer to children and young people under 17 or, if subject to a Children's Court Order, under 18.



## Sharing information to promote children's safety and development

One feature of the *Children, Youth and Families Act 2005* is that it provides for clear and flexible information sharing arrangements between professionals and those services that support families and protect children.

It complements existing privacy and confidentiality laws such as the *Information Privacy Act 2000* and the *Health Records Act 2001*.

These Acts permit the disclosure of information in certain circumstances, including:

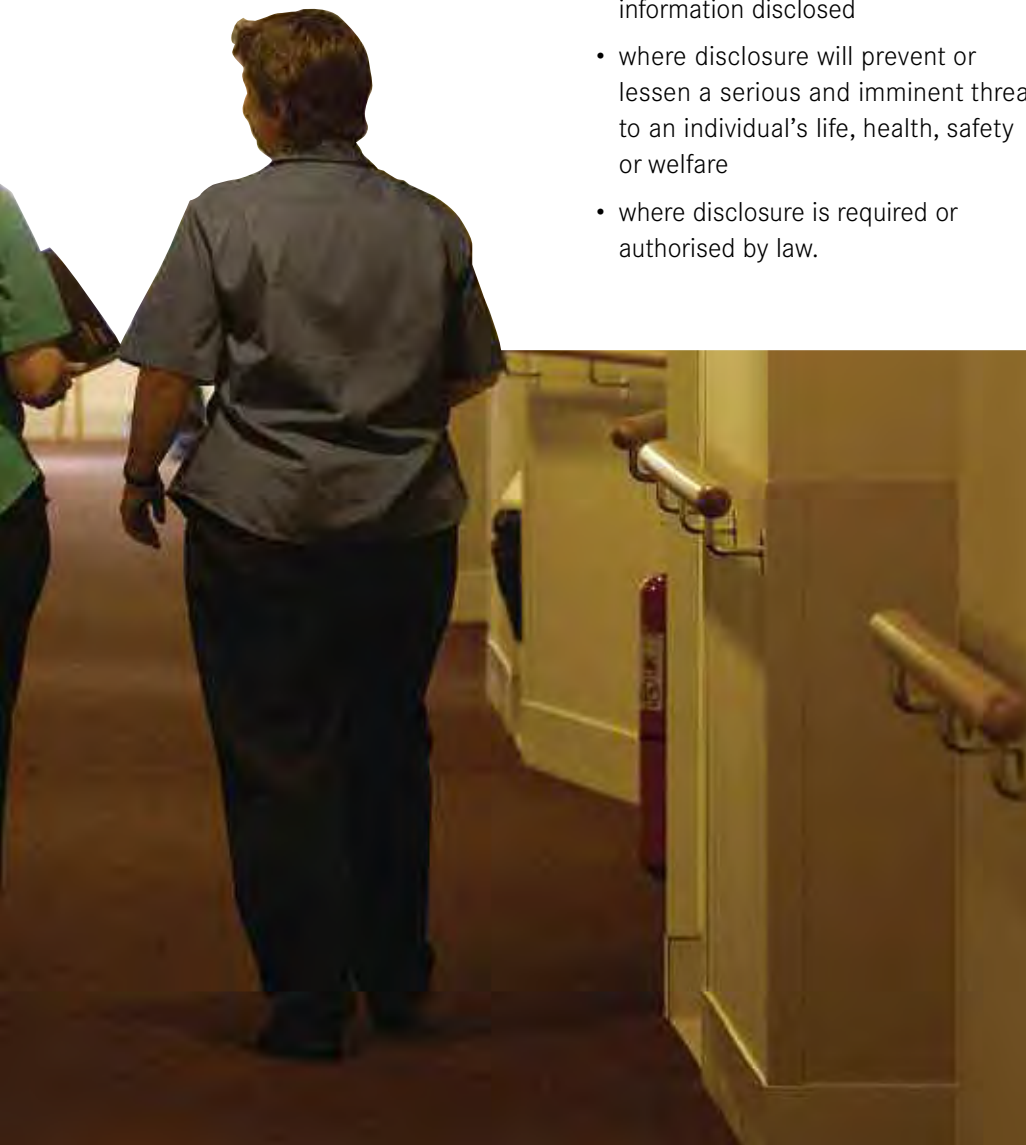
- where there is consent
- where the disclosure is made for a related purpose, and in the case of sensitive and health information, where disclosure is directly related to the purpose for which it was collected, and the person who is the subject of the disclosure would reasonably expect to have this information disclosed
- where disclosure will prevent or lessen a serious and imminent threat to an individual's life, health, safety or welfare
- where disclosure is required or authorised by law.

The *Children, Youth and Families Act* is such a law and provides additional authorisations as described in this guide.

As a health professional<sup>2</sup> in Victoria, you have a key role to play in ensuring that vulnerable children are protected and supported. This involves sharing information about children's safety and development where authorised by law.

The legislation allows you to share relevant information about a vulnerable child in specified circumstances without needing to be concerned about legal or professional consequences, provided you do so in good faith. It is important for you to know, however, when and how you can share this information, and when you may need the consent of a child or their parents.

This guide is designed to help you make the right decisions when sharing information about a child.



2. This term will be used in this guide to denote a registered medical practitioner, a registered nurse, or the person in charge of a relevant health service.

## New Child FIRST teams

Prior to the *Children, Youth and Families Act 2005*, there were two ways of connecting vulnerable children and their families to services. The first was where families referred themselves to services, or agreed to someone making a referral on their behalf. The second was where a situation had deteriorated to the point that someone notified Child Protection, who could then connect a family to services as part of its intervention.

The *Children, Youth and Families Act* adds a third way. Anyone who has a significant concern about the wellbeing of a child can make a referral to one of the new Child FIRST teams, which are run by registered community services. These referrals can be made in confidence and without the consent of a child's parents, if necessary. Child FIRST teams can then refer a child and their family to the services they need.

## What's new about information sharing in the *Children, Youth and Families Act 2005*?

As a health professional, there are a number of new aspects of the legislation that you should know about when considering information sharing. These new aspects of the legislation are in addition to authorisations carried over from previous legislation for you to make reports to Child Protection, and to assist Child Protection when they are undertaking an investigation.

