

# Direction under s. 62 of the *Health Records and Information Privacy Act 2002* in relation to Youth on Track

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As Privacy Commissioner appointed under Part 4, Division 1 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (the PPIP Act), I Samantha Gavel, hereby direct pursuant to section 62 of the *Health Records and Information Privacy Act 2002 (NSW)* (the HRIP Act) that:

## 1. Overview

This is a direction made under section 62(1) of the HRIP Act. This direction should be read in conjunction with the HRIP Act.

## 2. Interpretation

2.1 In this Direction, the following words have the respective meanings:

“**Category A agency**” means the agencies listed in Category A of Schedule 1;

“**Category B agency**” means the agencies listed in Category B of Schedule 1;

“**Category C agency**” means the agencies listed in Category C of Schedule 1;

“**COPS database**” means the Computerised Operational Policing System database operated and controlled by the NSW Police Force;

“**DJ**” means the Department of Justice;

“**DE**” means the Department of Education;

“**Direction**” means this direction and any Schedules;

“**GRAM screen**” means the Group Risk Assessment Model actuarial tool described in Schedule 2;

“**health information**” has the same meaning as in the *Health Records and Information Privacy Act 2002*;

“**health service**” has the same meaning as in the *Health Records and Information Privacy Act 2002*;

“**Home Environment**” means a location in which the young person ordinarily resides. It may include more than one location, for example where the young person has parents/guardian living in different residences.

“**HPP**” means the Health Privacy Principle set out in the clause of Schedule 1 of the *Health Records and Information Privacy Act 2002* with the corresponding number;

“**HRIP Act**” means the *Health Records and Information Privacy Act 2002*;

“**Known Risk Factors**” includes negative peer associations, undocumented offending by the young person (eg: occurring before 10 years of age) and risky family circumstances. This personal information may, in rare cases, include personal information to which s. 19 of the PPIP Act applies (in particular, personal information about a young person’s sexual activities, such as prostitution, if that is relevant to the young person’s risk of offending and/or support needs).

“**NGO**” means a non-government organisation contracted by DJ for the purposes of Youth on Track;

“**participating agency**” means a public sector agency specified in Schedule 1;

“**Police**” means the NSW Police Force;

“**PPIP Act**” means the *Privacy and Personal Information Protection Act 1998*;

“**privacy internal review**” means internal review as provided by s. 21 of the HRIP Act and Pt. 5 of the *Privacy and Personal Information Protection Act 1998*;

“**safety warnings**” means information which tends to suggest that the young person, or background circumstances surrounding the young person, may pose a threat to a case worker seeking to approach the young person and/or his or her parent/guardian, including due to his or her home environment.

“**YLS-CMI**” means the Youth Level of Service Case Management Inventory tool described in Schedule 2;

“**Youth on Track Unit**” means the Youth on Track Unit established within DJ to conduct and oversee Youth on Track.

- 2.2 For the purposes of s. 9(b) of the HRIP Act, the NGO contracted to provide the case management services is a “person engaged” by DJ. If the NGO is also a “private sector person” within the meaning of the HRIP Act, this Direction modifies the application of the HPPs to the NGO in both its capacity as a “person engaged” by DJ and its capacity as a “private sector person”.

### 3. Objectives of Youth on Track

- 3.1 Youth on Track is a trial strategy for reducing juvenile re-offending through improved early intervention. It aims to do this by:
- (a) identifying young people at risk of re-offending;
  - (b) identifying needs that contribute to the risk of those young people offending;
- and

- (c) addressing those needs at an early stage before offending becomes entrenched, through case management and the provision of appropriate evidence-based interventions for the young person.
- 3.2 The NSW Government will continue to implement Youth on Track in thirteen NSW Police Force Local Area Commands until 30 June 2019.
- 3.3 The Bureau of Crime Statistics and Research (BOCSAR) and the Cultural and Indigenous Research Centre Australia (CIRCA) will formally evaluate the effectiveness of Youth on Track. If proven successful, Youth on Track may be implemented across NSW.

