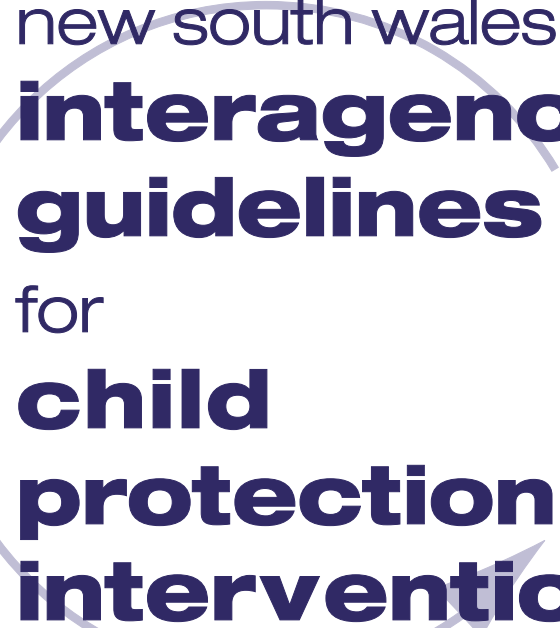


new south wales
**interagency
guidelines**
for
**child
protection
intervention**

2000 edition



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Reviewed and updated by:

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Premier's Foreword



One of the most important concerns of any community should be the health, safety and well-being of its children and young people.

Children and young people should grow up free of violence and exploitation. They should be able to develop physically, intellectually, emotionally and socially in conditions of freedom and dignity.

This has been a priority for my Government. We have introduced the *Children and Young Persons (Care and Protection) Act 1998* to establish a solid basis for building stronger families, tackling problems early and providing innovative, flexible services to children, young people and their families. In addition, this new legislation reinforces our commitment to providing children, young people and their families with the opportunity to participate fully in decisions that affect them.

Of course, protecting children and young people from abuse and neglect is the responsibility of the whole community. No single person or agency has all the knowledge, skills or authority to safeguard a child or young person from, or to deal with the consequences of, abuse or neglect.

The new Act recognises this and establishes, for the first time, a statutory framework for co-operative and co-ordinated work between government, community sector agencies and families in the care and protection of children and young people.

The Interagency Guidelines for Child Protection Intervention set out in practical terms this framework of interagency co-operation. This is intended to not only help professionals and agencies in their work with children, young people and families, but to also achieve high standards of interagency practice and support.

This third edition of the Guidelines has been revised to include important changes to policy and practice that are primarily the result of the new Act and other legislation, such as the *Commission for Children and Young People Act 1998* and recent amendments to the *Ombudsman Act 1974*. The revisions also incorporate recommendations from an evaluation of the 1997 Interagency Guidelines. I am glad that children and young people have participated in all stages of the revision process.

The new edition of the Guidelines has been adopted by all New South Wales Government departments and agencies involved in the protection of children and young people.

Through these Guidelines we will work together to strengthen families and help keep children and young people safe.

A handwritten signature in dark blue ink, appearing to read 'Bob Carr', is positioned above the printed name and title.

Bob Carr

Premier

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using the guidelines

The purpose of these Guidelines is to assist professionals and agencies in their work with children and families where there are child protection concerns. While individual agencies have broad responsibilities relating to strengthening families and preventing child abuse, the focus of these Guidelines is the interagency approach to child protection intervention.

The Guidelines are in five parts.

part I provides the background to the NSW approach to child protection. It sets the goals and expectations for the interagency approach and provides practitioners with a clear expectation of the importance of this approach in working with children, young people and families where there are child protection concerns.

part II provides information on key concepts supporting interagency practice. It includes key definitions, processes for exchange of information and for resolving differences.

part III relates to the interagency approach to practice. It presents a framework for child protection intervention that includes six stages with major activities within each stage described.

parts IV and V outline criminal prosecutions and disciplinary procedures.

The Guidelines should be used by agencies as a basis for working together in the interests of a child or young person and their family. The needs of children, young people and families will often mean that a range of responses are required from different agencies.

In using the Guidelines practitioners should:

- be acquainted with the child protection policies and procedures of their own agency
- understand that the Guidelines are not a practice guide for any particular agency or profession and do not replace professional judgement
- read the Guidelines in conjunction with any legislation or other relevant instructions.

There are a number of conventions in the document to assist in the use of the Guidelines.

Where particular agencies have a specific role an icon for the agency will appear in the text to assist in quick identification of responsibilities:



Department of Community Services



NSW Police Service



NSW Health



Department of Education and Training



Courts



Non-Government Organisations



Office of the Director of Public Prosecutions



Department of Juvenile Justice



Office of the Ombudsman

Suggestions or points for practice are highlighted and flow charts are included to provide an overview of complex processes. Important information is tagged by a note; “refer” leads to the specific references.

A shared understanding of terms and definitions is essential for an effective interagency approach so a glossary has been included.

The NSW Ombudsman has provided advice on investigations of child abuse allegations against employees of designated agencies. This advice does not form part of the NSW Government Guidelines on Child Protection Intervention, but is attached to the Guidelines for the convenience of agencies.

1.1 child protection: the NSW government commitment

The NSW Government believes that one of the primary concerns of any community should be the health and well-being of its children and young people. Children and young people should be able to grow up in an environment which enables them to develop physically, intellectually and socially in conditions of freedom and dignity.

The NSW Government is committed to a coordinated and comprehensive response to promote the protection of children and young people. Effective care and protection incorporates community action to:

- prevent and reduce the abuse and neglect of children or young people in the community
- provide support to families experiencing difficulties
- respond to reports of risk of harm so that the safety of children and young people is effectively addressed and appropriate support is provided
- ensure offenders are appropriately sanctioned.

The Government recognises that there are common features that enable consistent procedures to be developed and implemented within a best practice framework. It also recognises that physical abuse, emotional abuse, neglect and child sexual assault will require different and specialised responses.

1.2 principles for child protection intervention

Child abuse is a complex and serious problem that may occur in the lives of children, young people and their families. Often it occurs in environments that are isolated and stressful and affects those who are most vulnerable. Child abuse refers to non-accidental physical injury, neglect, psychological harm or sexual exploitation of children and young people and requires different and specialized response. In its most serious forms abuse can lead to death or long term harm to the physical or emotional well-being of a child or young person.

The NSW Government recognises that there are common features that enable consistent procedures to be developed and implemented within a good practice framework and has adopted the following principles to guide agency decisions on child protection and provide a framework for individual agency policies, practices and procedures:

- the safety, welfare and well-being of the child or young person are paramount
- children and young people must be given the opportunity to participate at a level appropriate to their age and development in decisions which significantly impact on their lives
- child protection decisions must take account of the culture, disability, language, religion and sexuality of the child or young person, family and carers
- families must be given an opportunity to participate in decisions which affect the safety, welfare and well-being of a child or young person
- acting to protect a child or young person, practitioners or agencies should maintain the child's or the young person's relationships and sense of identity and should intervene only as far as is required to secure their safety, welfare and well-being
- children and young people who are unable to live with their families will be provided with an environment which meets their care, support, education and health needs
- government agencies will work in partnership with each other, with non-government organisations and with the child or young person and their family to secure and sustain their safety, welfare and well-being
- government and non-government agencies will follow policies and practices, that staff are qualified, trained and supervised and the Working With Children Check is conducted.

1.3 interagency work

Child protection is a responsibility of the whole community and one specifically shared by those government and non-government agencies which provide any form of care for children, young people and their families or which come into contact with them in the course of their work. No single agency has all the knowledge, skills or authority to safeguard a child or young person from abuse or neglect and to prosecute an alleged offender. Child protection requires the best expertise and resources available and this is only achieved by coordination. In child protection the emphasis is on the child, young person or family receiving a service so that the child or young person is

safe. It is the task of agencies to coordinate their efforts to achieve a good outcome for the child and young person.

refer Sections 17 and 18 *Children and Young Persons (Care & Protection) Act 1998*

Experience has proven that coordinated responses can reduce the number of interviews a child and young person undergoes, minimise the number of persons involved in the case, enhance the quality of evidence discovered for civil litigation or criminal prosecutions, provide critical information for family services, and minimise the likelihood of conflicts among agencies with different philosophies and mandates.

These Guidelines are one strategy for improving cooperation and coordinated effort across agencies in responding to a child protection case. Other strategies involve legislation, policy, organisational structures and training.

1.3.1 expectations for interagency work

As a basis for interagency child protection work, it is expected that practitioners and agencies will share the following:

- an understanding of the aims of intervention and of what is good practice
- an appreciation of and respect for different roles and different contributions of practitioners
- commitment to partnership between the government and non-government sectors in achieving good practice responses
- an understanding of the context in which agencies work and acknowledgment of their constraints
- preference for coordinated effort rather than unilateral action by a single agency or uncoordinated action by a number of agencies
- a willingness to learn from each other
- belief in accountability to clients, to each other, and to the community.

In carrying out their duties practitioners and agencies will be conscious of:

- a child's or young person's immediate needs and assessed longer term needs for safety, nurturing and specialised assistance
- the need for prompt and purposeful information exchange between agencies in the interests of the immediate and ongoing safety of the child or young person

- clear division of responsibilities for the practitioners and agencies involved
- the importance of a case manager for every case
- the importance of following the processes for interagency planning in assessments and investigations in order to minimise trauma to families and protect the best interests of children and young people
- the need to deal constructively and promptly with difficulties and differences resulting in conflict between agencies
- differing experiences of child abuse and neglect for individuals that require individually planned responses.

1.4 roles and responsibilities

Main government agencies – The NSW Government has established the following roles and responsibilities for government agencies which have the most direct involvement in the protection of children and young people.

Lead responsibility – The Department of Community Services has the ‘lead responsibility’ in providing and co-ordinating the community response where intervention is necessary for the care and protection of children and young people.

The Department of Community Services has wide-ranging statutory powers to enable it to carry out its role in protecting children and young people from abuse and neglect on behalf of the community. While other agencies have key roles in child protection, the Department of Community Services has the mandate to coordinate responses and to ask other agencies to provide appropriate care and support to children, young people and their families.

The Department of Community Services’ lead role does not detract from the joint responsibility of all relevant agencies to protect children and young people who are at risk of harm and to work together to provide a coordinated and comprehensive response to their needs.

1.4.1 Department of Community Services

ROLE

The role of the Department of Community Services in child protection is prescribed by the *Children and Young Persons (Care & Protection) Act 1998*. The role includes providing or arranging services to children, young people and parents when a request for assistance is received; receiving and

assessing reports of child abuse and neglect; investigating those reports where there is a likelihood of risk of harm to the child or young person; acting to maintain the safety of children and young people; monitoring the safety of the child when serious harm has been identified; developing case plans; ensuring the provision of quality out-of-home care and support services for children and young people unable to live with their family; initiating action to protect children through alternative dispute resolution or care proceedings in the Children's Court and providing and arranging support services to children, young people and their families.

RESPONSIBILITIES

As a service provider:

- responding to requests for assistance by children, young people and families
- receiving and assessing reports of children and young people who are at risk of harm
- investigating reports where the Department believes there is a likelihood of risk of harm to the child or young person
- planning, conducting and managing, with Police (and with NSW Health where medical examinations are required), joint investigations of child sexual abuse and serious physical abuse reports, through Joint Investigation Teams or a Joint Investigation Response
- undertaking risk and needs assessments of the child or young person and the family to ensure a child or young person's safety, welfare and well-being are paramount
- determining if a child or young person is in need of care and protection
- informing reporting agencies of the progress and outcomes of assessments and investigations as permitted by law
- monitoring the child, young person and family to maintain a safe and secure environment
- providing, arranging and requesting care and support services for children, young people and families
- informing children and young people in the Department's care of their rights to be protected from abuse and of avenues of support available to them
- arranging and/or providing support and services for homeless children and young people
- engaging with and empowering children, young people, families and where appropriate communities to participate in decision-making

- providing, or negotiating with other agencies to provide, high quality out-of-home care and support services to children and young people
- making timely and appropriate referrals to care and support services in accord with agencies roles and responsibilities
- arranging alternative dispute resolution for children, young people and families where this will assist in problem solving
- gathering evidence and initiating care proceedings before the Children's Court
- developing, implementing and undertaking educational and preventative programs aimed at protecting children and young people
- raising community awareness about the safety, welfare and well-being of children and young people.

As an employer:

- ensuring all relevant staff are aware of their obligations to report suspected risk of harm, procedures for reporting and procedures for implementing care and support action
- ensuring all relevant staff are aware of the indicators of child abuse and neglect
- providing training and supervision for staff in the recognition and reporting of suspected risk of harm and in the implementation of the Department's child protection policy and procedures
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made against an employee, and ensuring that any such allegations and convictions are properly investigated and appropriate action taken in relation to the finding
- investigating and responding to allegations of abuse and neglect by Department of Community Services staff or carers.