### You can now make a referral to Child FIRST

- As well as being able to make a report to Child Protection when you believe a child is in need of protection, you can now make a referral to your local Child FIRST team. You should contact Child FIRST if you have a significant concern for a child's wellbeing but do not believe

the child is in need of protection. Child FIRST can then arrange for appropriate services to be provided to the family (see pages 18-19 for more information).

### You can now be consulted by Child FIRST or Child Protection

- As a health professional, you can now be consulted by either Child FIRST or Child Protection when they are deciding how best to respond to a referral or report they have received. You may provide any relevant information you have about the child in question and the child's family at this time (see page 24 for more information).

### You are now more clearly authorised to share information with Child Protection after a child is found to be in need of protection and when a child is subject to a Protection Order

- As well as being allowed to share information with Child Protection during an investigation, you are now clearly authorised to share information with Child Protection when they have assessed that a child is in need of protection and are working with the child and family. You can also disclose, and can be required to disclose, information to Child Protection where a child is subject to a Children's Court Protection Order (see pages 25-26 for more information).



# Section 2

## Important things to know about information sharing

### Why should I share information?

The maintenance of confidentiality is an important aspect of the relationship between health professionals and their patients. This serves the public interest by promoting access to health services, as well as open communication between a patient and their health professional.

However, by endorsing the *Children, Youth and Families Act 2005*, the Victorian Government has recognised that the issue of confidentiality must be balanced against another form of the public interest – ensuring the wellbeing of vulnerable children.

As a health professional in Victoria, you are encouraged to share information about a vulnerable child who needs help by making a referral or report to Child FIRST or Child Protection, or sharing information in other circumstances where you are authorised to do so. This is because sharing information with an appropriate agency helps to protect a child's safety and wellbeing. It also allows for an agency to provide better prevention and early intervention services to a vulnerable child and their family.

By sharing information with agencies, a comprehensive assessment of a child's situation can be developed, leading to better outcomes for the child and their family. Sharing information also enables intervention and support by several agencies working together, which is essential for families with complex needs.

In most instances, you will be able to discuss your concerns with the child and their family, and any information sharing can occur with their consent. Sometimes it will not be possible to discuss your concerns properly with the child or their family. You may then refer or report your concerns to a service that provides support or protection to children and families without the consent of a child or their parents.

The Victorian Government's best practice framework for acute health services, *Vulnerable babies, children and young people at risk of harm: Best practice framework for acute health services*, illustrates in more detail the important role that these services can play in ensuring early identification of children at risk.

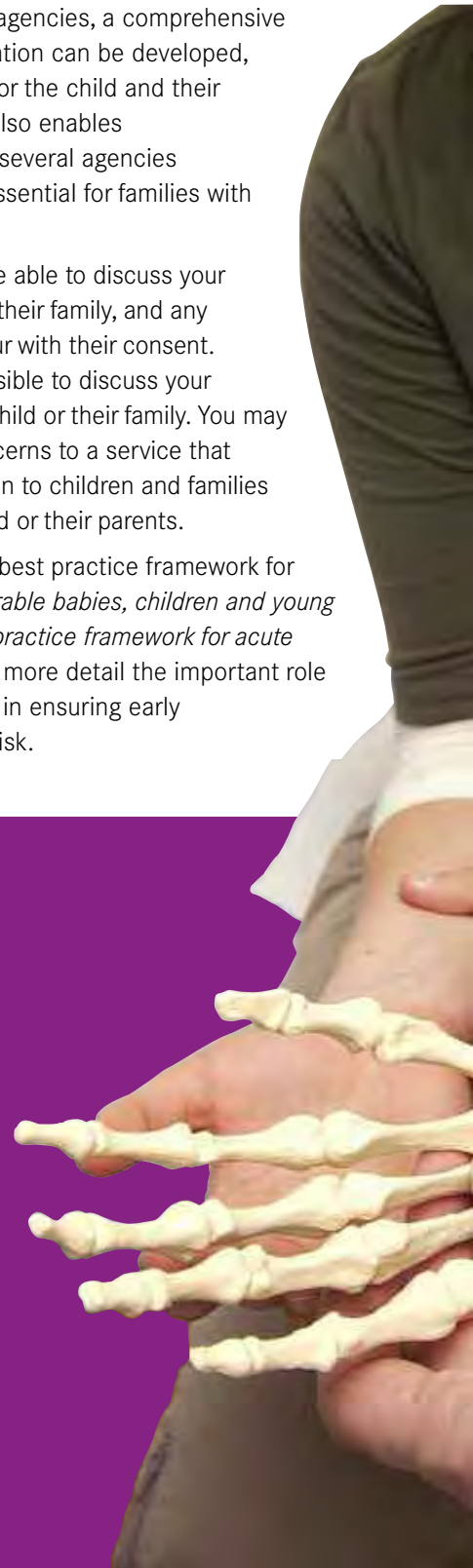
### When can I share information?

You are authorised by the *Children, Youth and Families Act 2005* to share information about a child in the circumstances described in this guide. You are also able to share information as otherwise authorised by privacy law, for example where authorised by the *Information Privacy Act 2000* and the *Health Records Act 2001*.

In most cases, sharing information as authorised by the *Children, Youth and Families Act* is not required by law, even though it is encouraged. For the few instances where you must share information by law about a child, see page 23 & 26.

If you work for, or at, an organisation (for example, a hospital or health centre), and the information you wish to disclose has become known to you at that place, you should consult the policies and protocols of that organisation, as these documents will apply to the handling of patient information by health professionals and other staff.

The manager of the organisation will be able to provide you with advice about what policies and protocols exist. You can also seek advice from your manager, professional body, medical defence insurer or legal counsel for further information about privacy legislation.



## Should I allow my identity to be disclosed?

As a health professional in Victoria, you may wish to keep your identity confidential when you make a referral or report to Child FIRST or Child Protection, or share information with these agencies.

Better outcomes may be achieved, however, if you are prepared to tell the child and their parents that you have shared information with Child FIRST or Child Protection. By disclosing your identity or allowing your identity to be disclosed, the family is more likely to be able to focus on solving the problems at hand, rather than questioning why the agency is unable to confirm an identity that they can, in any case, often guess.

Identifying yourself also makes it easier for you to be part of the plan that is developed to help the child.

If you are making a referral to Child FIRST and are prepared for your identity to be disclosed to the family, you may do so by simply telling the Child FIRST worker.