#### 4. Process

- 4.1 NSW Police and DE regularly come into contact with young people who are at risk of offending. Under the Youth on Track scheme, NSW Police and Department of Justice (DJ) agree to use evidence based screening tools to identify suitable potential participants for referral into the scheme. A Non-Government Organisation (NGO) will provide case management to referred potential participants, under contract with DJ for this purpose.
- 4.2 Young people who will be assessed for this scheme are of 10 to 17 years of age.
- 4.3 The Youth on Track scheme uses a six step process, and will undergo formal evaluation by BOCSAR.
- 4.4 The Scheme involves the collection, use and disclosure/exchange of health information about a potential participant, his or her family and social environment based on known risk factors and protective factors that can be used to predict the risk that a young person will re-offend. The risk factors are inter-related and cumulative.
- 4.5 The Youth on Track process is outlined below.

##### **Identification and Referral.**

- 4.6 Identification may be by Police or DE.

##### *Identification by Police*

- 4.7 Police identify young people at risk of offending by two screening methods, and refer suitable potential participants to DJ. The first screening process uses information about the young person<sup>1</sup> held on the COPS database to conduct GRAM screening. The second screening process is discretionary referral by Police Youth Liaison

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<sup>1</sup> Name, age, gender, prior cautions, prior charges, and Aboriginality. Note the Aboriginality of a young person is entered into the GRAM screening tool but is not stored once the GRAM is calculated.

Officers based on information about other known risk factors. The information used in screening may include health information.<sup>2</sup>

- 4.8 The Youth on Track Unit is provided with the information in paragraph [4.7] , including the contact details, address and known aliases of the young person and his or her parents/guardian and safety warnings in relation to the young person and/or their home environment.<sup>3</sup>

#### *Identification by DE*

- 4.9 DE identifies young people at risk of re-offending through its knowledge of student's known risk factors, and emails the Police Youth Liaison Officer ("YLO"), School Liaison Police Officer ("SLP") and Youth on Track Screening Officer with the name and date of birth of a student which it believes may be eligible for the scheme.
- 4.10 Police and/or YoT Screening Officer identifies whether the young person meets the eligibility criteria<sup>4</sup> by using information held on the COPS database and the Client Information Management System (CIMS), and informs DE whether the young person is eligible for the scheme. If the young person is not eligible, DE records that an eligibility request was made and the young person was not eligible.
- 4.11 If the young person is eligible, DE then completes the referral form including information about known risk factors and safety warnings in relation to the young person and/or their home environment which is submitted to the Youth on Track Unit. If police identify safety warnings in relation to the young person and/or their home environment while conducting the eligibility search they will provide this information directly to the Youth on Track Unit.

#### **Screening**

- 4.12 The Youth on Track Unit conducts further analysis of the suitability of potential participants against acceptance thresholds using GRAM screening and consideration of other known risk factors.
- 4.13 At this stage young people below the threshold are screened out, and the referral source (Police or DE) is advised. The referral source is provided with a general explanation to why the young person was not suitable. This information is used in order to improve DE's future assessment as to whether possible candidates for the Youth on Track scheme are likely to be accepted for referral and to maintain a collaborative relationship.

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<sup>2</sup> Such as an opinion about the young person's mental health and/or possible disability. This disclosure and collection is authorised and/or reasonably contemplated under s.66(2)(g) of the YO Act and can also be authorised under Cap 16A of the CYPCP Act.

<sup>3</sup> The exchange of information in this paragraph can, in many cases, be authorised under Chap. 16A of the CYPCP Act (HPP 10(2)). To the extent that Chap. 16A does not apply, this Direction modifies the application of the HPPs to enable this exchange to occur.

<sup>4</sup> Young person has had at least one, and no more than three, cautions, conferences and/or charges and they have not previously been under the supervision of Juvenile Justice.

- 4.14 For those young people who meet the threshold, information about existing case management being provided by Category B agencies is sought by the Youth on Track Unit. This may involve health information if the provision of case management services by the Category B agency is or involves a health service.

#### **Assessment**

- 4.15 The DJ Youth on Track Unit refers the young person to the contracted NGO, providing health information accumulated through the earlier stages. Where already case managed by a Category B agency, the NGO contacts the existing case manager and negotiates support to be provided by the Youth on Track scheme to the young person. This may include health information if the provision of case management services by the Category B agency is or involves a health service.

For the provision of any support by the Youth on Track scheme to the young person, the contracted NGO must obtain the consent of both:

- (a) The existing case manager and
- (b) The young person and their parents/guardians

in that order.

