

Charter of Human Rights and Responsibilities

Family Violence and Child Information Sharing Schemes

What is the Charter of Human Rights and Responsibilities?

The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) is a Victorian law that sets out the protected rights of all people in Victoria as well as the corresponding obligations on the Victorian Government.

Does the Charter apply to Information Sharing Entities (ISEs) when sharing information under the Schemes?

The Charter requires all public authorities, such as Victorian state and local government departments and agencies, and people or organisations delivering services on behalf of the Victorian Government to:

- give proper consideration to human rights before making a decision; and
- act compatibly with human rights.

Most ISEs are 'public authorities' because most ISEs are either Government agencies or are providing services on behalf of the Victorian Government. ISEs should therefore consider whether the Charter applies to each particular set of circumstances before requesting, sharing and/or using information under the Family Violence Information Sharing Scheme and the Child Information Sharing Scheme (the Schemes).

Organisations and services that are uncertain about whether the Charter applies to them should consult with their contracting agency.

When does the Charter apply to information sharing under the Schemes?

Generally, all ISEs who are public authorities must comply with their obligations under the Charter.

When the Charter does not apply

The Charter does not apply to the decisions and actions of ISEs who are required to share information under the Schemes, for example where an ISE is required under a Scheme to share information in response to a request that **meets the threshold requirements** of the relevant information sharing Scheme. In these circumstances, an exception under the Charter applies because there is no discretion under the Schemes to act differently or make a different decision.

If an ISE is required to share information under one of the Schemes and is concerned about the possible impact on a person's Charter rights, the ISE should raise these concerns with the requesting ISE so that this can inform any decisions about the request and how the requesting entity uses the information.

When the Charter does apply

The Charter applies to all discretionary decisions and actions under the Schemes. ISEs must give proper consideration to relevant human rights and act compatibly with those rights whenever making decisions and exercising professional judgment when *requesting information, voluntarily sharing* and *using* information under the Schemes. This includes when deciding whether to request information, what information to request, who to request it from, and who to share with and the way in which the information is shared.

ISEs may be required to consider Charter rights in the following circumstances:

- deciding whether to request information, who to request the information from and the nature and scope of the request (both Schemes)
- sharing information voluntarily that would promote the wellbeing or safety of a child but could impact upon the wellbeing and safety of another child (CIS Scheme)
- sharing information voluntarily for a family violence assessment or protection purpose (FVIS Scheme)
- voluntarily sharing information about perpetrators with victim survivors to assist them to manage their safety (FVIS Scheme) or with a child or their parent to manage a risk to that child's safety (CIS Scheme)
- seeking the views and wishes of a person regarding sharing their information (both Schemes)
- when making a decision that requires applying and interpreting a decision-making threshold in practice, such as considering whether it is 'safe, appropriate and reasonable' to seek a person's views (both Schemes)
- engaging with clients or responding to complaints (both Schemes).

How do ISEs apply the Charter?

If you are an ISE who is also a public authority, you must consider the Charter when voluntarily disclosing information and using the information. ISEs must consider whether any human rights are affected by such decisions. If a decision is likely to limit a human right, the ISE must assess whether the limitation is reasonable and justified taking into account all relevant factors.

If an ISE is concerned that a decision or action might interfere with a person's Charter rights they should conduct an assessment to determine, on a case-by-case basis, whether it is nevertheless reasonable and justified applying the Charter factors.

How does an ISE public authority properly consider Charter rights?

- Step 1: Identify which Charter rights are relevant to the ISE decision or action
- Step 2: Consider whether and how the ISE decision or action will interfere with the Charter rights
- Step 3: Balance any other considerations that are relevant to the ISE decision or action.

How does an ISE public authority act compatibly with Charter rights?