If you are making a report to Child Protection, and are prepared for your identity to be disclosed to the family, the Child Protection worker will need your consent in writing.

If you do not consent to disclosure, your identity cannot be disclosed by a Child Protection or Child FIRST worker.

## What if I am unsure what to do?

You are expected to exercise professional judgment – that is, to use your skills and knowledge as a health professional – to guide your decisions. Your actions should be consistent with what a member of your profession might reasonably be expected to do.

If you are still unsure what to do after considering the information in this guide, you should generally consult your manager. Sometimes you may need to consult with your professional association, union, medical defence insurer or legal counsel.



## When should I seek the consent of a child or their parents to disclose information to Child FIRST or Child Protection?

Generally speaking, you should seek and gain consent from a child or their parents to disclose information to Child FIRST or Child Protection wherever possible, provided that doing so does not place the child or another person at further risk.

You should consider seeking consent when you first discuss your concerns with a child's parents, if you believe that the disclosure of information may be necessary. If you have not had an initial discussion with a child's parents, you should consider raising your concerns with them first, unless you believe this would place the child at risk of harm, or place yourself or another person at risk of harm.

Sometimes it is not necessary to seek consent. For example, consent is not necessary when you have a significant concern for a child's wellbeing or a reasonable belief that the child is in need of protection, or where you are unable to contact a parent, or where it is clear from previous contacts that consent would not be given.

There is no definite age at which the consent of children should be sought. This depends partly upon the general maturity of the child, and partly on the child's understanding of the particular issues involved.

Children over the age of 12 are generally considered increasingly able to give consent on many issues, and many younger children can at

least express a view. You should therefore try to determine the views and wishes of a child where this is possible and appropriate.

You may need to explain to the child the possible consequences of different courses of action.

In any case, you may report your concerns to Child FIRST or Child Protection, but you must seriously consider whether your concerns justify doing so against the child's wishes, where these are known, bearing in mind the age and maturity of the child.

### Case study

John is a general practitioner in Melbourne. In May, John receives a call from Child Protection about one of his patients, Miranda, who is 12 years old.

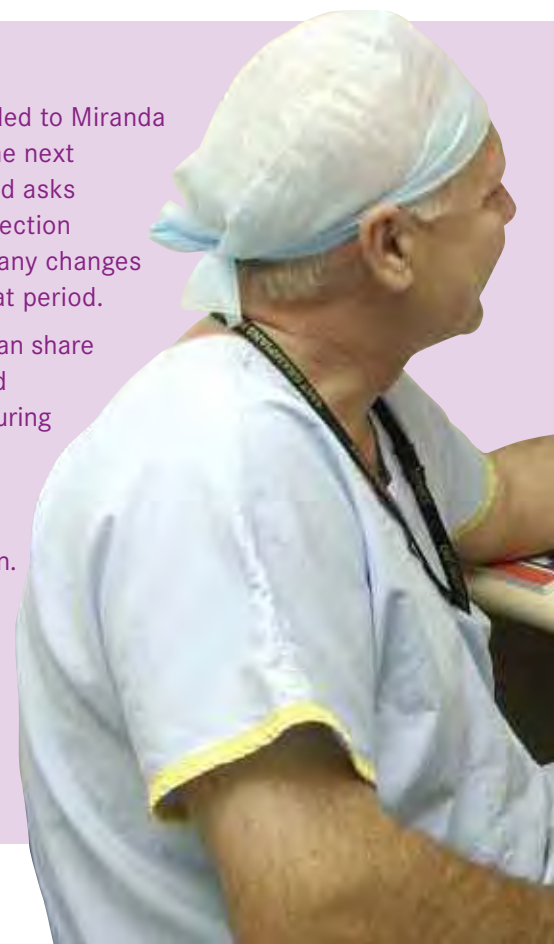
Child Protection tells John that a report has been made concerning Miranda. The report suggests that Miranda may be at risk of physical abuse. Child Protection asks John to tell them any information about Miranda that he has that is relevant to the report.

John is allowed, in these circumstances, to share this information about Miranda without her consent or the consent of her parents, and without suffering any legal or professional consequences. Because of the seriousness of the allegation and because there is no practicable way for John to get Miranda's consent today, John shares all the relevant information he is aware of with the Child Protection worker.

A few weeks later, John receives another call from Child Protection. The Child Protection worker tells John that Child Protection will be coordinating the support

services being provided to Miranda and her mother for the next couple of months, and asks John to let Child Protection know if he observes any changes in Miranda during that period.

John knows that he can share information with Child Protection not only during an investigation, but also during any subsequent Child Protection intervention. Once again, John agrees to disclose any relevant information he is aware of.



## What sort of information can I share?

When you share information with Child FIRST or Child Protection, you are allowed to disclose any information that you believe is relevant to the safety, stability and development of a child. This may include information about the child or the child's family.

Types of information you may share include:

- any known history of the child suffering harm
- any periods the child has been cared for by other people
- any significant issues relating to the child's brothers or sisters
- the child's physical health, including any medical treatment needs
- any psychological and emotional difficulties the child may have
- the child's education, including any special educational needs
- any disabilities the child may have, including the care they may need as a result
- any known allergies and dietary requirements of the child
- any significant health problems of the child's parents
- whether a parent has a mental illness, substance abuse problem, disability or a history of family violence
- whether a parent is receiving treatment for any of the above issues and the outcomes of this
- information about a person who may pose a risk to the child.

Depending on the nature of the concerns, there may also be other information about a child that you are authorised to share, if it is relevant.

Information is considered to be relevant if it relates directly to your concerns about the child or concerns about the child held by Child FIRST or Child Protection. For example, information about a parent's mental health is relevant only if you believe that it is having an adverse impact on the child's safety, stability and development, or if that is the assessment of Child FIRST or Child Protection.

The information sharing process is therefore a two-way exchange. The Child FIRST or Child Protection worker must explain to you the concerns about the child before you share any information, so that you can determine what information is relevant to disclose.



## How am I protected when I make a referral or report, or share information with Child FIRST or Child Protection as authorised by legislation?

### 1. Your identity is protected

Information about your identity will be kept confidential unless you consent to it being disclosed.