If either the case manager or young person does not provide consent, the involvement of the young person with the Youth on Track scheme will end.

- 4.16 In all other cases, the NGO contacts the young person and parents/guardian to inform them that the young person has been referred to Youth on Track and seeks consent for the young person to participate in the scheme. The initial consent to participate in Youth on Track includes consent to health information being used after exit or disengagement from Youth on Track. Records of consent are kept by the NGO and reported to the Youth on Track Unit.
- 4.17 All other steps in Youth on Track are conditional on the young person and their parents/guardians consenting. Without consent, the involvement of the young person in Youth on Track will end and they will not be further involved unless consent is given.
- 4.18 If consent is not given by the young person and their parents/guardians, or the young person disengages from Youth on Track at any time, the NGO reports this to the Youth on Track Unit and any Category B or C agency that has been involved in the provision of services to the young person during their involvement with the Youth on Track scheme. The DJ Youth on Track Unit reports back to Police and/or DE the refusal of consent and monitors the COPS database for any further offending by the young person. No health information is involved.
- 4.19 If consent is given by the young person and their parents/guardian, the NGO Case Manager assesses the young person's risk and protective factors. This involves collection and use by the NGO of health information from multiple sources that the young person and their parents/guardians have consented to the NGO collecting their health information from, the use to which that health information will be put, and the disclosure of that health information to other parties. The health information

collected mainly relates to the young person, but may include health information about family, peers and other third parties.

- 4.20 Health information in paragraph [4.19] relating to third parties will only be collected by the NGO from a health service if the third party consents to the collection, use and disclosure of that health information by the NGO.
- 4.21 The DJ Youth on Track Unit reports back to Police with an update about the young person's progress through the scheme.<sup>5</sup>

### **Case Management**

- 4.22 The NGO identifies key areas of need, relevant services (that may include health services) and suggested level of service provision for the young person, and works with the young person and their parents/guardians to develop a Case Plan. The NGO may also use the information to provide services (that may include health services) directly to the young person and/or parents/guardian.
- 4.23 The NGO reports to the Youth on Track Unit about the young person's progress.<sup>6</sup> This enables the Youth on Track Unit to support and monitor the provision of Youth on Track services (that may include health services).

### **Intervention**

- 4.24 Services are delivered by the NGO directly or by other government and non-government service providers (OSPs) brokered by the NGO Case Manager. Brokering of services may require disclosure by the NGO of health information to OSPs that is necessary for the OSP to provide the service in the particular case and limited collection by the NGO of information (that may include health information) from the OSP about the young person's progress.
- 4.25 The NGO prepares a quarterly Review/Progress Report (that may include health information) and a copy is provided to the Youth on Track Unit. The Youth on Track Unit updates Police.

### **Exit**

- 4.26 The NGO will determine if a young person moves from one stage of case management to the next and when a case may be closed and a young person exited from the scheme.
- 4.27 The NGO monitors implementation of the Exit Plan and prepares an Exit Report. The Plan and Report are provided to the Youth on Track Unit.

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<sup>5</sup> In cases where the young person and his or her parents/guardian have consented to participate in Youth on Track, this disclosure occurs with informed consent. In most other cases, this disclosure can be authorised under Chap. 16A of the CYPCP Act(HPP 11(2)). To the extent that Chap. 16A does not apply, this Direction modifies the application of the HPPs to enable this disclosure of health information to occur.

<sup>6</sup> The information provided is limited to the young person's assessment score, interventions accessed (which may include health services), status of completion/non-completion of case plan goals (which may include health information). The information does not include any case notes or health information discussed with NGO Case Manager.

## **Evaluation**

- 4.28 Youth on Track participants and their parents/guardian will be asked to complete a participant feedback form that may include health information. Participants and their parents/guardians can choose not to complete this form. Youth on Track records and case files will be used by BOCSAR and CIRCA to evaluate the effectiveness of the Youth on Track scheme. Additionally, BOCSAR and CIRCA may interview Youth on Track participants and parents/guardians.

## **End of Youth on Track Trial Period**

- 4.29 At the conclusion of the trial of the Youth on Track scheme, all health information collected by the NGO during the Youth on Track program must be returned to DJ to be dealt with by DJ in compliance with HPP 5 of the HRIP Act and any other relevant legal obligations DJ has in respect of this health information. This Direction does not modify the application of HPP 5 to participating agencies.