As a funding and regulatory body:

- advising organisations funded and/or regulated by the Department of their responsibilities to protect children and young people
- informing non-government organisations about Working With Children Check obligations and assisting them in carrying out these obligations.

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law

- working with other government and non-government agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support families
- providing leadership in collaborative work with other government agencies and non-government organisations in areas where the Department has statutory responsibility
- providing educational programs to other agencies and the community to raise awareness of the need to promote the safety, welfare and well-being of children and young people and the skills to respond appropriately
- providing the Working With Children Check services to groups and agencies in the community services sector.

1.4.2 NSW Police Service

ROLE

The role of the NSW Police Service in child protection is to recognise, report and investigate child abuse and neglect, and initiate legal proceedings for child abuse and neglect offences under the *Crimes Act 1900* and the *Children & Young Persons (Care & Protection) Act 1998*. The Police Service, with the Department of Community Services, is a designated statutory authority responsible for the care and protection of children and young people, under the *Children & Young Persons (Care & Protection) Act 1998*. In addition police are the designated authority for applying for apprehended violence orders on behalf of children and young people as required under section 562C(3) of the *Crimes Act 1900*. Police assist with ensuring the safety and security of children and young people, their families and the workers in agencies involved in child protection intervention.

RESPONSIBILITIES

As a service provider:

- intervening in child abuse and neglect cases to ensure the immediate protection of children and young people including, where appropriate, the initiation of apprehended violence orders and/or criminal court proceedings
- planning, conducting and managing, with the Department of Community Services (and with NSW Health where medical examinations are required), joint investigations of child sexual abuse and serious physical abuse reports, through Joint Investigation Teams or a Joint Investigation Response

- informing relevant agencies of the progress and outcome of investigations and legal processes
- keeping children, young people and families informed about investigations and legal processes as required by the Charter of Victims Rights and making referrals to counselling and support services as required
- providing information to arrested persons regarding the Pre-Trial Diversion of Offenders (Child Sexual Assault) Program where relevant
- responding to information about abandoned children in cars or public places and locating missing children or young people
- locating children and young people at risk who have run away from placement
- referring children and young people to emergency interim placement following accidents and disasters and where the parent/carer has been hospitalised, arrested or is deceased.

As an employer:

- ensuring police are aware of their obligations to report suspected risk of harm, procedures for reporting and the implementation of care and support action
- ensuring police are aware of the indicators of child abuse and neglect
- providing training and development for police in the recognition and reporting of suspected risk of harm and in the implementation of the Police Service's child protection policy and procedures
- complying with the Working With Children Check requirements
- reporting to the Ombudsman any child abuse allegations/convictions made against an employee, and ensuring that the allegations/convictions made against the employee are investigated and appropriate action taken in relation to the finding.

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- supporting other agencies involved in child protection who do not have 24 hour service delivery in urgent matters, particularly in remote communities
- working with other government and non-government agencies within agreed, coordinated procedures to plan and provide services for the care and protection of children and young people, and to strengthen and support families

- conducting relevant criminal records and apprehended violence order checks as required for the Working With Children Check purposes
- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with Police Service responsibilities and policies.

1.4.3 NSW Health

ROLE

The role of NSW Health in child protection is to recognise and report children and young people who are at suspected risk of harm and to provide crisis counselling, ongoing counselling and medical examinations for children and young people who have experienced abuse or neglect. NSW Health offers preventative and educational programs for health workers and communities as well as special programs for children, young people and families who have experienced child abuse or neglect.

RESPONSIBILITIES

As a service provider:

- providing medical examinations including a developmental assessment for children and young people where there is an allegation of physical or sexual abuse or neglect
- providing psycho-social/psychiatric and developmental assessment of children and young people suspected of psychological abuse or neglect
- providing medical treatment of children and young people where abuse or neglect has been identified
- providing crisis and ongoing counselling and advocacy services for children and young people who have been sexually abused, their non-offending caregivers and siblings at Sexual Assault Services
- providing counselling for eligible child sexual offenders through the Pre-Trial Diversion of Offenders Program
- providing counselling (through NSW Health Department prescribed programs) for young people who have committed sexual offences and who are not eligible for programs provided by the Department of Juvenile Justice
- providing counselling for children under the age of ten who are exhibiting sexualised or sexually abusive behaviour

- providing counselling for children and young people (who have been physically abused, emotionally abused or neglected) and their families through Physical Abuse and Neglect of Children (PANOC) services
- providing court preparation and support to children and young people who have experienced abuse and also to their non-offending caregivers
- maintaining a victims register with the Mental Health Review Tribunal
- providing a range of health responses to children and young people where these are indicated including medical treatment, mental health services, health screening and community health services
- providing preventative programs, including early intervention services, for the community that aim to protect children and young people.

As an employer:

- ensuring all frontline health workers, their managers and other relevant staff are aware of their obligations to report suspected risk of harm, procedures for reporting and for implementing agreed care and support action
- ensuring all frontline health workers, their managers and other relevant staff are aware of the indicators of child abuse and neglect
- providing training and supervision for staff in the recognition and reporting of suspected risk of harm and in the implementation of the Department's child protection policy and procedures
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations/convictions made against an employee, and ensuring that the allegations/convictions made against the employee are investigated and appropriate action taken in relation to the finding.

As a funding and regulatory body:

- advising organisations funded by NSW Health of their responsibilities to protect children and young people
- informing non-government organisations funded by NSW Health about Working With Children Check obligations and assisting them in carrying out these obligations.

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- working with other government and non-government agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support families

- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with Departmental responsibilities and policies
- providing the Working With Children Check services to groups and agencies in the health sector.

1.4.4 Office of the Director of Public Prosecutions

ROLE

The role of the Office of the Director of Public Prosecutions in child protection is to conduct criminal and related proceedings with respect to sexual and other serious offences against children and young people.

RESPONSIBILITIES

As a service provider:

- screening cases to ensure the legal process is child and young person-focused and that prosecution proceeds where there is sufficient evidence and prosecution is required in the public interest
- prosecuting offenders in all courts in New South Wales
- communicating effectively with and appropriately supporting victims of crime and witnesses before and during court appearances
- appearing in appeals and related proceedings in the District, Supreme and High Courts.

As an employer:

- training staff to prepare skilled advocates and witness assistance officers for pre-court and court roles
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made against an employee, and ensuring that the allegations and convictions made against the employee are investigated and appropriate action taken in relation to the finding.

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- providing advice and consulting with the New South Wales Police Service in matters that are prosecuted

- working with other agencies throughout criminal proceedings to support children or young people who are victims and witnesses
- working with other government and non-government agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support families
- providing input into law reform issues in the area of child abuse and neglect
- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with ODPP responsibilities and policies.

note *Public interest* has a particular meaning for the Office of the Director of Public Prosecutions.

refer Office of the Director of Public Prosecutions, Policy Five, DPP Prosecution Policy and Guidelines, issued March 1998.

1.4.5 Department of Education and Training

ROLE

The role of the Department of Education and Training in child protection is to promote the safety, welfare and well-being of children and young people whether they are students, apprentices or trainees in schools, colleges, workplaces or programs conducted by the Department or under the auspices of the Department. Departmental employees also recognise and report children and young people suspected to be at risk of harm.

RESPONSIBILITIES

As a service provider:

- protecting children and young people from risk of harm while they are in the Department's care
- informing students, including apprentices and trainees, of their rights to be protected from abuse and of avenues for support if they have concerns about abuse. It will also provide child protection education to children and young people in schools and teach protective strategies to children in pre-school and child care centres
- ensuring that community members in its programs, such as tutors, community mentors or voluntary helpers, are aware of the Department's policy on child protection and any other obligations relating to the specific activity in which they are involved

As an employer:

- ensuring all relevant staff are aware of their obligations to report suspected risk of harm, procedures for reporting and procedures for implementing agreed care and support action
- ensuring all relevant staff are aware of the indicators of child abuse and neglect
- providing training and development for staff in professional standards related to relationships with students, trainees or apprentices and in the recognition and reporting of suspected risk of harm, implementing relevant curriculum and support strategies for students and implementing the Department's child protection policy and procedures
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made against an employee and ensuring that the allegations and convictions made against an employee are investigated and appropriate action taken in relation to the finding.

As a funding and regulatory body:

- advising organisations that it funds of relevant legislative requirements relating to the protection of children and young people from abuse and neglect, including the need for conducting the Working With Children Check for employees who will work with children and young people. The Department will also provide advice to these agencies and link them with relevant sources of support.
- advising registered training organisations, group training companies, industry training advisory bodies and other agencies involved with students, apprentices and trainees, of their responsibilities for the protection of children and young people under 18 years from abuse and for screening employees who will work with children and young people.

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- working with other agencies within agreed, coordinated procedures for the care and protection of children and young people in ways that strengthen and support the family
- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with Departmental responsibilities and policies

- providing Working With Children Check services to some groups and agencies in the education and training sector.

1.4.6 Department of Corrective Services

ROLE

The role of the Department of Corrective Services in child protection is to recognise and report children and young people who are at suspected risk of harm and protect children and young people under its care from all forms of harm. The Department of Corrective Services manages people both in the community and correctional centers convicted of sexual assault offences, offences involving violence against children and young people, or psychological abuse or neglect. The Department works with offenders and the community to reduce further incidence of harm to children and young people.

Because children and young people reside in some of the Department's correctional centres and visit all centres, the Department has a direct role in ensuring children and young people are safe while in correctional centres or other facilities. A role is also played by probation and parole officers when visiting offenders at home.

RESPONSIBILITIES

As a service provider:

- conducting risk assessment and comprehensive case planning for all persons imprisoned for convictions relating to abuse and neglect of a child or young person and, where appropriate, providing a range of interventions from education to treatment
- conducting risk assessment and case planning for those who have made application to have a child resident or on a long term visit with them in the correctional centre
- providing behavioural management and supervision to all child abuse or child neglect offenders in custody and in the community appropriate to their level of risk and need
- providing the range of programs and services appropriate to the level of risk and needs of the offender
- conducting risk assessments in ensuring supervision of sex offenders in all foreseen aspects of contact with children and young people
- maintaining a victims register requiring that the Department will respond to requests from registered victims for information concerning an offender's release from custody, escape, or eligibility for absence from custody.

As an employer:

- ensuring staff are aware of their obligations to report suspected risk of harm, procedures for reporting and procedures for implementing agreed care and support action
- ensuring staff are aware of the indicators of child abuse and neglect
- providing training and development for staff in the recognition and reporting of suspected risk of harm and in the implementation of the Department's child protection policy and procedures
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made against an employee, and ensuring that the allegations and convictions made against the employee are investigated and appropriate action taken in relation to the finding.

As a funding and regulatory body:

- advising organisations funded and/or regulated by the Department of their responsibilities to protect children and young people
- ensuring that agencies and organisations funded by the Department are aware of their responsibilities to report risk of harm from abuse or neglect and to protect and promote the welfare and well-being of children or young people in their care
- ensuring that funded organisations are aware of their responsibilities under the Working With Children Check.

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- informing police of any breaches of bail supervision or release conditions by persons charged or convicted of offences related to child abuse or neglect
- informing the Department of Community Services when people charged with or convicted of offences related to child abuse or neglect are to be included on pre-release programs or commit further relevant offences whilst under supervision
- working with other agencies within agreed arrangements to plan and provide protection services for identified children and young people
- informing the Department of Community Services office and/or the child's or the young person's case manager when an offender seeks contact with the child or young person who is the victim of child abuse, or if an offender seeks contact with other vulnerable children and young people

- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with Departmental responsibilities and policies.

1.4.7 Department of Juvenile Justice

ROLE

The role of the Department of Juvenile Justice in child protection is to recognise and report suspected risk of harm to children and young people in its care or who are under the supervision of the Department. The Department will act to assist in the protection of these children or young people.

RESPONSIBILITIES

As a service provider:

- providing services to children and young people in custody or on conditional release who are convicted of offences related to child abuse or neglect, or who are the victims of child abuse or neglect
- providing risk assessment and case planning for all young offenders in custody or under supervision in the community who have committed sex offences against children, and a range of interventions from individual to group counselling and treatment
- maintaining a victims' register, requiring that the Department will respond to requests from registered victims for information concerning an offender's release from custody, escape, or eligibility for absence from custody
- informing registered victims of impending parole hearings seeking their submissions for these hearings.

As an employer:

- ensuring staff are aware of their obligations to report suspected risk of harm, procedures for reporting and the implementation of care and support action
- ensuring staff are aware of the indicators of child abuse and neglect
- providing training and development for staff in the recognition and reporting of suspected risk of harm and in the implementation of the Department's child protection policy and procedures
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made against an employee, and ensuring that the allegations and convictions made against the employee are investigated and appropriate action taken in relation to the finding.

As a funding and regulatory agency:

- advising organisations funded and/or regulated by the Department of their responsibilities to protect children and young people
- informing associated non-government organisations about Working With Children Check obligations and assisting them in carrying out these obligations.