### 2. You are legally protected

You are not subject to any legal liability in respect of the giving of information. For example, you cannot be successfully sued. This is because sharing information as authorised by the *Children, Youth and Families Act* is not an interference with privacy, or a breach of section 141 of the *Health Services Act 1988* or section 120A of the *Mental Health Act 1996*.

### 3. You are professionally protected

Authorised disclosure of information cannot be held to constitute unprofessional conduct or a breach of professional ethics. As a result, you cannot be disciplined by your professional body, or incur any formal professional negative consequences at your workplace.

You are protected in these ways provided you share information as authorised and 'in good faith'. This legal term is open to interpretation but implies that you are acting honestly and reasonably, and in the belief that your actions will achieve an appropriate outcome – in this case, the protection and support of a child and their family.



## Case study

Mary is a maternal and child health nurse in country Victoria. Recently, she has become concerned about one of the babies she visits, Joshua. At six months old, Joshua is underweight for his age and appears to be constantly unsettled. After discussing her concerns with Joshua's mother, Sarah, Mary suspects that the baby is not getting the care he needs and that his mother may be suffering from post-natal depression.

Mary explains her concerns to Sarah and asks for her consent to contact Child FIRST, as they may be able to give her some support. Mary makes a referral to Child FIRST after explaining the process to Sarah. If Sarah had not

consented, Mary would have been allowed to make a confidential referral anyway, but thought that this would make it harder for Sarah to accept other services, and also make it hard for Mary to keep Sarah's trust.

When Mary contacts Child FIRST to express her concerns about Joshua, she tells them that she has gained consent from his mother to make the referral.

After Mary has made her referral, Child FIRST contacts Sarah's GP and asks her to share information about both Joshua and his mother. The GP knows she is allowed to share relevant information about Joshua with

Child FIRST without suffering any legal or professional consequences.

Once Child FIRST has gathered sufficient information about Joshua, they arrange for a local family service to contact the family and offer support services that can help Sarah care for Joshua and her two older children. Child FIRST is allowed to tell Mary that it has asked other services to offer assistance.

Six months later, Mary says that Joshua is doing much better and is now closer to a normal weight for his age. Sarah has also improved and is coping better with her children. She is continuing to receive support services and counselling for her depression.

## Sharing information about the child of an adult client

Under the *Children, Youth and Families Act 2005*, you are allowed to share information about the child of an adult patient or client if you have a significant concern for the wellbeing of that child, or believe that the child is in need of protection.

When sharing information about the child, you may also disclose information about the child's parent where this is relevant to the protection or development of the child.



# Section 3

## Referring to Child FIRST and reporting to Child Protection

Making a **referral** to Child FIRST or a **report** to Child Protection is a very important part of information sharing for the purposes of protecting a child from harm and promoting their development.

As a health professional in Victoria, you can make a referral to Child FIRST if you have a significant concern for the wellbeing of a child. You can also make a report to Child Protection if you believe a child is in need of protection.

(If you are a mandated reporter and believe a child is in need of protection from physical injury or sexual abuse, you must make a report to Child Protection.)

Child FIRST teams are being established across Victoria and are managed by registered community services.

The following pages outline *how* and *when* you should make a referral or report.

### How do I know when to call Child FIRST or Child Protection?

There may be many factors, or combinations of factors, within family life that adversely impact upon children's safety, stability and development. The following lists are intended to provide some basic guidance as to how to decide whether to refer a matter to Child FIRST or make a report to Child Protection.

A **referral to Child FIRST** may be the best way of connecting children, young people and their families to the services they need. You should make a referral to Child FIRST where families show any of the following that may impact upon a child's safety, stability or development:

- significant parenting problems that may be affecting the child's development
- serious family conflict, including family breakdown
- families under pressure due to a family member's physical or mental illness, substance abuse, disability or bereavement

- young, isolated and/or unsupported families
- significant social or economic disadvantage that may adversely impact on a child's care or development.

A **report to Child Protection** should be made in any of the following circumstances:

- serious physical abuse of, or non-accidental or unexplained injury to, a child (as a mandatory reporter you must report)
- a disclosure of sexual abuse by a child or witness, or a combination of factors that suggest the likelihood of sexual abuse – the child showing concerning behaviours, for example, after the child's mother takes on a new partner or where a known or suspected perpetrator has had unsupervised contact with the child (as a mandatory reporter you must report)
- serious emotional abuse and ill-treatment of a child impacting on the child's development

- persistent neglect, poor care or lack of appropriate supervision, where there is a likelihood of significant harm to the child or the child's development
- serious or persistent family violence or parental substance misuse, mental illness or intellectual disability – where there is a likelihood of significant harm to the child or the child's development
- where a child's actions or behaviour may place them at risk of significant harm and the parents are unwilling or unable to protect the child
- where a child appears to have been abandoned, or where the child's parents are dead or incapacitated, and no other person is caring properly for the child.

## Making a referral to Child FIRST

Child FIRST teams are run by registered community services. They aim to assess the most appropriate service to provide help to a child of concern and their family. They do not have any statutory powers to protect a child or impose services on a family.

Anyone can make a referral to Child FIRST if they have a significant concern for the wellbeing of a child.

If you have a significant concern for the wellbeing of a child, you should generally first try to discuss your concerns with the child's parents.

If you do not feel that you can talk to the child's parents, or that when you do, their response is inadequate, you should consider making a referral to Child FIRST. Making a referral can lead to prevention and early intervention services being offered to the child and their family.

Child FIRST teams will be established across the state from 2007 to 2009. Prior to 2009, if you are not in one of the areas that has a Child FIRST team, you can make a referral directly to a local family service, or you can make a report to Child Protection.

### What happens when I make a referral to Child FIRST?

When you make a referral to Child FIRST, a decision is made as to what to do with the information you have provided. This may include Child FIRST consulting with other professionals (see lists on page 28) to find out more information about the child.