## **5. Public Interest**

- 5.1 This Direction has been made to permit the collection, use and disclosure of health information by participating agencies for the purposes of Youth on Track.
- 5.2 I am satisfied that the public interest in making this Direction is greater than the public interest in requiring the participating agencies to comply with the Health Privacy Principles contained in Schedule 1 to the HRIP Act.
- 5.3 A corresponding direction applies in respect of personal information under the PPIP Act.

## **6. Duration**

- 6.1 This Direction has effect from the date of this direction until 30 April 2018.

## **7. Previous Directions**

- 7.1 This Direction replaces all previous directions under the HRIP Act made in relation to Youth on Track from the date this direction is made by me.

## **8. Modification of Health Privacy Principles**

- 8.1 The application of the information protection principles in Schedule 1 to the HRIP Act to the participating agencies is modified to the extent described below.

### **Category A agencies**

- 8.2 **HPP 1:** For the purposes of Sch. 1 cl. 1 of the HRIP Act, the collection by a Category A agency of health information described in paragraphs [4.8], [4.11] to [4.27] of this Direction is taken to be for a lawful purpose that is related to a function or activity of that agency if the collection of that health information is:

- (a) for the purposes of Youth on Track;
- (b) necessary for those purposes; and
- (c) made subject to the limitation in paragraph [4.20] of this Direction where required.

**8.3 HPP 3:** Notwithstanding Sch. 1 cl. 3 of the HRIP Act, a Category A agency:

- (a) may collect health information about a young person and his or her parents/guardian described in paragraphs [4.11] to [4.27] of this Direction; and
- (b) may collect health information described in paragraphs [4.24] to [4.25] of this Direction about any third person where that health information is necessary for the participation by or provision of services to a particular young person in Youth on Track, subject to the limitation in paragraph [4.20] of this Direction;

but HPP 3 otherwise applies to Category A agencies.

**8.4 HPP 4:** Notwithstanding Sch. 1 cl. 4 of the HRIP Act, a Category A agency:

- (a) is taken to have complied with s. 10 of HPP 4 in respect of the collection of health information described in paragraphs [4.12] to [4.15] of this Direction when the NGO, as described in paragraph [4.16] of this Direction, informs the young person and his or her parents/guardian that the young person has been referred to Youth on Track; and
- (b) need not comply with HPP 4 where a third person's health information that is necessary for the participation by or provision of services to a particular young person in Youth on Track is being collected as described in paragraphs [4.19], [4.24] and [4.25], subject to the limitation in paragraph [4.20] of this Direction,

but HPP 4 otherwise applies to Category A agencies.

**8.5 HPP 9:** Notwithstanding Sch. 1 cl. 9 of the HRIP Act:

- (a) health information used by the Category A agency in relation to the young person and his or her parents/guardian is taken to be relevant, accurate, up to date, complete and not misleading having regard to the purposes for which it is to be used described in paragraph [4.15] of this Direction; and
- (b) in respect of the use of a third person's health information described in paragraphs [4.6] to [4.27] of this Direction that is necessary for the participation by or provision of services to a particular young person in Youth on Track, the taking of "such steps as are reasonable in the circumstances" does not require the Category A agency to consult with or make inquiries of the third person except as required by paragraph [4.20] of this Direction;

but HPP 9 otherwise applies to Category A agencies.

**8.6 HPP 10:** For the purposes of Sch. 1 cl. 10 of the HRIP Act,



- (a) use of health information about the young person or his or her parents/guardian by a Category A agency as described in paragraph [4.13], [4.15] and [4.22] of this Direction is taken to be used for the purpose for which it was collected; and
- (b) use of a third person's health information described in paragraphs [4.6] to [4.27] of this Direction that is necessary for the participation by or provision of services to a particular young person in Youth on Track is taken to be used for the purpose for which it was collected subject to the limitation in paragraph [4.20] of this Direction where required;

but HPP 10 otherwise applies to Category A agencies.