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- working with other agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people and to strengthen and support the family
- informing the case manager of changes to an offender's supervision plan or arrangements for contact with the family, particularly if these changes may endanger the safety or welfare of another child or young person
- informing police of any breaches of bail supervision, or release conditions of young people charged or convicted of offences related to child abuse and neglect, particularly if the safety or welfare of a child or young person is endangered
- informing the case manager when an offender seeks any form of contact with a victim who is a child or young person
- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with Departmental responsibilities and policies.

1.4.8 NSW Department of Sport and Recreation

ROLE

The role of the NSW Department of Sport and Recreation in child protection is to promote a safe environment for all children and young people and assist staff to recognise and report suspected risk of harm for children or young people who are in their care.

RESPONSIBILITIES**As a service provider:**

- promoting a safe environment for children and young people in the Department's care or in the care of paid or voluntary staff involved in sport and recreation activities conducted by the Department or under the auspices of the Department.

As an employer:

- ensuring all staff are aware of their obligations to report suspected risk of harm, procedures for reporting and the implementation of care and support action
- ensuring all staff are aware of the indicators of child abuse and neglect
- providing training and development for staff in the recognition and reporting of suspected risk of harm and in the implementation of the Department's child protection policy and procedures
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made against an employee, and ensuring that the allegations and convictions made against the employee are investigated and appropriate action taken in relation to the finding
- supervising, training and developing staff to assist them in identifying indicators of child abuse and neglect for children and young people and in carrying out their responsibilities for reporting.

As a funding and regulatory agency:

- assisting sporting and recreational organisations by raising awareness of their responsibilities to protect children and young people
- assisting organisations in the sport and recreation industry and organisations funded by the Department adopt a proactive and consistent approach to the protection of children and young people
- advising the sport and recreation industry and sporting organisations involved in child related employment of their responsibilities under the Working With Children Check for employees who will work with children and young people and assisting them in carrying out these obligations.

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- working with other agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support the family
- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with Departmental responsibilities and policies.

1.4.9 Ageing and Disability Department

ROLE

The role of the Ageing and Disability Department in child protection is to ensure all organisations it funds and regulates are made aware of their responsibility to protect children and young people, and to report cases of suspected risk of harm. The Ageing and Disability Department provides a focus for older people, adults, young people and children with disabilities and their carers by developing policy for ageing and disability, planning with other government agencies for integrated delivery of services, funding government and non-government organisations to provide services, monitoring the quality of services and collaborating with providers to improve service quality.

RESPONSIBILITIES

As a funding and regulatory agency:

- advising organisations funded and/or regulated by the Department of their responsibilities to protect children and young people
- ensuring organisations that it regulates are aware of Working With Children Check obligations and assisting them in carrying out these obligations.

As an employer:

- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made against an employee, and ensuring that the allegations and convictions made against the employee are investigated and appropriate action taken in relation to the finding.

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- working with other agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support the family, especially those with additional needs
- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with Departmental responsibilities and policies.

1.4.10 Department of Housing

ROLE

The role of the Department of Housing in child protection is to recognise and report suspected risk of harm, and to assist in ensuring the safety and security of children, young people and their families in services provided or funded through the organisation. The Department also provides services and programs that assist socially disadvantaged households, their children and families.

RESPONSIBILITIES

As a service provider:

- assisting in linking public housing tenant households that include children and young people to necessary support services, when required
- using best endeavours to provide housing assistance to eligible households where children and young people are at risk
- using best endeavours to provide assistance to young people in transition from out-of-home care to independent living
- ensuring that the safety and welfare of children is taken into consideration in the handling of cases of domestic violence amongst Departmental clients
- seeking the advice of the Department of Community Services where an application for housing assistance is received from a young person under 16 years of age
- providing tenancy and property management services for Aboriginal Housing Office properties.

As an employer:

- ensuring all client service staff and their managers are aware of their obligations to report suspected risk of harm, and of procedures for reporting, including procedures for reporting any child living away from home without parental permission
- ensuring all client service staff and their managers are aware of the indicators of child abuse and neglect
- providing training and development for client service staff in the recognition and reporting of suspected risk of harm and in the implementation of the Department's child protection policy and procedures
- ensuring that all client service staff are trained in policies and guidelines determining the provision of housing assistance for households where children or young people may be at risk

- reporting to the Ombudsman any allegations of child abuse made against an employee, ensuring the allegations are investigated and taking appropriate action in relation to any finding by the Ombudsman
- promoting professional standards amongst staff, particularly with regard to relationships with clients.

As a funding and regulatory agency:

- advising organisations funded and/or regulated by the Department of their responsibilities to protect children and young people
- informing organisations about any Working With Children Check obligations and assisting them in carrying out these obligations.

As an interagency partner:

- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with Departmental responsibilities and policies
- working with other agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support the family
- exchanging relevant information to progress investigations, assessments and case management as permitted by law.

1.4.11 NSW Ombudsman

ROLE

The role of the NSW Ombudsman in child protection is to monitor the investigation of allegations and convictions of child abuse made against employees in government and certain non-government agencies, such as all schools, child care centres and agencies providing substitute residential care. This role arises as a result of recent changes to the *Ombudsman Act 1974*. The Act requires the Ombudsman to determine whether an investigation of a child abuse allegation or conviction against an employee of a designated agency has been properly conducted and whether appropriate action was taken as a result of the investigation.

RESPONSIBILITIES

- ensuring designated government and non-government agencies are aware of their reporting obligations under the Act

- scrutinising the systems agencies have for preventing abuse of children and young people and for responding to allegations or convictions of child abuse
- monitoring agency investigations into abuse or, in some cases, conducting those investigations
- investigating complaints about inappropriate handling of responses to allegations of abuse of children and young people
- at the conclusion of a direct investigation, or after monitoring an investigation, providing the agency with recommendations for action in respect to the matter
- where appropriate, disclosing information about child abuse to police, other investigative bodies or the Commissioner for Children and Young People
- ensuring any allegations of abuse or misconduct against employees of the Ombudsman are dealt with by referral to ICAC, the Department of Community Services or the police as appropriate.

1.4.12 courts and tribunals

The role of courts and tribunals in child protection is to provide independent and impartial resolution of legal disputes involving or affecting children and young people. These disputes can include criminal matters in which a person is charged with an offence against a child, decisions about whether a person convicted of a serious sex offence may be employed in child-related employment, care matters in which it is alleged that a child is at risk of harm and in need of care due to abuse or neglect, and disputes between separating parents about residence, contact or other specific issues relating to their children.

The courts and tribunals of NSW which play a role in child protection are administered by the NSW Attorney General's Department and include the Supreme, District and Local Courts, the Children's Court, the Industrial Relations Commission and the Administrative Decisions Tribunal.

The Family Court of Australia also plays a role in child protection. This court is administered by the Commonwealth Attorney General's Department.

■ Children's Court

ROLE

The role of the Children's Court in child protection is prescribed in the *Children and Young Persons (Care and Protection) Act 1998* and the *Children's Court Act 1987*. The Children's Court is responsible for

hearing and determining the majority of applications for care orders in respect of children and young people.

RESPONSIBILITIES

Where an application is made to the Children's Court alleging that a child or young person is in need of care, the Children's Court is responsible for:

- ensuring that the best interests of the children and young people are its paramount consideration
- ensuring that, taking into account the age and developmental capacity of the children involved in the proceedings, children and young people have the fullest opportunity to be heard and to participate in the proceedings, including by way of appointing a legal representative for the child or young person
- ensuring that all other interested and relevant persons, including parents, persons with parental responsibility or siblings, have the fullest opportunity to be heard and to participate in the proceedings
- ensuring that Court processes are independent, impartial and fair to all concerned.

■ Children's Court Clinic

ROLE

The role of the Children's Court Clinic in child protection is to assist the Children's Court to discharge its role and responsibilities in certain matters. Where ordered to do so by the Children's Court, it is the role of the Children's Court Clinic to prepare an independent clinical assessment of a child, a young person and/or an adult, who has or who is seeking to have parental responsibility for the child or young person, upon request by the Children's Court. Such assessments are independent, in the sense that the expert is not on the side of any of the parties to the proceedings.

RESPONSIBILITIES

As a service provider:

- providing expert clinical assessments of children, young people and their families involved in care proceedings, and reporting the findings to the Children's Court for use as evidence in the proceedings
- providing training and information to the Children's Court in respect of psycho-social/psychological issues that may arise in proceedings involving children and young people.

As an employer:

- providing training and development to staff and consultants in recognising suspected risk of harm and in meeting the Clinic's requirements for managing or reporting such risk
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations made against an employee and ensuring that the allegations made against the employee are investigated and appropriate action taken in relation to the finding.

■ **Local, District and Supreme Courts**

ROLES

The role of the Local, District and Supreme Courts in child protection is to manage and adjudicate criminal proceedings when a person is charged with abusing, neglecting or otherwise harming a child or young person in violation of the criminal law. The District Court also hears, in its civil jurisdiction, appeals against decisions of the Children's Court and in these cases its functions are similar to those of the Children's Court.

RESPONSIBILITIES

These courts are responsible for ensuring that court processes are independent, impartial and fair both to persons charged with an offence and to the child or young person who is the alleged victim of the offence and may appear as a witness in the proceedings. They should provide a safe place for children waiting at court and ensure the availability of the relevant technology and facilities for children to give evidence (*Evidence (Children) Act 1997*).

■ **Administrative Decisions Tribunal and Industrial Relations Commission**

ROLES

The roles of the Administrative Decisions Tribunal and the Industrial Relations Commission in child protection are to hear and determine applications for an exemption order under the *Child Protection (Prohibited Employment) Act 1998*.

In addition, the Industrial Relations Commission may hear and determine applications by employees who claim to have been unfairly dismissed as a result of child protection-related issues. Finally, the Administrative Decisions Tribunal may hear and determine appeals against some decisions of the Department of Community Services, including decisions about the placement of children for whom the

Department has parental responsibility and refusals to provide information or assistance under NSW adoption laws.

RESPONSIBILITIES

In undertaking these roles, the Administrative Decisions Tribunal and the Industrial Relations Commission are responsible for ensuring that their hearing processes are independent, impartial and fair to all concerned and that the best interests of the child or young person are their paramount consideration.

■ Family Court of Australia

ROLE

The role of the Family Court in child protection is to recognise and report risk of harm and to manage and adjudicate disputes between parents or other individuals with parental responsibility about residence, contact or other specific issues relating to children or young people.

RESPONSIBILITIES

As a service provider:

- ensuring that the best interests of the children or young people involved are the paramount consideration in any decisions about them. This includes the need to protect the child or young person from physical or psychological harm and any family violence involving the child or young person or any member of the child's or young person's family
- ensuring that court processes are independent, impartial and fair to all concerned
- identifying and reporting to the Department of Community Services matters in which it appears to the Family Court that a child or young person is at suspected risk of harm or actual harm
- providing conciliation counselling and mediation to assist families to resolve their disputes without the need for a contested hearing in a manner that promotes the best interests of the children or young people involved.

As an employer:

- developing and training staff to recognise suspected risk of harm or actual harm and to report concerns to the Department of Community Services
- conducting the Working With Children Check.

As an interagency partner:

- working with other agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support the family
- exchanging relevant information to progress investigations, assessments and case management as permitted by law.

1.4.13 Commission for Children and Young People

ROLE

The role of the Commission for Children and Young People in child protection is to promote the interests and needs of vulnerable children and young people. The Commission has a key role in monitoring the Working With Children Check for NSW and in conducting Working With Children Check activities. It also promotes children's and young people's participation in decisions that affect them. The Commissioner is convenor of the Child Death Review Team.

RESPONSIBILITIES

- promoting the participation of children and young people in decision-making processes that affect their lives and encouraging agencies to seek the participation of children and young people
- promoting and monitoring the overall safety, welfare and well-being of children and young people and monitoring trends in complaints
- conducting special inquiries into issues affecting children and young people
- making recommendations to agencies on legislation, policies, practices and services affecting children and young people
- conducting, promoting and monitoring training, public awareness and research, and promoting the provision of information and advice to assist children and young people
- monitoring screening for child-related employment, including auditing compliance with the procedures and standards of the Working With Children Check
- conducting the Working With Children Check
- making recommendations to the Premier about procedures and standards for the Working With Children Check

- collecting and maintaining a database of relevant completed disciplinary proceedings about a person
- providing access to information on the database for the purposes of the Working With Children Check to those bodies that have entered into a Memorandum of Understanding with the Commission
- developing and administering a voluntary accreditation scheme for those working with sex offenders
- recognising and reporting suspected risk of harm.

1.4.14 Children's Guardian

ROLE

The role of the Children's Guardian in child protection is to exercise parental responsibility for a child or young person. Additionally the Guardian promotes the interests of children and young people in out-of-home care and safeguards and promotes their rights.