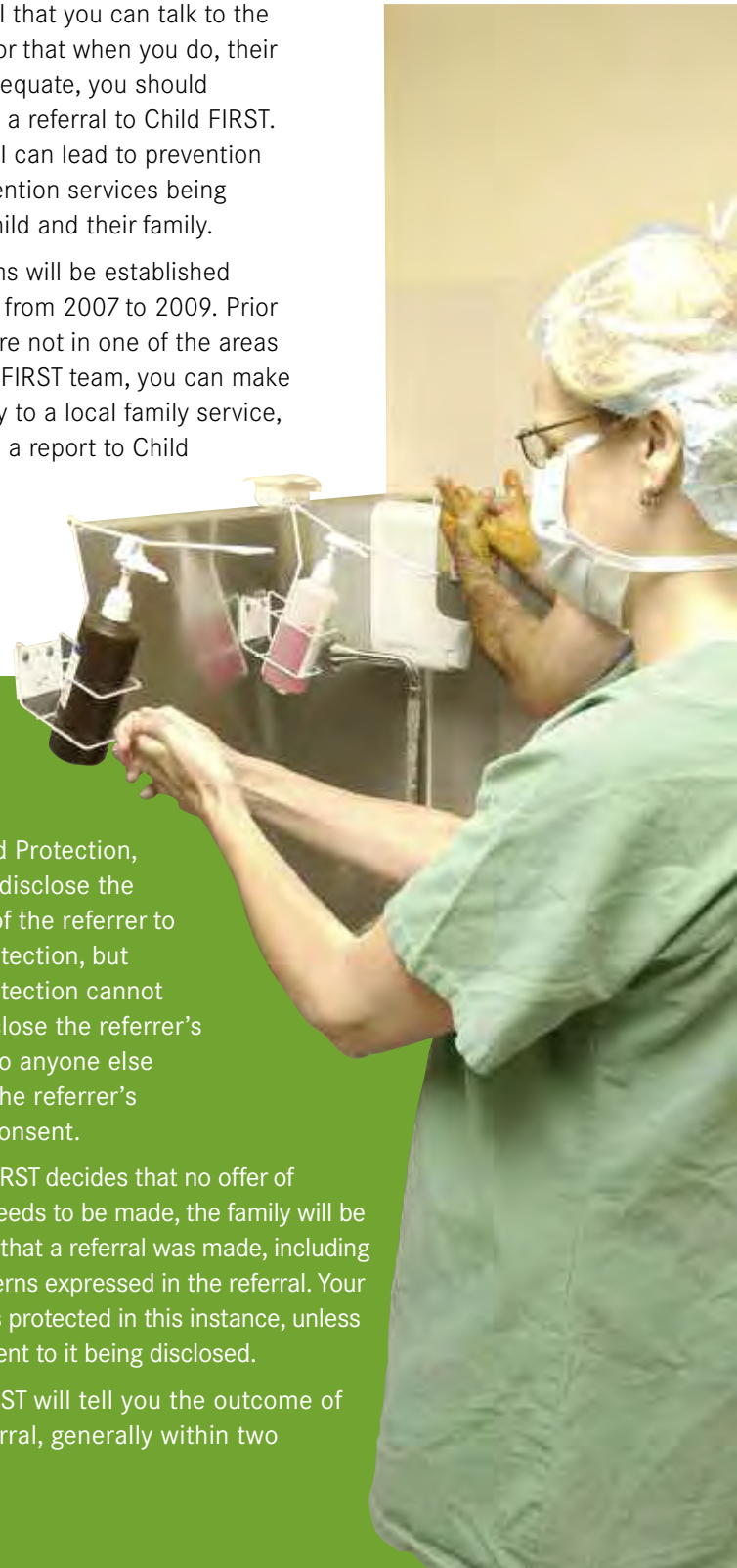
If Child FIRST decides that the child may benefit from support services, they may arrange appropriate services for the child and their family. Services may be provided to meet the needs of parents, such as parenting education or drug or alcohol treatment services, or they may be provided to meet the needs of the child, such as counselling or out-of-school activities.

If Child FIRST believes that the child is in need of protection, they must report the case to Child Protection. This is because Child FIRST does not have any statutory powers to protect a child. When Child FIRST receives a referral and reports

it to Child Protection, they will disclose the identity of the referrer to Child Protection, but Child Protection cannot then disclose the referrer's identity to anyone else without the referrer's written consent.

If Child FIRST decides that no offer of service needs to be made, the family will be informed that a referral was made, including the concerns expressed in the referral. Your identity is protected in this instance, unless you consent to it being disclosed.

Child FIRST will tell you the outcome of your referral, generally within two weeks.



## Case study

Peter is a psychiatric registrar at a large public hospital in Melbourne. While on duty, Peter is called to assess a patient who has presented at casualty after a violent incident at home. The patient, who is a 34-year-old woman, has a history of mental illness that has required hospitalisation in the past. She has had an initial assessment by a psychiatric nurse in the emergency department.

After assessing the patient and reviewing past hospital records, Peter decides to consult the medical registrar on duty about the situation. Peter is not only concerned about the mental health of the woman, but about the impact this is having on her two children at home, who are aged 15 and 10. Peter knows that his hospital has a policy with regard to making referrals and reports about children and so checks the policy before taking further action. That policy authorises him, to release relevant information in this kind of case.

After consulting with the medical registrar, Peter decides to admit the woman to the psychiatric inpatient unit. He also makes sure that the children's grandmother, who is

caring for the children, is contacted. Because of the ongoing situation, and because the grandmother indicates she may need some help, Peter decides to make a referral about the children to Child FIRST. He informs the mother that he is doing so as he is hoping to get support for her children.

After Peter has made his referral, Child FIRST decides to call other professionals that know the woman, including her family doctor and the local mental health service. The information gathered by Child FIRST leads them to believe that the situation for the children is more serious than previously thought, possibly involving physical abuse and chronic neglect. The grandmother appears reluctant to accept that this may be the case, and intends to return the children to their mother's care as soon as she is discharged from hospital. Since Child FIRST believes that the children may be in need of protection, they report the case to Child Protection.

The Child FIRST worker tells Peter that the case has been reported to Child Protection and that Child Protection may contact him for further information.

## Making a referral or report about unborn children to Child FIRST or Child Protection

*The Children, Youth and Families Act 2005* focuses strongly on preventing harm to children through earlier intervention. As a result, a referral or report can now be made prior to the birth of a child.

This means that if you have a significant concern for the future wellbeing of an unborn child, you can now make a referral to Child FIRST or a report to Child Protection about this child, *providing your concern relates to the child's wellbeing after it is born.*

The purpose of this aspect of the legislation is to provide the mother of the unborn child with assistance before the baby is born and to enable appropriate planning to ensure the child's safety, stability and development after it has been born.