**8.7 HPP 11:** For the purposes of Sch 1 cl. 11 of the HRIP Act:

- (a) disclosure of health information described in paragraphs [4.6] to [4.27] of this Direction about the young person or his or her parents/guardian by a Category A agency:
  - to Police as described in paragraphs [4.13], [4.21] and [4.25] of this Direction; or
  - to a Category C agency or individual as described in paragraphs [4.24] to [4.25] of this Direction; and
- (b) disclosure of a third person's health information described in paragraphs [4.6-4.27] of this Direction that is necessary for the participation by or provision of services to a young person in Youth on Track by a Category A agency:
  - to a Category C agency or OSP as described in paragraph [4.24] of this Direction; or
  - to DE as described in paragraphs [4.13] and [4.18] of this Direction; or
  - to Police as described in paragraphs [4.13], [4.21], and [4.25] of this Direction–

is taken to be a disclosure that is directly related to the primary purpose for which the health information was collected, and the individual would reasonably expect the organisation to disclose the information for the secondary purpose (unless consent has been refused after being requested as set out in paragraph [4.20] of this Direction);

but HPP 11 otherwise applies to Category A agencies.

**Category B agencies**

**8.8 HPP 1:** For the purposes of Sch. 1 cl. 1 of the HRIP Act, the collection by a Category B agency of health information described in paragraphs [4.8] to [4.15] of this Direction is taken to be for a lawful purpose that is related to a function or activity of that agency if the collection of that health information is:

- (a) for the purposes of Youth on Track; and
  - (b) necessary for those purposes.
- 8.9 **HPP 3:** Notwithstanding Sch. 1 cl. 3 of the HRIP Act, a Category B agency may collect health information described in paragraphs [4.14] and/or [4.15] of this Direction about a young person and his or her parents/guardian, but HPP 3 otherwise applies to Category B agencies.
- 8.10 **HPP 4:** Notwithstanding Sch. 1 cl. 4 of the HRIP Act, a Category B agency need not comply with HPP 4 of the HRIP Act where a third person's health information as described in paragraphs [4.19], [4.24] to [4.25] of this Direction that is necessary for the participation by or provision of services to a young person in Youth on Track subject to the limitation in paragraph [4.20] of this Direction, but HPP 4 otherwise applies to Category B agencies.
- 8.11 **HPP 9:** Notwithstanding Sch. 1 cl. 9 of the HRIP Act, the use of health information described in paragraphs [4.14] and [4.15] of this Direction, by the Category B agency in relation to the young person and his or her parents/guardian is taken to be relevant, accurate, up to date, complete and not misleading having regard to the purposes for which it is to be used, but HPP 9 otherwise applies to Category B agencies.
- 8.12 **HPP 10:** For the purposes of Sch. 1 cl. 10 of the HRIP Act, use of health information described in paragraphs [4.14] and [4.15] of this Direction by a Category B agency is taken to be used for the purpose for which it was collected, but HPP 10 otherwise applies to Category B agencies.
- 8.13 **HPP 11:** For the purposes of Sch. 1 cl. 11 of the HRIP Act, disclosure of health information by a Category B agency to a Category A agency as described in paragraphs [4.14] and [4.15] of this Direction is taken to be a disclosure for the purpose for which the health information was collected, unless consent has not been obtained as required by paragraph [4.20] of this Direction in respect of a third party, but HPP 11 otherwise applies to Category B agencies.

### **Category C agencies**

- 8.14 **HPP 1:** For the purposes of Sch. 1 cl. 1 of the HRIP Act, the collection by a Category C agency of health information described in paragraphs [4.19] to [4.27] of this Direction is taken to be for a lawful purpose that is related to a function or activity of that agency if the collection of that health information is:
- (a) for the purposes of Youth on Track;
  - (b) necessary for those purposes; and
  - (c) made subject to the limitation in paragraph [4.20] of this Direction.

