

CIRCULAR

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NOTIFICATION OF SUSPECTED CHILD ABUSE AND NEGLECT AND EXCHANGING INFORMATION IN CHILD PROTECTION INVESTIGATIONS

1. This circular supersedes circulars 97/14, 97/55, 93/39, 89/161 and 89/98.
2. In accordance with the Children (Care and Protection) Act 1987, the Department of Community Services is charged with responsibility for the care and protection of children and is therefore the agency with lead responsibility for child protection in NSW. It has wide powers to enable it to carry out this responsibility on behalf of the community and has the legal mandate to ensure children's safety, care and welfare.
3. Protecting the health and welfare of children is the role of every health professional who comes into contact with children. The role of NSW Health Services in child protection is to identify and notify suspected child abuse and neglect and to provide treatment, crisis and ongoing counselling and medical examinations.
4. The role of NSW Health workers in relation to child protection is outlined in the documents *A Policy for Protecting Children and Young People from Physical Abuse, Sexual Abuse, Emotional Abuse and Neglect (March 1997)* and *Recognising and Notifying Child Abuse and Neglect: Procedures for Frontline Health Professionals (March 1997)*. Every health worker has a responsibility to be familiar with these documents. Copies of these documents are available through the Better Health Centre on (02) 9391 9569 or e-mail on DE1@doh.health.nsw.gov.au

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5. The *NSW Health Child Protection Policy and Procedures Manual (1997)* is a comprehensive manual which includes the policy document and the frontline guidelines in relation to child protection. It also contains an additional two sections relating to Sexual Assault Services and specialist services for children and families where physical or emotional abuse or neglect has occurred. It is the responsibility of all staff working in these services and all managers with responsibility for these services to be familiar with and adhere to the policies and procedures outlined in this manual.
6. NSW Health is committed to an interagency approach to child protection. The complexity of the problem of child abuse and neglect means that effective intervention requires cooperative and coordinated action across agencies.

What are the legal obligations and responsibilities of health practitioners towards children and their care giver(s)?

7. All health practitioners need to be clear that they understand their own legal obligations and responsibilities towards children and their care giver(s).
8. The Children (Care and Protection) Act 1987 establishes a process so that people who believe, on reasonable grounds, that a child is being or is in danger of being abused can give information to the Department of Community Services so that action can be taken to protect the child.
9. All health workers must notify suspected physical, sexual and emotional abuse and neglect of children.
10. Verbal or written information provided to the Department of Community Services concerning a child who has been or is in danger of being abused, or is in need of care, is a notification.
11. Medical Practitioners are required under Section 22 of the Children (Care and Protection) Act 1987 to report child abuse or suspected abuse of children under the age of 16 years of age. Mandatory notifiers who fail to comply with Section 22 of this Act are guilty of an offence.
12. In accordance with the Minister's direction of 1988 and 1993, all NSW Health workers employed by area and rural health services, and second and third Schedule public hospitals who form the belief upon reasonable grounds that a child under 16 years of age has been or is in danger of being abused are to notify all such cases to the Department of Community Services.
13. Health workers who are aware that the particular case over which they have concerns has already been reported to the Department of Community Services by the employing body or by another health worker employed by the body, are exempt from this direction.

14. The Children (Care and Protection) Act 1987 also legislates for voluntary reporting. It states that *any person who forms the belief upon reasonable grounds that a child has been, or is in danger of being abused, or is a child in need of care, may cause the Director General of the Department of Community Services to be notified of that belief and the grounds therefore, either orally or in writing.* Protection is provided to a person making a notification in accordance with paragraphs 22 and 23.
15. The Children (Care and Protection) Amendment (Disclosure of Information) Act 1996 amended Section 22 of the Children (Care and Protection) Act 1987 to allow voluntary notification to extend to any person who believes on reasonable grounds that a child who is aged 16 or 17 years has been, or is in danger of being, abused.

How should notifications be made to the Department of Community Services?

16. All notifications should be conducted in line with the requirements of the Children (Care and Protection) Act 1987 as outlined in the NSW Child Protection Council's *Interagency Guidelines on Child Protection Intervention* ("the Interagency Guidelines") and NSW Health's *Recognising and Notifying Child Abuse and Neglect: Procedures for Front Line Health Professionals* ("the Front Line Guidelines"). Notifications should be made on the attached *Form for Notification of Suspected Child Abuse or Neglect*.

Why should health workers notify?