## Making a report to Child Protection

Child Protection is the Victorian Government agency that protects children at risk of significant harm. Child Protection has statutory powers and can use these to protect a child.

As a health professional in Victoria, you must make a report to Child Protection if you believe on reasonable grounds that a child is in need of protection from physical

injury or sexual abuse. This is called a mandatory report. (For more information about making a mandatory report, see page 23).

If you believe a child is in need of protection from other forms of harm (for example, harm resulting from emotional abuse, neglect or abandonment), you are also encouraged to make a report to Child Protection, but this is not required by law.

### What happens when I make a report to Child Protection?

When you make a report to Child Protection, a decision is made as to what to do with the information you have provided. This may include consulting with other professionals (refer to list of Information Holders on page 28), to find out more information about the child.

If Child Protection believes the child is not at risk of significant harm but that the child or the child's family may benefit from support services, they can either refer the case to Child FIRST, who can arrange appropriate services for the child or their family, or refer the case directly to those services. If the report is referred to Child FIRST, the identity of the reporter will also be disclosed to Child FIRST, but Child FIRST cannot then disclose the reporter's identity to anyone else without the reporter's written consent.

If Child Protection believes an investigation is justified, based on the information contained in the

report and other available information, then one will be conducted. This may involve the police if it appears that an offence has been committed requiring a police investigation, for example, an assault on the child. There is a protocol between the Department of Human Services and Victoria Police that deals with such situations.

If Child Protection believes that the child is in need of immediate protection, it can use its statutory powers to protect the child and make an application to the Children's Court.

It is important to know that when you make a report, Child Protection can tell you what action it will take. However, if an investigation is completed, Child Protection cannot tell you the outcome of the investigation without the family's consent, unless you have an ongoing role to play in ensuring the child's protection.



## Case study

Linda is a GP in a suburb of Melbourne. One day, she receives a call from one of her patients, 13-year-old Joel, who tells her that his mother has not been home for four days. Joel has not heard from his mother during this time and he does not know where she is. He is very upset and does not know what to do.

Linda knows that Joel's father left the family several years ago, and that Joel has had no contact with him. She also knows that there are no other family members living in the state.

At first Linda thinks that perhaps the best thing to do is to call Child FIRST, as she knows that they can refer Joel to family services. However, after discussing the situation with her colleagues, she decides that she should call Child Protection because Joel has been abandoned and has no effective legal guardian.

Although Linda is not mandated to make a report to Child Protection in this instance, she feels she has a professional duty to do so. Linda calls Child Protection to make a report about Joel. She is protected legally and professionally when she makes the report because she is acting in good faith.

Following the report, Child Protection takes immediate steps to protect Joel by discussing with him what he needs and placing him in foster care while they conduct an investigation and try to locate his mother. Child Protection tells Linda that she may be contacted for further information during this time.

The investigation finds that Joel's mother's drug use has become uncontrolled and that she has been unable to properly care for Joel or herself, and that she is currently critically ill in hospital after being hit by a car while drug-affected. As a result, Joel remains in foster care while further assessments are made to see if he can safely live with his mother again.

Child Protection is allowed to tell Linda about this outcome with the consent of Joel's mother, or the consent of Joel, who may choose to tell Linda himself. Where there is no consent, the Child Protection worker can inform Linda of details of the outcome only if Linda has an ongoing role in ensuring Joel's safety and wellbeing.

Two months later, Joel has settled into his new home. Joel's mother is receiving treatment for her substance abuse and is having regular contact with Joel, while her progress is being monitored to assess whether Joel can return home.

## Case study

Anthony is a nurse at a regional hospital in Victoria. A 14-year-old girl presents at the hospital with a possible broken wrist and severe bruising around the legs. As Anthony is the triage nurse on duty, he is obliged to make an assessment of the situation and so asks the girl several questions about the nature of her injuries.

Initially, the girl tells Anthony that she fell while playing netball. However, when Anthony looks at the bruising, he believes that this is not consistent with such a fall. When he questions her further, she makes vague statements about things not being so great at home, especially since her mother's boyfriend has moved in with them.

Anthony suspects that the girl is being sexually abused. As a registered nurse, he knows that he must either make a report to Child Protection if he believes a child (aged 0–17) is at risk of sexual abuse or physical injury because of the mandatory reporting laws, or be satisfied that another person has made such a report.

Anthony consults with his nurse manager about making the report, as well as with the hospital psychologist. After ensuring that the girl receives the necessary medical examination and treatment, the nurse manager makes a report to Child Protection and they, in turn, make arrangements to conduct a joint investigation with Victoria Police.

## Making a mandatory report to Child Protection

As a registered medical practitioner or registered nurse in Victoria, you are a mandatory reporter under the *Children, Youth and Families Act 2005*, just as you were under previous legislation. This means that you must make a report to Child Protection if you reasonably believe that a child is

in need of protection from sexual abuse or physical injury.

When you make a mandatory report to Child Protection, you have the same protections as a person making other types of reports (see page 16).

It is important to know that if you believe a child is in need of protection

from sexual abuse or physical injury and you do not make a report to Child Protection (where a reasonable member of your profession would), you may be prosecuted unless you have a genuine belief that someone else (for example, your manager or registrar) has reported the same belief and grounds for that belief to Child Protection.

## What happens when I make a mandatory report to Child Protection?

When you make a mandatory report to Child Protection, the same processes will be applied as for any report to Child Protection (see page 21).