- 8.15 **HPP 3:** Notwithstanding Sch. Cl. 3 of the HRIP Act, a Category C agency may collect health information described in paragraphs [4.19] and/or [4.24] to [4.27], subject to the limitation in paragraph [4.20] of this Direction about:
- (a) a young person and his or her parents/guardian; and/or
  - (b) any third person that is necessary for the participation by or provision of services to a particular young person in Youth on Track;
- but HPP 3 otherwise applies to Category C agencies.
- 8.16 **HPP 4:** Notwithstanding Sch. 1 cl. 4 of the HRIP Act, a Category C agency need not comply with HPP 4 of the HRIP Act where a third person's health information that is necessary for the participation by or provision of services to a particular young person in Youth on Track is being collected as described in paragraphs [4.6] to [4.27], subject to the limitation in paragraph [4.20] of this Direction where required, but HPP 4 otherwise applies to Category C agencies.
- 8.17 **HPP 9:** Notwithstanding Sch. 1 cl. 9 of the HRIP Act, in respect of the use in accordance with paragraphs [4.24] to [4.27] of this Direction of a third person's health information that is necessary for the participation by or provision of services to a young person in Youth on Track, the taking of "such steps as are reasonable in the circumstances" does not require the Category C agency to consult with or make inquiries of the third person other than those set out in paragraph [4.20] of this Direction, but HPP 9 otherwise applies to Category C agencies.
- 8.18 **HPP 10:** For the purposes of Sch. 1 cl. 10 of the HRIP Act, the use in accordance with paragraphs [4.24] to [4.27] of this Direction of a third person's health information that is necessary for the participation by or provision of services to a young person in Youth on Track is taken to be used for the purpose for which it was collected subject to the limitation in paragraph [4.20] of this Direction, but HPP 10 otherwise applies to Category C agencies.
- 8.19 **HPP 11:** For the purposes of Sch. 1 cl. 11 of the HRIP Act, disclosure of health information by a Category C agency to a Category A agency as described in paragraphs [4.19] and/or [4.24] to [4.27] is taken to be a disclosure that is directly related to the purpose for which the health information was collected subject to the limitation in paragraph [4.20] of this Direction, but HPP 11 otherwise applies to Category C agencies.

Signed by me on **31 October 2017**.



Samantha Gavel  
**NSW Privacy Commissioner**

## SCHEDULE 1 – PARTICIPATING AGENCIES

### **Category A – DJ agencies and referring agencies**

NGO  
Youth on Track Unit  
Department of Education

### **Category B – Agencies that may already be providing case management to the young person**

Ageing Disability and Home Care  
Family and Community Services

### **Category C – Agencies in respect of which the young person and/or parents/guardian may consent to share health information for the purposes of Youth on Track**

Ageing, Disability and Home Care  
Registry of Births Deaths and Marriages  
Bureau of Crime Statistics and Research (BOCSAR)  
Cultural & Indigenous Research Centre Australia (CIRCA)  
Department of Education (School and TAFE)  
Family and Community Services  
NSW Health including Justice Health  
Housing NSW  
Juvenile Justice  
Legal Aid and/or Aboriginal Legal Services  
Revenue NSW

and

Such of the following organisations or individuals as may be specified on the consent form signed by the young person in the particular case:

Counsellor  
Drug and alcohol services  
Medical practitioner Non-  
government agencies  
Treatment facilities  
Youth Accommodation Services (refuges)

Any named individual(s)

## SCHEDULE 2 – ASSESSMENT TOOLS

### Youth on Track Group Risk Assessment Model (GRAM) screening tool

The Youth on Track Group Risk Assessment Model (GRAM) screening tool is an actuarial tool developed by BOCSAR to determine the risk of reoffending of individuals. The GRAM uses offender characteristics which are available to NSW Police at the time of a young person's contact with the Police and which are significantly related to an offender's likelihood of reoffending. Specifically these characteristics are:

- Gender
- Aboriginality
- Age
- Prior cautions
- Prior charges

GRAM screening will be conducted by a screening officer on the COPS database to identify young people at significant risk of reoffending in each Youth on Track location.

### Youth Level of Service Case Management Inventory (YLS/CMI)

The YLS/CMI is a validated tool to assist professionals to: identify a young offender's major needs, strengths, barriers and incentives; select the most appropriate goals for him or her; and produce an effective case management plan.

The YLS/CMI is composed of seven sections:

- Part I: Assessment of risks and needs
- Part II: Summary of risk/need factors
- Part II: Assessment of other needs / special considerations
- Part IV: Your assessment of the client's general risk /need level
- Part V: Contact level
- Part VI: Case management plan
- Part VII: Case management review

The seven parts of this instrument provide a guide for three imperative principles of effective case management:

1. **Risk:** Level of intervention required (based on overall risk/need rating);
2. **Need:** Areas of need that require intervention (based on YLS/CMI domains); and
3. **Responsivity:** Factors that may influence how interventions are delivered (based on other needs and special considerations).