17. If children are not the subject of a notification following concerns or suspicion regarding child abuse or neglect, their safety needs cannot be properly assessed and they may be left vulnerable to further maltreatment or abuse. The Department of Community Services is the statutory body in NSW with the power to investigate the protective needs of children.
18. Anyone, regardless of professional status, has the legal right to report concerns for a child to the Department of Community Services, along with the NSW Police Service, whether or not this view is held by all the health team members involved with a case. If there is disagreement regarding suspected abuse, the individual health team member who suspects abuse should still notify and is still covered by the provisions in the Act.

Allegations of child abuse by a NSW Health Employee

19. Allegations of child abuse where the alleged assailant is an employee of the NSW Health Department, an area or rural health service, second or third Schedule public hospital, or Ambulance Service of NSW are to be reported immediately to the Department of Community Services, the Police and the Chief Executive Officer of the service. In addition to the procedures outlined in this circular, Workers are to adhere to circular 97/80 entitled *Procedures for Recruitment and Employment of Staff and Other Persons - Vetting and Management of Allegations and Improper Conduct* regarding management of these cases and additionally Circular 96/69 *Critical Incident Reporting Procedures* regarding critical incidents.

Exchange of information between NSW Health and the Department of Community Services

20. Arrangements for the care and protection of children can only be successful if professionals and agencies with responsibilities and obligations to ensure their protection have access to relevant information. Relevant information assists in the assessment of risk and the needs of the child and family.
21. Effective child protection is dependent upon shared information. Information may include details concerning the child or information concerning a parent, caregiver or household members which is relevant to the child's safety and assessment of risk to the child.
22. Information exchange is consistent with the Government's commitment to a high degree of cooperation among agencies with child protection responsibilities and which have a responsibility for the protection of children.
23. The Children (Care and Protection) Amendment (Disclosure of Information) Act 1996 requires a prescribed body to furnish the Director General of Community Services with information relating to the welfare of a particular child, or class of children, in the course of an investigation where directed to do so by the Director-General of the Department of Community Services. A "prescribed body" includes Government Departments, Area Health Services and Public Hospitals. This means staff must provide information that they have available when asked to do so by the Department of Community Services.
24. The Department of Community Services will request information using the "*Request for Information on the Safety and Wellbeing of a Child who is Subject of a Notification*" form. Information will be provided by health workers using the form "*Response to a request for information*". A copy of both of these forms is attached and can also be found in all child protection procedure manuals including the Interagency Guidelines and the Front Line Guidelines.

What protections exist for health employees who make a notification or exchange information in accordance with the Children (Care and Protection) Act 1987?

25. Notifying (as outlined in paragraphs 7-11) or furnishing information (as outlined in paragraphs 17-18) in accordance with the provisions of the Children (Care and Protection) Act will:
- not be held to constitute a breach of professional etiquette or ethics or a departure from acceptable standards of professional conduct;
 - not constitute grounds for liability for defamation,
 - not constitute a ground for civil proceedings for malicious prosecution

where the information is provided in good faith and with reasonable care.

26. In the case of a notification, the Children (Care and Protection) Act 1987 provides that, except for Children's Court proceedings, the notification is not admissible in evidence, nor can any person be compelled to produce it or give evidence as to its contents.
27. As exchange of information is mandated through the legislation, provided workers comply with the terms of the requirements (ie as directed by this policy), they will not be liable as they are simply fulfilling a legislative obligation. Section 22(8) (the indemnity provision) has also been amended and extended to cover cases where a person provides info to DCS in line with the new provisions, through specifically including reference to subsections (7B) and (7C).
28. These protections also have particular relevance when those persons who are the subject of a notification of suspected child abuse consider themselves aggrieved and initiate grievance proceedings against the notifier. In administering grievance procedures, recognition must be given to this important public interest and a need to balance it with the rights established by grievance policies.
29. In line with these considerations, grievance proceedings shall not be initiated or allowed to progress against any person in relation to that person's notification of suspected child abuse to the Department of Community Services. Existing grievance policies should be amended to recognise this.

Training programs for employees

30. All staff in Area Health Services should have basic training in the recognition and notification of child abuse and neglect. Staff development and induction programs for relevant employees should also include information and access to training programs regarding effective intervention in child abuse cases, local protocols for case management, the employee's obligations and protections provided under the legislation.
31. Training programs for staff are available through the NSW Child Protection Council and the Education Centre Against Violence (ph: (02) 9840 3737).

What is child abuse and neglect?