RESPONSIBILITIES

- exercising, subject to any direction of the Minister for Community Services, the parental responsibilities of the Minister for a child or young person for the benefit of that person
- promoting the best interests of all children and young people in out-of-home care
- ensuring the rights of all children and young people in out-of-home care are safeguarded and promoted
- examining a copy of the case plan for each child or young person in out-of-home care and a copy of each report following a regular review of the case plan
- accrediting designated agencies and monitoring their responsibilities under the *Children and Young Persons (Care and Protection) Act 1998*
- removing responsibility for daily care and control of a child or young person from an authorised carer
- using best endeavours to informally resolve disputes between children and young people, parents, relatives or another person connected to the child or young person, designated agencies or an authorised carer
- applying for reviews of Children's Court orders
- reviewing compulsory assistance orders

- exchanging information to progress investigations, assessments and case management as permitted by law.

1.4.15 Community Services Commission

ROLE

The role of the Community Services Commission in child protection is to recognise and report suspected risk of harm from abuse and neglect of children and young people when it comes to the agency's attention. This role is also undertaken by the Community Visitors Scheme, which is co-ordinated through the Commission. The Commission may investigate complaints where it is alleged that insufficient or inappropriate action has been taken by the Department of Community Services in relation to child protection reports. The Commission's role in those instances would be to provide for the resolution of the complaint.

RESPONSIBILITIES

As a service provider:

- Informing and educating consumers of community services, including children and young people, of their right to complain about access to services or about unreasonable conduct in the provision of services
- Investigating complaints about access to and provision of community services, including child protection intervention and substitute care services; review the circumstances of children and young people in care; and undertake inquiries into matters affecting children and young people as consumers of community services
- Co-ordinating the Community Visitors Scheme, which promotes and advocates for the interests of children, young people and people with a disability in full-time care
- Providing education and training for Community Visitors about indicators of abuse and neglect and their obligation to report suspected risk of harm from abuse and neglect and procedures for reporting.
- Promoting the provision of timely, high-quality care and protection intervention and support by service providers.

As an employer

- Ensuring all relevant staff are aware of their obligations to report suspected risk of harm and procedures for reporting
- Ensuring all relevant staff are aware of the indicators of child abuse and neglect

- Providing training and development for staff in the recognition and reporting of suspected risk of harm
- Conducting the Working With Children Check.
- Exchanging relevant information to progress investigations, assessments and case management as permitted by law.

1.4.16 Health Care Complaints Commission

ROLE

The role of the Health Care Complaints Commission in child protection is to act in the public interest by investigating, monitoring, reviewing and resolving complaints about health care with a view to maintaining, promoting and improving health standards and the quality of health care services in New South Wales.

RESPONSIBILITIES

- receiving and dealing with complaints concerning professional practice and conduct of health practitioners and health services;
- resolving complaints with the parties;
- providing opportunities for people to resolve their complaints and concerns locally;
- investigating complaints, recommending and taking appropriate action;
- prosecuting disciplinary cases before appropriate Tribunals and committees;
- publishing and distributing helpful information about commission work and activities;
- advising the Minister and others on trends in complaints;
- consulting with key consumers and other stakeholders.

1.4.17 Local Government Authorities

ROLE

The role of local councils in child protection is to recognise and report children and young people in its programs who are at suspected risk of harm. Local government is a major provider of child care services and some Councils provide other services such as family support, neighbourhood centres and toy libraries. Local government's charter

also involves providing services and facilities directly or on behalf of other governments.

RESPONSIBILITIES

As a service provider:

- providing care and support services to children, young people and families
- promoting the safety, welfare and well-being of children and young people in their programs.

As an employer:

- ensuring relevant staff, contractors and managers are aware of their obligations to report suspected risk of harm and procedures for reporting
- ensuring relevant staff, contractors and managers are aware of the indicators of child abuse and neglect,
- providing training and development for relevant staff in the recognition and reporting of suspected risk of harm
- providing reporting procedures and professional standards for staff relationships with children, young people and families
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made against an employee, and ensuring that the allegations and convictions made against the employee are investigated and appropriate action taken in relation to the finding.

As a funding body:

- reviewing services to ensure processes are child and young person focused.

As interagency partners:

- responding to requests for services from the Department of Community Services
- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- working with other agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children, and to strengthen and support the family.

1.4.18 non-government organisations

ROLE

A range of non-government agencies provide services to children, young people and their families. Many more come into contact with them in the course of their work. Some agencies provide services to children, young people and their families where abuse or neglect has occurred. Others provide services that include training, family support, counselling, child care, therapy, out-of-home care, residential care, and accommodation for homeless people and for women and children escaping domestic violence. Some provide specialist assistance and support to children, young people and families and others more general services for the community as a whole. Those who work with children and young people are required by law to report suspected risk of harm.

Non-government organisations are autonomous bodies. Although the Guidelines are not prescriptive, it is expected that most non-government organisations will support and work in accordance with the principles established in the Guidelines.

Some of the key non-government services for children, young people and families include:

Children's services

The role of children's services is to provide care and education for children up to the age of 12 years. They often act as a non-stigmatising form of family support and early intervention. Children's services staff, because of their close contact with children and families, play an important role in recognising and reporting child abuse and neglect and in promoting the safety, welfare and well-being of children. Services may also provide additional support for families in difficulty through respite care, or access and referral to information and resources. Services may also work directly with children who have suffered abuse or neglect.

Disability services

Disability services are responsible for providing a broad range of supports to children, young people and their families, including centre-based and in-home respite care, attendant care, early intervention, recreation services, accommodation services ranging from in-home drop in support services to 24 hour supported accommodation, technology and equipment services, therapy and paramedical specialist services, case management, support groups and counselling. For young people services may also include employment and vocational, adult training, learning and support services.

Disability advocacy services provide information, advice and support to children and young people with disabilities and their families to enable them to make informed decisions. Disability advocacy services act to promote and protect the rights and interests of children and young people with disability and their families.

Family support services

The role of family support services in child protection is to support and assist children, young people and families. Family support services offer goal focused one-to-one work with individual families providing personal support, counselling, education, resourcing and advocacy. Group activities such as support groups, courses and self help groups are also offered. Family support services are autonomous bodies, mostly funded by the Department of Community Services. Services vary depending upon geographic location, service capacity and their fit with other specialist service providers in the same catchment area.

Out-of-home care services

Out-of-home care services provide residential care for children and young people at a place other than their usual home and by a person who is not the child's parent or relative. Out-of-home care services include foster care, residential care, shared family care and other forms of alternative care. These services play a crucial role in the care and support of children and young people through case work, advocacy, court support, practical support, counselling, outreach and day to day care and control.

Supported accommodation services

Services for people who are homeless and/or in crisis include emergency and longer term refuges for families in crisis, single adults, young people and women and children escaping domestic violence. They provide support services such as outreach, advocacy and living skills development. They also link people to other services such as health, welfare and housing.

Youth services

Youth services offer children and young people support and run programs that reach out to vulnerable children and young people. They provide a broad range of services including drop-in centers, youth health services, specialist youth services, counselling and support, mediation in crisis intervention to assist in averting family breakdown, advocacy, outreach, street work, recreational activities, group work and activities.

ROLE

The role of non-government organisations in child protection is to recognise and report suspected risk of harm. Some offer continuing

support and assistance to children, young people and families where there has been abuse and neglect by reducing the risk of harm and providing specialist crisis intervention, counselling and care.

RESPONSIBILITIES

As service providers:

- informing children and young people of their rights to be protected from abuse or neglect and of the avenues for support available to them
- providing care and support services to children, young people and their families
- promoting the safety, welfare and well-being of children and young people in their agency.

As employers:

- ensuring that all staff are aware of their obligations to report suspected risk of harm from abuse and neglect and procedures for reporting ensuring that all staff are aware of indicators of child abuse and neglect
- providing training and development for staff in the recognition and reporting of suspected risk of harm.
- providing reporting procedures and professional standards for care and protection work generally, and for staff relationships with children, young people and families
- conducting the Working With Children Check
- for those non-government organisations that are designated agencies, reporting to the Ombudsman any child abuse allegations and convictions made against an employee and ensuring they are investigated and appropriate action taken in relation to the finding.

As interagency partners:

- working with other agencies within agreed, co-ordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support the family
- liaising with the Department of Community Services about requests for services
- exchanging relevant information to progress investigations, assessments and case management as permitted by law.

1.4.19 non-government schools sector

ROLE

The role of the non-government schools sector in child protection is to protect children and young people from risk of harm and to promote and safeguard the safety, welfare and well-being of children and young people. Principals or their nominees, teachers and other staff, who have direct involvement with the supervision of children, are required to report suspected risk of harm from abuse and neglect to the Department of Community Services. Organisations with this responsibility include sectoral administrators, schools, colleges and other providers of education and training.

It is also the role of the non-government schools sector to provide appropriate preventative programs that aim to protect children and young people from abuse, assist them to seek help effectively, and to develop skills for positive, non-coercive relationships.

RESPONSIBILITIES

As service providers:

- protecting children and young people in their care from risk of harm
- informing students that they have a right to be protected from abuse or neglect and of the avenues for support available to them
- educating children and young people in preschool and schools about child abuse and neglect.

As employers:

- ensuring that staff are aware of their legal obligations to report suspected risk of harm and procedures for reporting
- ensuring that staff are aware of the indicators of child abuse and neglect
- providing training and development for staff in the recognition and reporting of suspected risk of harm and professional standards for teacher/student relationships
- implementing relevant curricula
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made against an employee, and ensuring that the allegations and convictions are investigated and appropriate action taken in relation to the finding.

As interagency partners:

- working with other agencies within agreed, co-ordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support the family
- liaising with the Department of Community Service about requests for services
- exchanging relevant information to progress investigations, assessments and case management as permitted by law.

2.1 terminology

Practitioners who are concerned in a professional capacity with the protection of children and young people should have a clear understanding of the main points of the law as it applies to the safety, welfare and well-being of children and young people and the implications of these points of law for the discharge of their respective responsibilities.

The legal context of child abuse and neglect is set out in a number of Acts of Parliament. The law covers three main areas: the care and protection of children as provided for in the *Children and Young Persons (Care and Protection) Act 1998*; the criminal law as set out in the *Crimes Act 1900*, as amended, and other statutes; and the law relating to child-related employment and alleged abuse by employees as set out in the *Commission for Children and Young People Act 1998*, the *Ombudsman (Amendment) Act 1998* and the *Child Protection (Prohibited Employment) Act 1998*.

note Practitioners need to be clear about their legal obligations to protect children. Legal advice may need to be sought in particular cases where a practitioner is unsure of legal responsibilities.

2.1.1 about risk of harm

Under the *Children and Young Persons (Care and Protection) Act 1998*, people must report to the Department of Community Services if they believe a child or young person is at risk of harm, if current concerns exist for the safety, welfare or well-being of the child or young person.

note Detailed information about risk of harm can be found in your agency procedures and in part III of these Guidelines.

refer Section 23 *Children and Young Persons (Care and Protection) Act 1998*; recognising risk of harm p73.

2.1.2 about child abuse

Child abuse is the term commonly used to describe different types of maltreatment inflicted on a child or young person. It includes assault (including sexual assault), ill treatment, neglect and exposing the child or young person to behaviour that might cause psychological harm.

Child abuse can be a criminal offence under the *Crimes Act 1900*.

refer *Crimes Act 1900* as amended.

2.1.3 about neglect

Neglect is the failure to provide the basic physical and emotional necessities of life. Neglect may be an ongoing situation and can be caused by a repeated failure to meet the child or young person's basic physical and psychological needs.

refer Indicators of abuse and neglect p74; recognising risk of harm p73.

2.1.4 about physical abuse

Physical abuse or ill treatment is assault, non-accidental injury and/or physical harm to a child or young person by a parent, caregiver, another person responsible for the child or young person, or older child. It includes harm or injuries which are caused by excessive discipline, beating or shaking, bruising, lacerations or welts, burns, fractures or dislocation, female genital mutilation and attempted suffocation or strangulation.

refer Indicators of abuse and neglect p74; recognising risk of harm p73; *Crimes Act 1900*.

2.1.5 about sexual abuse

Child sexual abuse is any sexual act or sexual threat imposed on a child or young person. Adults or adolescents or older children, who sexually abuse children or young people, exploit their dependency and immaturity. Coercion that may be physical or psychological is intrinsic to child sexual abuse and differentiates child sexual abuse from consensual peer sexual activity.

note Section 11G of the *Summary Offences Act 1988* makes it an offence for convicted child sex offenders to loiter without reasonable excuse in or near a school or public place regularly frequented by children and where the children are present at the time of loitering

refer Sections 149 to 159 of the *Criminal Procedures Act 1986*; Police Standing Operational Procedures: Crimes Against Children and Young People; indicators of abuse and neglect p74; recognising risk of harm p73.

2.1.6 about behaviours causing psychological harm (emotional abuse)

Behaviours that cause psychological harm include acts by a parent, caregiver or other person that damage the cognitive and emotional development of a child or young person.