## Who is a mandatory reporter?

**Under the *Children, Youth and Families Act*, a mandatory reporter is required by law to make a report to Child Protection if they believe a child is at risk of sexual abuse or physical injury.**

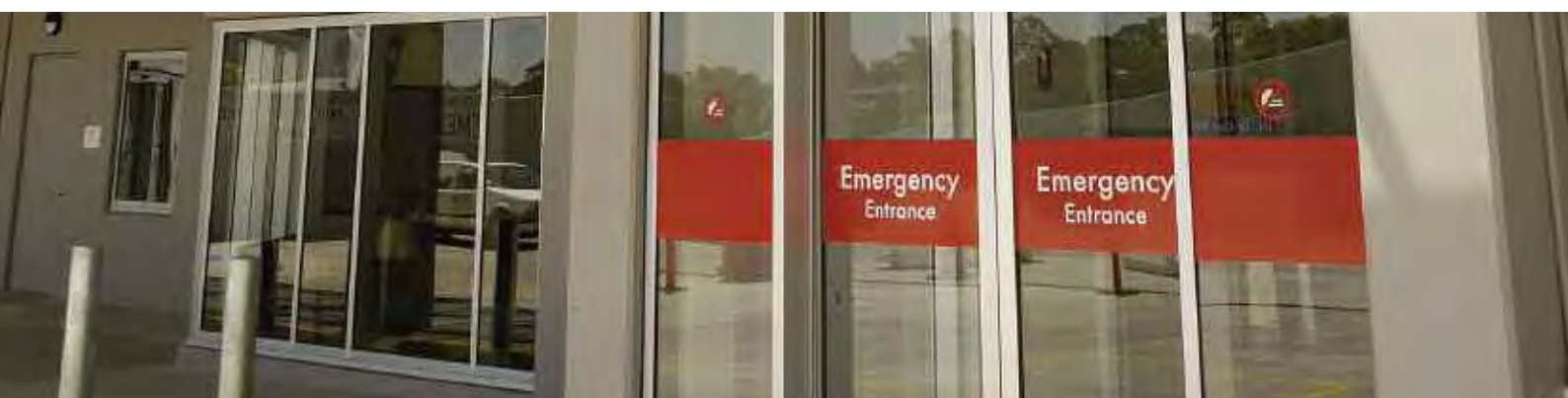
You are a mandatory reporter if you are a:

- registered nurse
- registered school teacher or school principal
- member of Victoria Police
- registered medical practitioner.

## When is it 'reasonable' to make a mandatory report to Child Protection?

The legal test for deciding whether your belief that a child is in need of protection is based on reasonable grounds is whether a reasonable person practising your profession would have formed a belief on those grounds. This means that you are expected to exercise professional judgment to guide your decisions.

So, for instance, if a child has suffered unexplained injuries, a medical practitioner might be expected to make a more accurate assessment of the cause of such injuries than other professionals.



# Section 4

## Sharing information with Child FIRST and Child Protection

### Information sharing authorised by the *Children, Youth and Families Act 2005*

The *Children, Youth and Families Act 2005* contains a number of provisions about professionals sharing information with Child FIRST and Child Protection. As a health professional in Victoria, it is important that you know when and how you can share information, and when you may need the consent of a child or their parents to do so.

Below is a short guide to possible information sharing scenarios. (These do not include reporting, which is covered in section 3.) You may also wish to consult the summary of information sharing guidelines (see page 30-31).

All of the following scenarios allow for information sharing without the knowledge or consent of the child or their parents. However, it is preferable – where possible, and where seeking consent does not place the child or another person at risk – to share information with the knowledge and consent of the child and their parents.

### Case study

Mark is a psychiatrist in private practice in a Melbourne suburb. One day, Mark receives a call from Child Protection about Alex, the child of one of his patients, Anne. Child Protection tells Mark that Alex has been the subject of a Children's Court Protection Order for the past two months and that they are calling to find out any relevant information he may have about Anne or Alex.

Mark knows that he is allowed to share relevant information with Child Protection when a child is subject to a Children's Court Protection Order without the consent of the child or their parents.

However, he is concerned about disclosing information that will violate the mother's confidentiality.

Since the situation appears to be serious, Mark decides to share the information he has with Child Protection willingly. If he was not willing to do so, and if the information he held was sufficiently important, he knows he could be compelled to disclose the information by an officer authorised by the Secretary of the Department of Human Services, despite medical professional privilege.

### Being consulted by Child FIRST or Child Protection

When Child FIRST or Child Protection receives a referral or report about a child, they may decide to collect more information about the child from other professionals (see list of Information Holders on page 28) to develop a comprehensive assessment of the situation before deciding what action to

take, if any. They may also contact a Service Agency (see list of Service Agencies on page 28) to discuss a possible referral to that agency for follow-up.

If Child FIRST or Child Protection contacts you for either of these purposes, you are allowed to give relevant information without the consent of the child or their parents.

It is important that you give as much information as possible at this time. Before doing so, you may wish to take a phone number and call back, so as to confirm the identity of the person you are talking to.

By sharing information, you can help create a better outcome for a vulnerable child.

## Sharing information with family services (or other Service Agencies) when they are providing services to a family

Sometimes, Child FIRST or Child Protection will refer a case to family services (or another Service Agency such as a disability service or a drug or alcohol treatment service), who can arrange and provide appropriate support services for a child and their family.

Once family services (or other Service Agency) makes contact with a family and begins providing services, you may ordinarily only share information with the agency with

the consent of the child's parents and, if old enough, the child. This is because service provision in these circumstances is by voluntary agreement between the family and the service provider.

Family services, however (but not other Service Agencies) are allowed to consult with Child Protection at any time, if necessary.

## Sharing information with Child Protection during an investigation

When a report is made to Child Protection about a child, they may decide to conduct an investigation. As part of the investigation, Child Protection may share information with people who know the child or the child's family. In order to do this, Child Protection must authorise any person they do contact to share this information with them.

As a health professional, you are authorised to share information with Child Protection during an investigation without the consent of a child or their parents, where this is relevant to the protection or development of the child.

## Sharing information with Child Protection after an investigation has been completed and there is ongoing Child Protection involvement

After an investigation has been completed, the child's family may be provided with a range of services to address any parental or family issues that may cause harm to the child. The child may also be provided with services, which will sometimes include out of home care.

As a health professional, you are authorised to share information relevant to the protection or development of the child with Child Protection after an investigation has been completed and where there is ongoing Child Protection involvement, typically under a case plan that has arisen following the investigation. This is authorised without the consent of the child or their parents.



## Sharing information about a child subject to a Children's Court Protection Order

Sometimes, following a Protection Application by Child Protection, a child who is in need of protection may have a Protection Order made about them by the Children's Court.

Where there is a Protection Order, Child Protection will be responsible for ensuring the child's safety, stability and development, and may contact you for information about the child that is relevant to assessing the child's circumstances.

You are allowed to share relevant information with Child Protection about a child who is subject to a Children's Court Protection Order without the consent of the child or their parents.

## Case study

Eva is the manager of a drug and alcohol treatment centre in a Melbourne suburb.