Decisions and actions will be compatible with the Charter if they can be justified under the Charter. This is because Charter rights may only be limited where it is reasonable and justified taking into account all relevant factors. These factors can be found in section 7(2) of the Charter, and include:

- Nature of the right – what does the human right protect?
- Purpose of the limitation – what are you trying to achieve? Is it for a legitimate purpose?
- Extent of the limitation – how will your action impact on the person’s human rights?
- Relationship between limitation and purpose – will your actions achieve your objective (evidence base)?
- Less restrictive options – can you do anything that will achieve your objective which has a lesser impact on the person’s human rights?

Case Studies: these case studies aim to illustrate how the Charter applies in the context of decision making and sharing information under the Schemes

Case Study 1: Requesting information under the Schemes

Huang (14-year-old) is in the Youth Justice system and attends a youth justice community support group (an ISE). The community group is a public authority under the Charter.

On several recent occasions, Huang was aggressive and physically violent towards other young people in the group. It is suspected that this behaviour is linked to recent drug use. Jackson, the facilitator running the group considers removing him from the group, but first wants to explore whether it is possible to support Huang to continue attending the group while managing the risk of violence to the group.

Jackson has insufficient information to make the decision about the risk Huang poses to the youth group. He considers that Youth Justice is most likely to hold relevant information. A request from Youth Justice will likely elicit information that will help promote the best interests of the other youth in the group (section 17(2)) and their right to be safe (section 21). Jackson has a legitimate purpose in requesting the information. However, Jackson is also conscious of the need to balance Huang’s best interests (section 17(2)) and his right to privacy and reputation (section 13) in making the request. Having weighed up these considerations, and the possible impacts of requesting information on all concerned, Jackson determines that it would be unsafe to seek Huang’s views, and makes a request to Youth Justice. Jackson is careful to tailor his request to only include information directly relevant to risk of violence, drug use and behaviour management planning.

Aisha at Youth Justice receives the request and considers whether it meets the thresholds for required disclosure under the Child Information Sharing Scheme. Aisha determines that the thresholds are met. As a result, when responding to this request Aisha does not have to consider the Charter because Youth Justice is obliged to share the information. However, Aisha considers that whilst sharing the information may promote the wellbeing and safety of other children in the group, it may mean that Huang is removed from the group which is one of his only support networks.

Aisha considers that it would be unsafe to seek Huang’s views and shares the information with Jackson in a manner that avoids stigmatisation. Aisha also raises the concerns about the possible impact on Huang’s Charter rights. As the organisation running the group is a public authority, it must continue to give proper consideration to relevant human rights and act compatibly with those rights. When Jackson receives the information, he reviews it to decide whether the proposed use of the information is justifiable. A decision to remove Huang from the group may limit his right to privacy (section 13(a)) and to such protection as is in his best interests (section 17(2)) but it would also promote the best interests of other children in the group (section 17(2)) and their right to be safe (section 21). The purpose of the limit on Huang’s right is legitimate and important (as it relates to child safety), and Jackson considers that given the nature of the risk, the use of the information from Youth Justice is justifiable.

Jackson considers that he can use the information to facilitate a warm referral to drug counselling and put in place behaviour management strategies that will establish clear expectations and proper supervision so that Huang can be supported to remain in the group. Jackson discusses the information sharing and decision with Huang to support him to understand the roles and responsibilities of the workers to support him and the rest of the group, and to include him in the decision. Jackson is careful to store the information securely, and to reassure Huang that only the persons that need to know the information have access to it.

Case Study 2: Voluntarily sharing information

Kim is a victim survivor of family violence who is working with a child and family service to assist with supporting her parenting capability. In addition to recovering from family violence, Kim has a history of complex needs, including a cognitive impairment and mental health needs. The child and family service is aware that Kim is also a client of a mental health service that is assisting her with her mental health needs.