The harm resulting from these abusive behaviours can include: emotional deprivation and trauma; the serious impairment of a child's or a young person's social, emotional, cognitive or intellectual development; disturbance of a child's or a young person's behaviour.

refer Indicators of abuse and neglect p74; recognising risk of harm p73.

2.1.7 about serious psychological harm

Serious psychological harm is the result of the abusive or neglectful behaviours of a parent, caregiver or other person.

A child or young person can suffer serious psychological harm from acts of psychological abuse or the accumulation of psychologically abusive behaviours, chronic neglect, or exposure to situations such as ongoing or severe physical abuse, domestic violence or sexual abuse.

refer Recognising risk of harm p73.

2.1.8 about domestic violence

Domestic violence is violence, abuse and intimidatory behaviour perpetrated by one person against another in a personal, intimate relationship. It is partnership violence that includes violence perpetrated when couples are separated or divorced. Acts of domestic violence are mainly but not only perpetrated by men against women within heterosexual relationships but can also occur within same sex relationships.

Domestic violence occurs between two people where one has power over the other causing fear, physical and/or psychological harm. Children and young people may experience harm, by being in the presence of or by being exposed to violence in the parental relationship, by becoming the victims of violence or a combination of the two.

refer Indicators of abuse and neglect p74; recognising risk of harm p73; section 4 *Crimes Act 1900*.

Child abuse and neglect therefore covers a wide range of harms and behaviours.

A parent, other relative, caregiver, a sibling or other child or young person, an acquaintance or a stranger may harm children.

note Abuse and neglect of a child or young person is an offence.

refer Sections 227 and 228 *Children and Young Persons (Care and Protection) Act 1998*.

2.1.9 a child

- Under the *Children and Young Persons (Care and Protection) Act*, a child is a person who is under the age of 16 years.
- Under the *Commission for Children and Young People Act*, the *Prohibited Employment Act* and the *Ombudsman Act* a child is a person under the age of 18 years.

2.1.10 a young person

- Under the *Children and Young Persons (Care and Protection) Act* a young person is a person who is aged 16 years or above but who is under the age of 18 years.

2.1.11 a class of children or young persons

- refers to more than one child or young person who may be at risk of harm from abuse because of a person or a situation. An example could be the children in a school or recreational group where a person in charge is suspected of abuse or known to have abused a child.

2.1.12 a parent

- of a child or young person, according to the *Children and Young Persons (Care and Protection) Act 1998*, means a person having parental responsibility for the child or young person.

2.1.13 parental responsibility

- in relation to a child or young person, means all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

refer Section 3 *Children and Young Persons (Care and Protection) Act 1998*.

2.1.14 homelessness

The *Children and Young Persons (Care and Protection) Act 1998* recognises homelessness as an important issue for the care and protection of children and young people. This Act does not define homelessness, therefore the definition used is that outlined in the Human Rights and Equal Opportunity Commission 1989 *Report of the National Inquiry Into Homeless Children*, which states that:

Homelessness is where a child or young person is living without any family support in any of the following circumstances:

- no accommodation at all
- only temporary or transient accommodation
- emergency, refuge or crisis accommodation
- other long term supported accommodation for homeless people such as hostels or transitional accommodation.

2.1.15 children and young people in need of care and protection

A child or young person who is at risk of harm due to abuse or neglect may be a child or young person *in need of care and protection*. A child or young person is in need of care and protection if action is required to safeguard his or her safety, welfare and well-being

If the Department of Community Services believes a child or young person is in need of care and protection then the Department must take whatever action is necessary to safeguard their safety, welfare and well-being. Actions that might be taken include providing or arranging services for family members, in consultation with the family, developing a care plan, exercising emergency protection powers or seeking orders from the Children's Court.

refer Section 34 *Children and Young Persons (Care and Protection) Act 1998*.

The Department of Community Services may seek a care order from the Children's Court if a child or young person is in need of care and protection and the risk of harm cannot be reduced or eliminated by the provision of services or by the development of an agreed care plan that provides for alternative care arrangements.

A care order may require that the child or young person or their family accept certain services, that certain services be provided to the family member/s and/or that a child or young person be placed in out-of-home care.

The Children's Court may only make a care order if it is satisfied that a child or young person is in need of care for any of the following reasons:

- there is no parent available to care for the child or young person, as a result of death or incapacity, or for any other reason
- the parents acknowledge that they have serious difficulties in caring for the child or young person, and the child or young person is in need of care and protection
- the child or young person has been, or is likely to be, physically or sexually abused or ill-treated
- the child's or the young person's basic physical, psychological or educational needs are not being met, or are likely not to be met, by his or her parents
- the child or young person is suffering or is likely to suffer serious developmental impairment or serious psychological harm as a consequence of the domestic environment in which he or she is living
- in the case of a child who is under 14 years, the child has exhibited sexually abusive behaviours and an order of the Children's Court is necessary to ensure his or her access to, or attendance at, an appropriate therapeutic service
- the child or young person is subject to a care and protection order of another State or Territory that is not being complied with.

practice point

In seeking a care order before the Children's Court the principle of least intrusive option is important yet must be balanced with the paramount consideration of safety welfare and well-being of the child or young person.

refer Sections 60-73 *Children and Young Persons (Care and Protection) Act 1998*.

note The Children's Court cannot conclude that the basic needs of a child or young person are not being met on the grounds of poverty or disability alone.

refer Section 71(2) *Children and Young Persons (Care and Protection) Act 1998*.

2.1.16 out-of-home care

Out-of-home care usually means residential care and control of a child or young person at a place other than their usual home by someone who is not the child's or the young person's parent or other close relative. It can include staying with more distant relatives, friends and

acquaintances, foster care, residential care, shared family care and other forms of care away from the child or young person's normal home.

refer Section 135 *Children and Young Persons (Care and Protection) Act 1998*.

Out-of-home care has a slightly broader meaning in relation to payment of allowances.

refer Section 161 *Children and Young Persons (Care and Protection) Act 1998*.

Out-of-home care has a slightly different meaning in relation to Aboriginal and Torres Strait Islander children and young people

refer Section 13 *Children and Young Persons (Care and Protection) Act 1998*.

2.1.17 compulsory assistance

Compulsory Assistance is a new form of intensive support and supervision provided for in the *Children and Young Persons (Care and Protection) Act 1998*. It is available for those children or young persons where it is regarded as necessary to protect them from suicide or other life-threatening or serious self-destructive behaviour. Because of the serious nature of such an order, Compulsory Assistance can only be applied for by the Department of Community Services Director-General and be granted by the Children's Court. Interim Compulsory Assistance orders can only be granted for 21 days.

The Children's Court must be satisfied that: the child or young person will receive treatment, therapy or other services that will assist them to deal with the problems that have led them to present a danger to themselves; that the program offered to them is more likely than not to lead to a significant improvement in circumstances and; that the agency which will be required to provide intensive supervision of the child or young person has indicated to the Children's Court that it will, and that it is able, to allocate the necessary resources.

refer Sections 123-132 *Children and Young Persons (Care and Protection) Act 1998*.

The Children's Court must inform the Children's Guardian if it makes an interim compulsory assistance or compulsory assistance order and the Children's Guardian must monitor the circumstances of the child or young person subject to the order. The Children's Guardian can also apply to have the order varied or revoked.

refer Section 133 *Children and Young Persons (Care and Protection) Act 1998*.

2.2 **intervening early**

Intervening early to assist families experiencing stress and difficulty is a key child abuse prevention strategy. Legislation in NSW allows for a range of early intervention strategies, including the Working With Children Check, to help prevent inappropriate candidates being appointed to positions in children's services and care and protection legislation that promotes alternate dispute resolution, partnerships between families and agencies and a coordinated interagency response. Also, children, young people and their parents may approach the Department of Community Services for help. Legislation now supports the Department in responding to these requests for help and for other agencies to be involved in providing services. Getting services to families at a time when they identify that they need help is an important way to support the strengths in a family and make positive changes in the lives of children and young people. Families seeking help to improve their parenting skills before a problem arises should also be assisted by the service system. It is vital that children, young people and families seeking help are given the timely and appropriate support from the agency most likely to meet their support needs.

2.3 **requests for assistance from children, young people or parents**

Under section 20 of the *Children and Young Persons (Care and Protection) Act 1998*, a child or young person can request assistance from the Department of Community Services for any reason.

For parents, the grounds for a requesting assistance are outlined under section 21 of the Act which states:

A parent of a child or young person may seek assistance to obtain services that will enable the child or young person to remain in or return to the care of his or her family.

The aim is to encourage families to request help early before situations escalate, or to get early help with family reunification.

The family does not have to 'prove' they are in need of assistance.

There are separate provisions in the *Children and Young Persons (Care and Protection) Act 1998* for seeking assistance where there is a serious or persistent conflict between the child or young person and their parents. This occurs when children or young people and their parents experience a breakdown in their relationship. In some cases the conflict

may be so serious that it jeopardises the safety, welfare and well-being of the child or young person. Similarly, if the parents are unable to provide adequate supervision to such an extent that it places the child or young person in jeopardy, then a request for assistance can be made to the Department of Community Services.

refer Section 113 *Children and Young Persons (Care and Protection) Act 1998*.

refer Sections 9(b), 10 and 12 *Children and Young Persons (Care and Protection) Act 1998*.

The DoCS Helpline will receive all requests for assistance from children, young people and parents.

The DoCS Helpline will use its Risk Assessment (Guide 1) for deciding the type of assistance required, and the information gathered will be assessed to check whether the child or young person is considered to be at risk of harm.

refer Risk Assessment for the NSW Department of Community Services: *A Guided Approach to Risk Assessment in Child Protection*.

In assessing a request for assistance the Department of Community Services must provide whatever advice, material assistance or referral is considered necessary to promote the safety, welfare and well-being of the child or young person. This may include the decision to take no further action, if they are satisfied there is no risk to the child or young person.

refer Section 22 *Children and Young Persons (Care and Protection) Act 1998*.

Where the child or young person is at risk of harm, the request for assistance will be responded to as a report. If DoCS Helpline staff assess that the child or young person is at risk of harm, they should sensitively explain that protective intervention may be necessary to reduce the risk of harm and the process that will follow.

note If the report relates to a young person, the Department of Community Services must have regard to any known wish that a young person did not want the report to be made.

refer Section 10 and 31 *Children and Young Persons (Care and Protection) Act 1998*.

Where the child or young person is not at risk of harm the Department of Community Services could:

- provide referral advice for the child, young person or parent to follow up if they wish

practice point

It is vital that the child, young person and family participate in decisions about assessment processes for requests for assistance and any referrals to other agencies.

practice point

It is important that children, young people and families are aware that they can request assistance from the Department of Community Services. They should also be made aware that the Department of Community Services will follow the principles set out in these Guidelines seeking to meet the needs of the child, young person and family while supporting and maintaining the family unit.

- make a referral to another agency at the request of the child, young person or parent
- provide information and advice which may or may not include information about service providers
- take no further action.

The Department of Community Services will help the caller to contact the service provider by either giving them a letter of introduction, or contacting the service for them. The Department of Community Services will only initiate the contact where the caller has some difficulty accessing the service, for example, limited mobility or isolation, and has requested that the Department initiate contact on their behalf. Most of these referrals will be from the DoCS Helpline.

note Some referrals made from the local office of the Department of Community Services will not require ongoing monitoring from the Department. These are cases where the Department of Community Services has established that risk of harm no longer exists but where the family may require assistance to access services. The principle of 'best endeavours', section 18 of the Act, does not apply to these referrals.

refer Working together – requests for services by the Department of Community Services to other agencies (below).

2.4 working together – requests for services by the Department of Community Services to other agencies

Collaborative responses to vulnerable and at risk families are a part of practice established under the 1997 Interagency Guidelines. The new *Children and Young Persons (Care and Protection) Act 1998* legislates for a whole of government response.

Government agencies have a range of responsibilities for assisting families in relation to “request for services”, a term used in the *Children and Young Persons (Care and Protection) Act 1998*. Non-government agencies may also be approached by the Department of Community Services or the Children’s Court to provide services.

refer Sections 17, 18, 20, 21, 85 and 113 *Children and Young Persons (Care and Protection) Act 1998*.

Section 17 of the Act states:

In deciding what action should be taken to promote and safeguard the

safety, welfare and well-being of a child or young person, the Director-General may request a government department or agency, or a non-government agency in receipt of government funding, to provide services to the child or young person or to his or her family.

Section 18 states:

The government department or (government) agency must use its best endeavours to comply with the request made to it under section 17 if it is consistent with its own responsibilities and does not unduly prejudice the discharge of its functions.

2.4.1 requests for services that require follow up and monitoring by the Department of Community Services

These requests are generally made on behalf of clients of the Department of Community Services and are in response to concerns for the safety, welfare and well-being of a child or young person.

The Department of Community Services may request that another government department or government agency provide services with an expectation that they use their best endeavours to comply.