One day Eva receives a call from Child Protection about the children of one of the patients attending the centre, a 30-year-old man named Derek. The Child Protection worker tells Eva that someone has made a report about the children and that they are calling to ask her to share any information with them about Derek that is relevant to the report, which contains an allegation that he has physically abused the children. Child Protection wants this information to help them make a decision about the risks to the children and the best way to respond to the report they have received.

Although Eva is not a registered health professional, she knows that as the manager of a drug and alcohol treatment service funded by the Department of Human Services, she is authorised to share information with Child Protection. Eva also knows that she can provide information to Child Protection without the consent of the family.

Before sharing relevant information with Child Protection, Eva consults with other professionals at the centre,

including nurses, a social worker and a psychologist, to ensure that the information she provides about Derek is complete and accurate. She then calls Child Protection and shares what she knows about Derek and his family with the Child Protection worker. At the end of this call, the worker tells Eva that the case may be investigated and that they may call her again for further information.

A few weeks later, Eva receives another call from Child Protection telling her that the case is now being investigated. Child Protection asks Eva whether she has any further relevant information about Derek. Eva knows that she can share information with Child Protection during an investigation without his consent and provides this information.

The Child Protection worker tells Eva that they may not be able to tell her details of the outcome of the investigation without Derek's consent, unless she is playing an ongoing part in ensuring the protection of the child.

## Power to compel disclosure of information about a child subject to a Children's Court Protection Order

If you choose not to share information with Child Protection when they contact you about a child who is subject to a Protection Order, you should know that you can be directed in writing by an officer of the Department of Human Services to provide relevant information about the child. The officer in this instance is personally authorised by the Secretary of the Department of Human Services.

If you fail to disclose information when such a direction is properly made and do not have a reasonable excuse, you may be prosecuted. The *Children, Youth and Families Act 2005*, section 200, explicitly states that medical professional privilege is not a 'reasonable excuse' in these circumstances.

The information required must be relevant to the protection and development of the child and will be specified in the written direction. It may consist of a verbal or written opinion or information about the child, or relevant documents.



## Authorised professionals and agencies

Any person can make a referral to Child FIRST or a report to Child Protection.

### Professionals (Information Holders)

Following is the list of professionals who are authorised to share information with Child Protection and Child FIRST to help them make an initial assessment, and with Child Protection to assist in investigation and intervention.

1. Police
2. Government department employees
3. Registered school teachers and principals
4. Registered medical practitioners
5. Registered nurses
6. Registered psychologists
7. Person in charge of a relevant health service
8. Person in charge of a relevant psychiatric service
9. Person in charge of a children's service
10. Person in charge of a disability service
11. Person in charge of a drug or alcohol treatment service
12. Person in charge of a family violence service
13. Person in charge of a sexual assault support service
14. Person in charge of a parenting assessment and skills development service
15. Person in charge of a local government child and family service that is not registered as a community service with the Department of Human Services
16. Person in charge of a placement support service for children in out of home care.

Community service workers (registered family services and out of home care services) are also authorised.

### Service Agencies

Following is the list of agencies which Child Protection and Child FIRST may contact to follow up on a referral or report they have received.

1. A Victorian Government department
2. A relevant health service
3. A relevant psychiatric service
4. A disability service
5. A drug or alcohol treatment service
6. A family violence service
7. A sexual assault support service
8. A parenting assessment and skills development service
9. A local government child and family service that is not registered as a community service with the Department of Human Services
10. A placement support service for children in out of home care.

The precise meaning of these terms – e.g. in relation to other relevant legislation – is more clearly defined in section 3 of the *Children, Youth and Families Act 2005*.

## Other sources of information:


[www.dhs.vic.gov.au/everychildeverychance](http://www.dhs.vic.gov.au/everychildeverychance)

This website provides information about legislation, policy and services for vulnerable children and their families.

***Vulnerable babies, children and young people at risk of harm: Best practice framework for acute health services***, Department of Human Services, August 2006.

### Disclaimer

The information in this guide is specifically relevant to health professionals in Victoria, and intends to provide a broad understanding of the *Children, Youth and Families Act 2005* as it applies to health professionals.

 To obtain guides for other professionals, please visit:

[www.dhs.vic.gov.au/everychildeverychance](http://www.dhs.vic.gov.au/everychildeverychance)



## Summary of information sharing guidelines and how they apply to you

| Action   | Is this required by law?<br>(where not required by law,<br>it may be good practice to<br>do so voluntarily) | Is this authorised by the<br><i>Children, Youth and Families<br/>Act 2005</i> ? |
|--|---|---|
| Making a referral to Child FIRST   | NO  | YES   |
| Making a report to Child Protection  | NO  | YES   |
| Making a mandatory report to<br>Child Protection   | YES   | YES   |
| Sharing information when you are consulted by<br>Child FIRST or Child Protection   | NO  | YES   |
| Sharing information with family services<br>when they are providing services to a family   | NO  | NO  |
| Sharing information with Child<br>Protection during an investigation   | NO  | YES   |
| Sharing information with Child<br>Protection to support ongoing<br>case planning after an investigation  | NO  | YES   |
| Sharing information with Child<br>Protection on request when a child<br>is subject to a Children's Court<br>Protection Order   | NO  | YES   |
| Sharing information with Child Protection<br>when a child is subject to a Children's Court<br>Protection Order and when you are directed<br>by an officer authorised by the Secretary of<br>the Department of Human Services | YES   | YES   |

\* You are encouraged to allow your identity to be disclosed, even where it is protected by law (i.e. when making a referral or report, or assisting an investigation). Your identity will be treated in confidence, if that is your wish, except where disclosure is required by law (for example, if directed by a court).

| Is my identity protected by the <i>Children, Youth and Families Act 2005</i> ?* | Am I protected from negative legal and professional consequences by the <i>Children, Youth and Families Act 2005</i> ? |
|---|--|
| YES   | YES  |
| YES   | YES  |
| YES   | YES  |
| NO, but it will be held in confidence upon request                              | YES  |
| NO  | NO   |
| YES   | YES  |
| NO, but it will be held in confidence upon request                              | YES  |
| NO, but it will be held in confidence upon request                              | YES  |
| NO, but it will be held in confidence upon request                              | YES  |