The child and family service has observed changes in Kim's behaviour and are concerned this could impact her parenting. Kim has been arriving late to appointments and has appeared overwhelmed and hypervigilant. The service would like to understand more about her mental health needs to inform their supports and interventions with her. The service raises this issue directly with Kim but she does not want to talk about this with the service. They decide to request information from Kim's mental health service about her engagement with the service under the Child Information Sharing Scheme in order to better address her mental health needs and assess the risk of any impact on the needs of Kim's children. In making the request, the service considers that the need to protect families and children (under section 17 of the Charter) outweighs the likely impact the request will have on Kim's right to privacy (section 13) and that there are no less restrictive ways to obtain relevant information and assess the risk to her children. They make a file note to that effect.

Kim has previously expressed a view to her mental health service that she does not want information to be shared about her with other services. This is because she has been discriminated against by services in the past due to her mental health and cognitive impairment. She consequently has extreme anxiety that her children will be removed and placed in the care of her ex-partner because of this discrimination.

Kim has generally engaged well with the service and has maintained her medication and therapy regime. The mental health service is required under the Child Information Sharing Scheme to share information that is relevant to promoting the wellbeing and safety of Kim's children in response to a request. However, the service should seek Kim's views about sharing this information where appropriate, safe and reasonable to do so. This decision about whether it is appropriate, safe and reasonable involves the exercise of discretion. When determining whether it is appropriate, safe and reasonable to seek Kim's views, the service cannot breach Kim's Charter rights, in particular her right to equality and non-discrimination (section 8 of the Charter), her right to privacy and reputation (section 13) and the protection of families (section 17(1)). They must balance the possible impact on these rights against the right of Kim's children to such protection as is in their best interests (section 17(2) of the Charter).

Based on their professional judgement, and given the serious concerns raised by Kim about information sharing, the possible risks and Kim's explicit instructions not to share her personal and health information, the mental health service engages with Kim about the request for information. In choosing

how they engage with Kim, the mental health service takes into account her cognitive impairment and asks her what support they can provide her to assist her and/or if she would like a support person to help her with understanding what they will discuss. They are also careful to ensure they communicate with Kim appropriately based on her understanding and give sufficient time to the discussion to provide the explanation Kim might require.

When talking about sharing this information, the service assures Kim about what information they will be sharing, and that this information will demonstrate that she is managing her mental health well. They also explore the issues raised by the child and family service. Kim tells them she is scared because her former partner has recently been calling her in breach of his intervention order and threatening to take the children away from her. The mental health service explains to Kim that her former partner should not be calling her and that this information should be shared with police and other services so they can consider what risk he poses to Kim and the children. These actions protect Kim's right to security of the person (section 21 of the Charter) and serve to protect her children and family (section 17) and ensure that she is treated with respect and dignity, and without discrimination (section 8 of the Charter).

The mental health service shares information under the Child Information Sharing Scheme with the child and family service about how Kim is managing her mental health and balancing the children's needs. They also want to voluntarily share with police and the child and family service under the Family Violence Information Sharing Scheme the information about how Kim's former partner is breaching his intervention order. In sharing this information under the Family Violence Information Sharing Scheme, the service is not required to get the consent of Kim's former partner.

However, because the service is sharing voluntarily and not as a legal obligation, they must consider the rights of both Kim and her former partner under the Charter. In this instance the service considers that sharing the information about Kim's former partner breaching his intervention order is necessary for assessing and managing the safety of Kim and her children, and that this is a reasonable basis to limit the privacy rights of both Kim and her former partner. The service decides it is authorised to voluntarily share the information on this basis.

The mental health service and the child and family service work together with Kim and a specialist family violence service to assess and manage the family violence risk to Kim and the children.

Resources and Support

For more information about the Charter obligations on public authorities, visit [humanrightscommission.vic.gov.au](https://www.humanrightscommission.vic.gov.au). For more information on the Child Information Sharing and Family Violence Information Sharing Schemes, visit [vic.gov.au/guides-templates-tools-for-information-sharing](https://www.vic.gov.au/guides-templates-tools-for-information-sharing).