These types of requests will be made in the context of interagency case planning processes, for example, as part of a protection plan, and will be negotiated with agencies by the local office of the Department of Community Services.

There may be exceptional situations where these requests are made from the DoCS Helpline which may or may not require ongoing follow up by the Department of Community Services.

note Although the Department of Community Services may request services from non-government agencies, the best endeavours principle does not apply. These requests will need to be negotiated in the context of case planning processes, on a case-by-case basis and/or according to agreements between the Department of Community Services and the non-government agency.

refer Sections 17 and 18 *Children and Young Persons (Care and Protection) Act 1998*.

When making requests for services that require follow up and monitoring the Department of Community Services will provide in writing:

- the reasons for the Department of Community Services approaching the agency

- the type of service required and how this will meet the needs of the child, young person or family
- accurate, appropriate and relevant information on the child or young person and family
- the views of the child, young person and family on their needs for support and assistance
- the process for reviewing identified goals
- the nature of the Department of Community Services' ongoing involvement, if any
- information on how the case will be monitored
- a copy of the case plan.

2.4.2 agencies confirming provision of services

Agencies approached by the Department of Community Services to provide services to a child, young person or family where monitoring and follow up is required should promptly inform the Department whether or not they can accept the request.

Where agencies accept the request they should respond in writing and outline what they are providing. This may involve attaching a copy of the protection plan or other case plan that clearly outlines their role with the child, young person or family.

If the agency cannot accept the request, they must outline their reasons for being unable to do so. Where the agency does not provide the required service this information will assist the Department of Community Services to identify alternatives and prevent future inappropriate requests. It is the role of the Department of Community Services to locate another appropriate service for the child, young person or family or consider reconvening a case planning meeting to identify alternative services or responses.

Where the request is appropriate, but a service is not available, the agency should provide clear information about the reasons for lack of availability, for example waiting lists or staff shortages. The agency should identify who can be contacted to provide information on future availability of the service.

Non-government agencies should consider whether priority could be given to the request on the basis that the child or young person is at risk of harm.

If a non-government agency has agreed to provide a service, they will follow the same confirmation of service procedure.

note Standard forms for requests for services and for responses to those requests are available from agencies.

refer Sections 17-22 and section 248 *Children and Young Persons Care and Protection Act 1998*; exchanging information p51; referrals p122; case planning p56.

2.4.3 best endeavours

In responding to a situation where a child or young person's safety, welfare and well-being is at risk of harm, the Department of Community Services may request a government department or government agency to provide services to the child or young person or their family. The government department or agency must use its best endeavours to comply with this request. In this context 'best endeavours' means to exercise a genuine and considered effort to respond to a request for services to promote and safeguard the safety, welfare and well-being of the child or young person.

A government department or government agency is not expected to provide a service outside its expertise or responsibility or that unduly prejudices the discharge of its functions.

The Department of Community Services will make a request for a service only if they think the child or young person needs the service, and that the organisation approached is best placed to provide it. For example, it would be appropriate to ask a government agency drug and alcohol provider to use their best endeavours to provide a service to a parent whose substance abuse is jeopardising their child's safety, welfare or well-being.

All practitioners and agencies are responsible for promoting the safety, welfare and well-being of children, young people and their families. This has been a NSW Government goal for interagency work for some time, and it is now included in legislation. While other agencies have key roles in child protection, the Department of Community Services has the mandate to coordinate responses and to ask other agencies to provide appropriate care and support to children, young people and their families.

The Department of Community Services will make a request for service asking government departments and government agencies to use their best endeavours in cases where following a risk assessment, it is decided that the child or young person is at risk of harm and may be in need of care and protection. These requests will most often be in the context of a case plan and therefore usually generated by the local office of the Department of Community Services.

Requests may involve family members who do not attend or who appear reluctant to attend services in the first instance. In such cases, best endeavours include practitioners making efforts to follow up with the person referred and encouraging their attendance.

In using best endeavours government agencies should:

- have documented intake procedures for agencies, children, young people and families that prioritise those who are vulnerable
- consider risk of harm issues in prioritising the request for assistance
- manage services flexibly to deal with high demand so that children's or young people's safety, welfare or well-being is not compromised
- deliver accessible services
- use active attempts to engage families and assist families to make use of services offered.

refer Section 18 *Children and Young Persons (Care and Protection) Act 1998*.

Disputes about requests for services should follow the resolving differences process.

refer Resolving differences p64.

2.4.4 best endeavours and children's court orders

The Children's Court can make a request for support services when making an order with the consent of a person or organisation.

Government departments or funded non-government agencies are required to use their best endeavours to provide services to facilitate restoration of a child or young person to their family when requested by the Children's Court.

refer Sections 74 and 85 of the *Children and Young Persons (Care and Protection) Act 1998*.

The best endeavours principle also applies to government departments and agencies providing services for compulsory assistance orders.

refer Section 125 of the *Children and Young Persons (Care and Protection) Act 1998*.

2.5 exchanging information

Arrangements for the care and protection of children can be successful only if professionals and agencies with responsibilities and obligations to ensure their protection have access to accurate information relevant to the assessment of risk and the needs of the child, young person and family.

Information exchange is consistent with the Government's commitment to a high degree of cooperation among agencies with child protection responsibilities and an acknowledgement that government departments are the authorised agents of the community responsible for ensuring the protection of children.

2.5.1 who can exchange information

The Department of Community Services has the power to direct prescribed agencies to provide information relating to the safety, welfare and well-being of a child or young person, or class of children and young people. The Department can also furnish such information to prescribed agencies. This is a necessarily broad power that can be exercised at any stage in child protection intervention.

Under the *Children and Young Persons (Care and Protection) Act 1988* the Department of Community Services must be a party to the exchange of information.

Some agencies are obliged by law to exchange information with the Department of Community Services about safety, welfare and wellbeing of a child or young person, or a class of children and young people, to assist with the planning or delivery of care and support to children, young people and families. These agencies include the Police Service, government departments, public authorities, schools, TAFE institutes, public health organisations, private hospitals, non-government bodies, the Family Court of Australia and Centrelink, and any others as prescribed by the regulations to the Act. Each worker should be familiar with the legislation, policies and procedures of their agency with regard to the release of information.

refer Section 248 *Children and Young Persons (Care and Protection) Act 1998*.

The Children's Guardian has the power to direct the Department of Community Services, a designated agency or an authorised carer to provide and exchange information relating to a child or young person's safety, welfare and well-being. These groups have a duty to comply with these requests.

refer Section 185 *Children and Young Persons (Care and Protection) Act 1998*.

The Child Death Review Team can request records from the government departments, the Commissioner of Police, the State Coroner or the holder of any office prescribed by the Regulations, and these agencies have a duty to comply with such requests.

The Commission for Children and Young People can request information on the Working With Children Check and agencies have a duty to comply with such requests.

In conducting the Working With Children Check, Approved Screening Agencies may become aware that an applicant for child-related employment is a prohibited person under the *Child Protection (Prohibited Employment) Act 1998*. In such cases Approved Screening Agencies are required to notify the Police and the Commission for Children and Young People.

The NSW Ombudsman can require any information relating to an investigation it is undertaking. The Ombudsman can also require an agency to provide information and/or documents, including records of interview with respect to agency investigations of child abuse allegations against an employee.

refer Sections 18 and 25E(3) *Ombudsman Act 1974*.

Exchanging information for requests for assistance and in child protection intervention is not a breach of professional ethics or standards of professional conduct and does not carry liability for defamation or constitute grounds for civil action.

The *Children and Young Persons (Care and Protection) Act 1998* protects people who provide information about risk of harm and allows the Department of Community Services to seek or provide information which will contribute to the safety, welfare and well-being of children, young people or families.

refer Section 29 *Children and Young Persons (Care and Protection) Act 1998*.

Because the protection of children and young people from abuse and neglect is deemed more important in some situations than an individual's right to privacy, there are statutory provisions that override restrictions on disclosure of personal information. For example, section 248 of the *Children and Young Persons (Care and Protection) Act 1998* overrides the privacy principles outlined in the *Privacy (Personal Information) Protection Act 1998*.

refer Part 2, Division 1 *Privacy (Personal Information) Protection Act 1998*.

2.5.2 information requested by the Department of Community Services

Information being requested may include:

- information about the child's or the young person's history, current circumstances and their views
- information about the parent or family
- information about relationships
- information about the agency's role and relationship with the child, young person and family.

The Department of Community Services should make clear to the agency:

- who is the subject of the information request and their relationship to the child or young person
- how the request for information relates to safety, welfare and well-being and/or risk of harm issues
- identifying information so practitioners can check they are talking about the appropriate person
- whether or not consent has been sought and where it has not, any reasons why the agency should not inform a child, young person or parent that the information has been requested (eg safety concerns)
- the timeframe for providing the information.

The Department of Community Services should make any requests for information at the earliest possible opportunity to give the agency adequate time to respond. Requests for files and formal reports should be followed up in writing.

2.5.3 responding to requests for information

Exchanging relevant and accurate information requires that practitioners pay careful attention to the situation being described by the Department of Community Services and assist the Department as it seeks information that may be relevant to risks to the child or young person's safety, welfare and well-being.

Agencies receiving the request for information take responsibility for identifying which parts of their system may hold the information relevant to the request.

practice point

An example of a request to Health is relevant information from a parent's health record

Agencies are responsible for identifying information that may assist the Department of Community Services in determining the risk to the child or young person, for example, the capacity of the parent to adequately care for the child (which could include information on domestic violence or drug and alcohol/mental health files), or information about a child or young person, for example, medical history or school records about attendance.

Agencies are responsible for identifying how this information will be collected, who will be responsible for collecting it and for providing it to the Department of Community Services promptly.

note For issues regarding the Family Court, see the protocol between the Department of Community Services and the Family Court and section 248 *Children and Young Persons (Care and Protection) Act 1998*.

It is important that all staff exercise a high degree of confidentiality in terms of information they receive as part of their child protection work

2.5.4 criminal proceedings

Where criminal proceedings have been initiated, practitioners should be mindful that if the prosecution will rely upon information contained in the records of an agency, there is an obligation on the prosecution to disclose to the defence the existence of that information. In practice this can mean that a record of an interview or an assessment report is potentially available to the accused via their legal representative. Issues of this nature that arise in a specific case should be discussed with the Office of the Director of Public Prosecutions or the police prosecutor with responsibility for that case.

2.5.5 records

Well-kept records are essential to child protection practice. Well-kept records contain pertinent information recorded in a systematic, accurate way and are regularly updated.

Agencies should have policies that outline the purpose and format of record keeping and the retention of records for appropriate periods. All agencies should ensure the safe keeping of information provided to them.

As a general principle, clients should have access to records relating to their personal affairs. Judgement will need to be exercised in deciding whether a client should have access to all or part of their records, in line with the *Freedom of Information Act 1989*. This may arise, for example, if a parent seeks access to information that may place a child or young person at risk of further abuse or if the access may undermine

work aimed at strengthening a parent-child relationship. In cases of child abuse and neglect, access to records by a parent or alleged offender should be carefully considered having regard to the interests and welfare of the child or young person.

note There are special provisions to protect the confidentiality of clients where records are subpoenaed during child sexual assault counselling.

refer *Criminal Procedure Act 1986* and *Evidence Act 1995*.

Under the *Freedom of Information Act 1989* a person can request a copy of a document held by any government agency or public body. A copy of the document must be supplied within 21 days of receiving the request unless exemptions apply. For example, exemptions would apply in the case of someone who reported risk of harm from child abuse or neglect. Their name and identifying details would not be released under FOI, unless the reporter consented to the release of these details.

There are a number of other grounds on which copies of documents can be withheld including protection of the life or safety of a person, protection of public safety, some adoption documents, documents which are subject to a legally enforceable duty of confidentiality. Other confidential material and opinions, advice or recommendations can be withheld if it would be contrary to the public interest to disclose them.

refer *State Records Act 1998*; sections 16, 25, 31 and Schedule 1 *Freedom of Information Act 1989*.

A person who is the subject of completed disciplinary proceedings for alleged child abuse, sexual misconduct or acts of violence against or in the presence of children or young people can:

- Apply under the *Freedom of Information Act 1989* for access to any documents held by a government or non-government agency containing information about those proceedings: (section 43(1) *Children and Young Persons (Care and Protection) Act 1998* and section 16 *Freedom of Information Act 1989*)
- Apply under *Freedom of Information Act 1989* for the amendment of any records of the agency which contain information about the disciplinary proceedings on the grounds that such records are incorrect or misleading: (section 43(4) *Children and Young Persons (Care and Protection) Act 1998* and Part 4 *Freedom of Information Act 1989*).

No fees or charges are payable by persons seeking access to documents relating to such disciplinary proceedings.

Documents must be released on request unless they fall within one of the exemptions in the *Freedom of Information Act 1989*. Exemptions include documents contained in confidential material and documents

that contain personal information about persons other than the applicant (*Schedule 1 Freedom of Information Act 1989*).