32. Child abuse and neglect covers a wide range of harms and behaviours. Children may be harmed by a parent, other relative, a caregiver (ie persons who, while not a parent, have actual custody of the child), a sibling, acquaintance or a stranger.
33. The legal context of child abuse and neglect is set out in a number of Acts of Parliament. The law covers two main areas: the care and protection of children as provided for in the Children (Care and Protection) Act 1987; and the criminal law as set out in the Crimes Act 1900, as amended, and other statutes.
34. **Child abuse** is a term commonly used to refer to different types of child maltreatment. Section 3 of the Children (Care and Protection) Act 1987 defines 'child' for the purpose of that act to mean a person who is under the age of 18 years. It states as follows:

'abuse', in relation to a child, means:

- (a) assault (including sexual assault) the child; or
- (b) ill-treat the child; or
- (c) expose or subject the child to behaviour that psychologically harms the child,

whether or not, in any case, with the consent of the child.

35. Abuse of a child is an offence under Section 25 of the Children (Care and Protection) Act, 1987. A person who causes or procures a child to be abused is also guilty of an offence under this Section.

36. Child abuse is a term commonly used to refer to a range of offences under the Crimes Act 1900 which result in harm to a child or involve behaviours to which a child cannot give consent.
37. **Child sexual abuse** is any sexual act or sexual threat imposed on a child. Adults or adolescents who perpetrate child sexual abuse exploit the dependency and vulnerability of children. Coercion, which may be either physical or psychological, is intrinsic in sexual abuse and differentiates such abuse from consensual peer activity.
38. The laws concerning offences in sexual assault are sexual intercourse, indecent assault and acts of indecency. Sexual Intercourse under the Crimes Act 1900 is defined in section 61A(1) as:
- (a) sexual connection occasioned by the penetration to any extent of the genitalia of a female person or the anus of any person by:
 - (i) any part of the body of another person; or
 - (ii) an object manipulated by another person, except where the penetration is carried out for proper medical purposes;
 - (b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person;
 - (c) cunnilingus; or
 - (d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).
39. An indecent assault is an assault, a touching without consent, accompanied by an indecent act. An indecent act is one which right-minded persons would consider contrary to community standards of decency (Chief Justice Gleeson, 17.2.93).
40. A child cannot consent to behaviours which are offences under the Crimes Act 1900.
41. **Physical assault.** There are many behaviours which may constitute assault and the law specifically takes into account the circumstances of the victim which may mean that the offence is regarded as a more serious assault. The vulnerability of a child, and hence the likelihood of sustaining a more serious injury or permanent injury means that assault charges may be warranted in cases of physical abuse.

42. Female genital mutilation is also a crime. The Crimes (Female Genital Mutilation) Act 1995 states that anyone who is found guilty of practising female genital mutilation or who aids, abets, counsels or procures someone else to practise female genital mutilation on another person is liable to penal servitude of up to seven years. It is also illegal for female genital mutilation to be carried out overseas on anyone who is normally resident in NSW.
43. Physical abuse refers to non accidental injury to a child by a parent, care giver or another person responsible for the child. It includes injuries which are caused by excessive discipline, severe beatings or shakings, bruising, lacerations or welts, burns, fractures or dislocations, female genital mutilation, attempted suffocation, strangulation or death.
44. **Emotional abuse** encompasses a range of behaviours that harm a child. It is behaviour by a parent or care giver which can destroy the confidence of a child resulting in significant emotional deprivation or trauma. It involves impairment of a child's social, emotional, cognitive, intellectual development and/or disturbance of a child's behaviour. Emotional abuse includes a child witnessing domestic violence.
45. **Domestic violence** is violence, abuse and intimidatory behaviour perpetrated by one person against another in a personal, intimate relationship. Domestic violence occurs between two people in which one has power over the other causing fear, physical and/or psychological harm. It has a profound effect on children and constitutes a form of child abuse. Children can be affected by being exposed to violence in the parental relationship, by becoming the victims of violence, or a combination of the two.
46. **Neglect** of children is an offence under Section 26 of the Children (Care and Protection) Act 1987. Section 26 of that Act states:
- “A person, whether or not the parent of the child who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid or lodging for a child in his or her care, is guilty of an offence.”
47. Child neglect occurs where a child is harmed by the failure to provide the basic physical and emotional necessities of life. Neglect is characterised as a continuum of omissions in parental caretaking.

Questions about this circular

48. Any inquiries regarding this circular may be directed to Ms Melissa Gibson, Health Services Policy Branch on (02) 9391-9506 or Legal Branch on 9391-9606.

Michael Reid
Director-General