If an agency refuses to comply with a request to amend its records it must give reasons for such refusal. The applicant can:

- require that a note be attached to the records specifying in what respects the records are claimed to be incorrect or misleading (section 46 *Freedom of Information Act 1989*, section 43(4) *Commission for Children and Young People Act 1998*)
- make a complaint to the NSW Ombudsman (section 52 *Freedom of Information Act 1989*)
- apply to the Administrative Decisions Tribunal for a review (section 53 *Freedom of Information Act 1989*).

2.6 the role of case planning

Effective intervention requires good planning. Planning is the activity in which participants set goals for the future, define objectives and agree on strategies to achieve them. Planning involves looking forward in time to identify what it is that can or should be achieved, defining those achievements and identifying stages for moving to the desired outcomes. Planning must be documented.

2.6.1 case planning

Case planning is the term that refers to all planning relating to the safety, welfare and well-being of a child, young person or their family. Such plans should ensure there are no misunderstandings for a child, young person, family and practitioners about goals or responsibilities. Planning should focus on meeting the needs of the child, young person and family by looking at safety, welfare and wellbeing, the risks and the family's strengths, and should wherever possible be done collaboratively.

The stages in a typical planning process include:

- setting a goal or goals – what can be achieved
- setting objectives – measurable time-defined results
- agreeing on strategies or actions
- allocating responsibilities and time frame
- identifying how the results of strategies or actions will be assessed and when
- defining times and methods for review

- agreement on how the process will be completed and closed
- documenting the details – the case plan itself
- monitoring the plan and having contingencies if the plan is not working.

Case plans should meet the following criteria:

- be worded simply in plain English and copies provided to all practitioners involved and the child, young person and family, unless that is not in the best interests of the child or young person
- set goals for action
- specify processes for achieving goals
- provide time frames for action
- assign responsibilities to individual practitioners, agencies and family members
- define times and processes for review
- address risk of harm issues
- address family strengths and protective factors
- address care, support, education and health issues.

2.6.2 case planning with children and young people

Involving children and young people in decision making is crucial to good planning. Children and young people have the right to:

- respect for their culture, child rearing customs and religious beliefs
- contribute their views about services which affect them and have these views taken into account
- be informed of any change in their case manager
- share in exploring options, problems, goals, tasks and criteria for a successful outcome
- clear accurate information about options open to them and about services offered in a form they can understand
- privacy and confidentiality
- express grievances about a service.

note Under privacy legislation children and young people have the same rights to privacy as adults.

refer Exchanging information p51.

In case planning with children and young people, practitioners should:

- provide information about what procedures are being invoked and what the procedures mean; for example, children and young people need to know what a meeting is about and what sort of decisions are being made on their future
- provide information on how decisions can be challenged and any complaints mechanisms where the child or young person doesn't agree with a decision or aspects of a plan
- carefully consider the meeting venue and if it is child and young person-friendly
- consider the level of formality of meetings, any breaks required, the timing (length and disruption to school) and the focus of the meeting
- ensure that the child, young person and their family are well prepared before case meetings and given opportunities to negotiate suitable times, dates and venues
- provide information about the reason for case meetings, the process of the meeting and range of possible outcomes
- ask whether the child or young person wants a support person to come with them
- give information about those who will attend and whether the child or young person has any concerns about particular attendees
- consider any possible conflicts between the child or young person and their parents or other attendees at case meetings and how to proceed if these arise
- respect the child's or young person's right to participate in ways other than attending case meetings, ensure that they are included in some other way and that their views are recorded, and ensure they receive feedback on the meeting and case plan
- ensure that the child or young person receives copies of materials distributed to the meeting and that family members are able to understand and give feedback on the materials
- ensure that people from non-English speaking backgrounds and people with disabilities receive the required support to be fully involved in decision making processes
- ensure the person chairing case meetings is skilled and experienced in working with children and young people; wherever possible, the chairperson should meet with the child or young person and their family beforehand

- keep the child or young person informed of the name and contact details of the case manager.

refer Section 10 of the *Children and Young Persons (Care and Protection) Act 1998* sets out principles for the participation in decision making by children and young people.

2.6.3 types of case plan

There are several types of plan referred to in the Guidelines. There will be some overlap but practitioners should seek to plan and document what is proposed at each stage of the intervention process. Among the important plans required are:

- an assessment and investigation plan, which is a process and documents the activities practitioners agree are needed to establish what, if any, abuse or neglect has occurred and what activities are needed to establish and minimise the impact of risk of harm. The plan outlines the objectives of the assessment and investigation, the process for carrying out the plan and the responsibilities, time lines and processes for review.
- a protection plan which is developed at a protection planning meeting and recommends intervention in child protection cases based on the conclusions drawn from assessments and investigations. It is prepared by practitioners with responsibilities for the care and protection of a child or young person after negotiating with the child, young person and family. It specifically addresses the safety and care and support of the child or young person and may include criminal prosecutions and/or care proceedings.
- a support and management plan, which refers to the documentation of the proposed action to be taken to provide for a child or young person's care or protection. It defines:
 - the action to be taken to provide the care, support and education necessary to sustain the safety, welfare and well-being of the child, young person and family
 - the sequence of such action
 - the agencies or practitioners responsible and the processes for review.

The plans are part of case planning and the concepts apply to different parts of the process. All planning should follow sound planning principles.

- There may be less formal meetings convened to discuss aspects of a case, such as preliminary outcomes from assessments and

investigations. These informal meetings do not replace the protection planning meeting or support planning meeting.

note A care plan is a document that sets out the services for the family and the parenting arrangements for a child or young person that are required to reduce risk of harm. A care plan has a particular meaning before the Children's Court. The care plan may be registered with the Children's Court or can form the basis to consent orders made before the Court. The care plan may form part or all of a protection or support plan. If this is the case this must be documented and made clear to family members and agencies involved.

refer Sections 34, 38, 66 and 78 *Children and Young Persons (Care and Protection) Act 1998*; care plans p126.

note Various other plans are mentioned in the *Children and Young Persons (Care and Protection) Act 1998*. Each will follow a similar format. Each must be documented on the case file. This is important where case management involves more than one agency.

refer Restoration plans, sections 83 and 84; alternative parenting plans, section 115; and leaving care plans, section 166 *Children and Young Persons (Care and Protection) Act 1998*.

practice point

The transition from receiving services from one agency to receiving services from another can be very difficult for a child, young person or family. If the transition is not handled sensitively, they can drop out of the service completely, and increase the risk of harm to the child or young person. Practitioners need to be aware of the need to manage service transition processes.

2.6.4 case coordination – the role of the case manager

The interagency approach to child protection requires someone to take responsibility for coordinating the response and ensuring that decisions and actions are carried out. The lynchpin to the success of a planned and coordinated approach is the case manager who must be appointed in all cases requiring a child protection response.

The role of the case manager, appointed by the DoCS, is to coordinate the interagency intervention and includes:

- keeping the agencies involved informed of progress
- calling case planning meetings
- coordinating case planning meetings
- ensuring plans are recorded and distributed
- monitoring and reviewing case plans
- coordinating the participation of children, young people and their families and ensuring they have been informed about planning and decision making processes

- receiving relevant feedback from other agencies on the progress of the child, young person and family
- informing relevant agencies, children, young people and families of changes of case manager and prior to case closure

The case manager will be from the Department of Community Services during the reporting, assessment and investigation and protective intervention stages. The exception to this is where there are no risk of harm concerns or these have been resolved and the matter is subject to police investigation or criminal proceedings. As the Department of Community Services may no longer need to be involved, the case manager can be from another agency.

When the child or young person enters the ongoing care and support stage, the case manager can be from the agency in the best position to coordinate the plan.

refer Support and management planning meeting p133.

2.7 alternative dispute resolution (ADR)

Alternative Dispute Resolution (ADR) refers to the processes for parties involved in a dispute to negotiate and confirm a decision on a jointly agreed course of action.

In ADR, the people involved make the decision, rather than an external adjudicator. ADR is an important tool for case planning in child protection and for resolving joint decisions between agencies.

The value of ADR lies in people being more likely to commit to a decision that they make themselves.

ADR is recognised as a useful tool to assist in decision making for families and is a significant initiative in the Children and Young Person's Care and Protection Act 1998.

ADR is a non-threatening, non-legalistic flexible process which:

Emphasises the values, norms and principles of the participants, rather than those of the mediator. It is a short-term process with a focus on helping the participants to resolve conflict, with an emphasis on cognitive and behavioural rather than emotional aspects, and a focus on the present and the future, rather than the past. It looks at results rather than the internal causes of the conflict and encourages independence from the professionals rather than dependence on them. It is a useful approach when a situation calls for a structured agreement to a conflict. (Dale Bagshaw Mediating Family Disputes in Statutory Settings, Australian Social Work Vol 48 No 4, December 1995 p 5.)

A premise of the *Children and Young Person's (Care and Protection) Act 1998* is that ADR can be used to facilitate workable outcomes in resolving concerns about care and protection matters and in resolving serious and persistent conflict between children, young people and their families.

ADR is not to be used to establish whether a child has been abused or neglected. Rather ADR is about finding appropriate actions to ensure the safety, welfare and well-being of the child or young person.

ADR can be used as a strategy at any point in child protection intervention where it might reasonably assist in identifying issues, planning outcomes or resolving disputes. ADR is available as

- an early intervention strategy
- an alternative to a care application lodged with the Children's Court during the course of a care application
- a discretionary informal mechanism for the Children's Guardian to resolve disputes between various parties in relation to out-of-home care.

In responding to a report the Department of Community Services must consider the appropriateness of using ADR services that are designed:

- to ensure intervention so as to resolve problems at an early stage, and
- to reduce the likelihood that a care application will need to be made, and
- to reduce the incidence of breakdown in adolescent-parent relationships, and
- if an application for a care order is made, to work towards making consent orders that are in the best interests of the child or young person concerned.

Attendance at ADR is not compulsory regardless of when it occurs. However, when an application has been made to the Children's Court and the matter is listed for a preliminary conference, attendance at the preliminary conference is mandatory.

refer Section 37 *Children and Young Persons (Care and Protection) Act 1998*.

2.7.1 planning for ADR

In any ADR process the following should be considered:

- plan for the meeting – ensure that both parties are clear about the reason for the meeting and the processes involved

- organise a neutral venue for the meeting where the parties will not be disturbed
- allow adequate time for the issues to be discussed (ADR should not be rushed and may require more than one meeting)
- any safety issues that may limit the applicability of ADR.

2.7.2 principles for ADR

- Respect what the other party is saying
- Seek to clarify and identify the key issues for each party
- Listen: do not reject the ideas of the other party
- Seek to explore options which meet the interests of both parties
- Build solutions: don't work from pre-established positions
- Define agreements carefully and document them
- Build processes for review.

These models should take account of the unique cultural, geographic and linguistic requirements of a community, the complexities of the case and the nature and severity of the abuse or neglect suffered by the child or young person.

Other issues of primary consideration in ADR are:

- how best to involve the parents or caregivers in the process
- how children and young people will participate
- addressing the issues of power and inequality
- legal advocacy and representation
- privacy and confidentiality
- accommodating special needs.

refer Case planning p56; Department of Community Services Discussion Paper on Alternative Dispute Resolution for the *Children and Young Persons (Care and Protection) Act 1998*.

practice point

Evidence in relation to covert communication and coercion patterns commonly used by sexual offenders means ADR is unlikely to be safe for children and young people where sexual perpetrators are present. ADR may also be unsafe for the child or young person in situations of domestic violence or severe physical abuse.

practice point

The use of recognised workers that understand issues for people with disabilities, or the cultural, linguistic and religious background and associated issues of the children or young person and their family, would be of assistance in ADR.

2.7.3 approaches to ADR in child protection intervention

The ADR model in child protection intervention has three approaches

DISPUTE RESOLUTION CONFERENCING (DRC – APPROACH ONE)

This is ADR provided by an ADR-trained worker from the Department of Community Services who is not involved in the case under discussion and is to be considered where:

- It is necessary to allocate or re-allocate parental responsibility without consent of the parties, and to develop a care plan
- There is a conflictual history between Department of Community Services and family members
- There are issues of dispute between family members including ‘serious and persistent conflict’ as outlined in s114 of the Act
- Family members or the caseworker requires ADR
- Family circumstances are particularly complex or the family has special needs.

EXTERNAL ADR (APPROACH TWO)

Carried out by providers outside the Department of Community Services, this approach is used where DRC was either unsuccessfully attempted, or is likely to be unsuccessful if attempted.

COURT INITIATED ADR (APPROACH THREE)

This approach is linked exclusively to section 65 of the *Children and Young Persons (Care and Protection) Act* and the preliminary conference that occurs after a care application has been lodged with the Children’s Court. At the preliminary conference, the Children’s Registrar may consider that ADR is appropriate to resolve any disputes and refer the application to independent ADR. Care applications will only be referred to court-initiated ADR if all parties consent to the referral. Court initiated ADR is carried out by providers independent of both the Department of Community Services and the Children’s Court.

2.8 resolving differences

In the planning and delivery of coordinated services to protect and promote the safety, welfare and well-being of children and young people, practitioners and agencies are regularly required to negotiate

joint decisions. From time to time differences will occur. Differences may be about roles; professional and organisational philosophies or priorities; systems issues; status and perceived power; communication; level of commitment to the interagency approach and group dynamics; and attitudes and beliefs about families and community standards. Differences must be addressed proactively and quickly. Differences should be approached firstly at an individual and if necessary at an agency level.

2.8.1 a regional process for resolving differences

Agencies in a region or area will put in place a model for promptly, objectively and collaboratively resolving differences that at a minimum will include requirements for:

- the parties in conflict clearly identifying their perceptions of the problem or issue
- acknowledging relevant goals and interests
- generating practical options to address a problem
- negotiating a preferred option
- formalising agreement on a preferred option
- agreement on implementation and review.

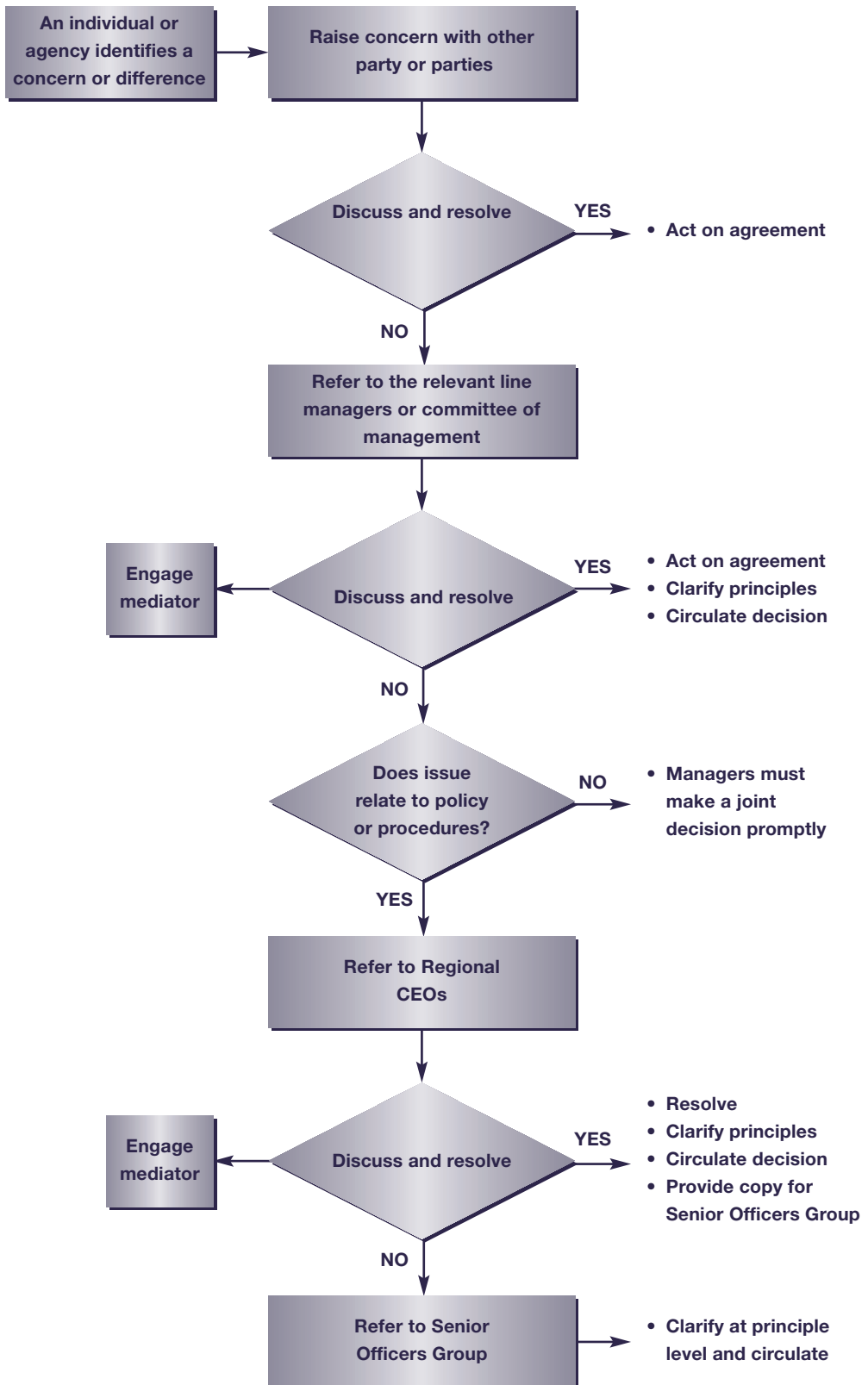
The capacity to effectively resolve differences is an important element in professional child protection practice. The Department of Community Services as lead agency in child protection will be responsible for coordinating the establishment of these regional models.

note Where there are interagency disputes on funding matters that are the subject of prior funding agreements the resolution of these matters should follow agreed guidelines of the funding agency.

Depending on the nature of the issue, it may be resolved verbally. If, however, there is an issue that may affect future processes, the decision should be documented and circulated to those who are involved in practice in the region or area. Implementing the Guidelines relies on each agency completing its tasks. Issues of perceived non-compliance can be treated in the same way as other differences. Individuals or agencies should be free to refer their differences to the required level for resolution. The process is not directed to identifying fault but to improving the quality of the processes for the future.

Where a difference cannot be resolved successfully at a local level, it may be advisable to engage a mediator to assist in reaching a decision.

a model for resolving interagency differences



Resolving differences can take time and the parties may need to meet on more than one occasion.

Only those directly affected should be involved in the resolution process and decisions from meetings should be documented and followed through. It is strongly recommended that the same staff be involved throughout the resolution process. Protective intervention must not be put on hold, while any difficulty is resolved. Managers are responsible for ensuring action is taken while negotiations continue, if this is necessary.

2.8.2 strategies for improving professional practice

Other strategies at an agency level that may assist in developing professional practice and resolving practice problems include:

- memoranda of understanding between agencies which outline a specific process for resolving differences
- interagency training and other professional development activities
- ensuring an experienced and/or trained practitioner chairs and facilitates debriefing sessions for protection planning and case planning meetings
- systematically recording and eliminating circumstances that contributed to differences along with positive strategies and learning outcomes
- periodic monitoring and evaluating the interagency approach by an external body
- research and feedback from service users on their experience of intervention
- support for Area-based child protection structures, including Area Practice Review Committees and other networks
- opportunities for formal and informal meetings to review practice and meet fellow practitioners.

An effective practice model will include simple protocols for resolving disputes about principles or practice issues. Agencies in an area should agree on a simple set of guidelines that cover:

- time frames ensuring differences are addressed promptly and resolved
- a method for government and non-government agencies to report concerns

- fair procedures for joint resolution of difference
- a method for involving a mediator or for referring the issues to a higher level when agreement cannot be achieved
- methods for managing the case while agreement is negotiated
- circulating decisions which are negotiated as a means of improving local, regional or state practice
- agreement that any agency can and should raise concerns as part of professional practice and as a contribution to quality improvement.

The interagency approach to child protection practice involves many different activities that occur over time. These activities can be grouped into broad stages that provide a framework for thinking about child protection intervention and the roles and responsibilities of the agencies involved.

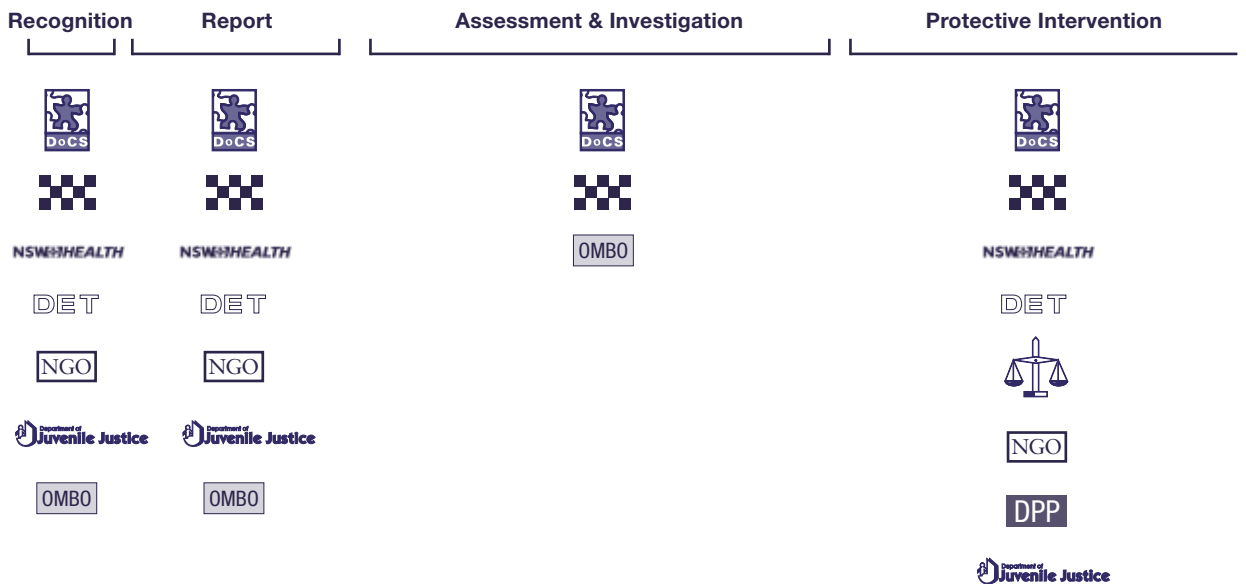
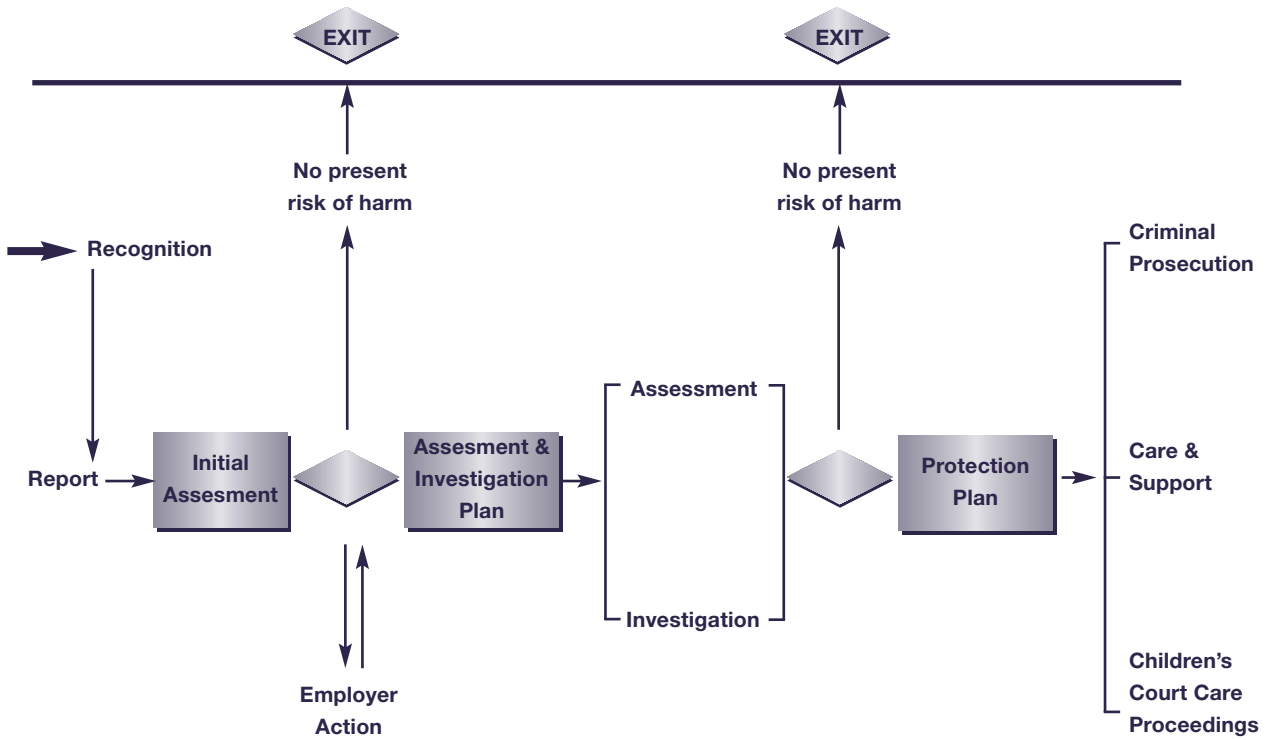
Six broad stages form the structure for this section of the Guidelines. They are:

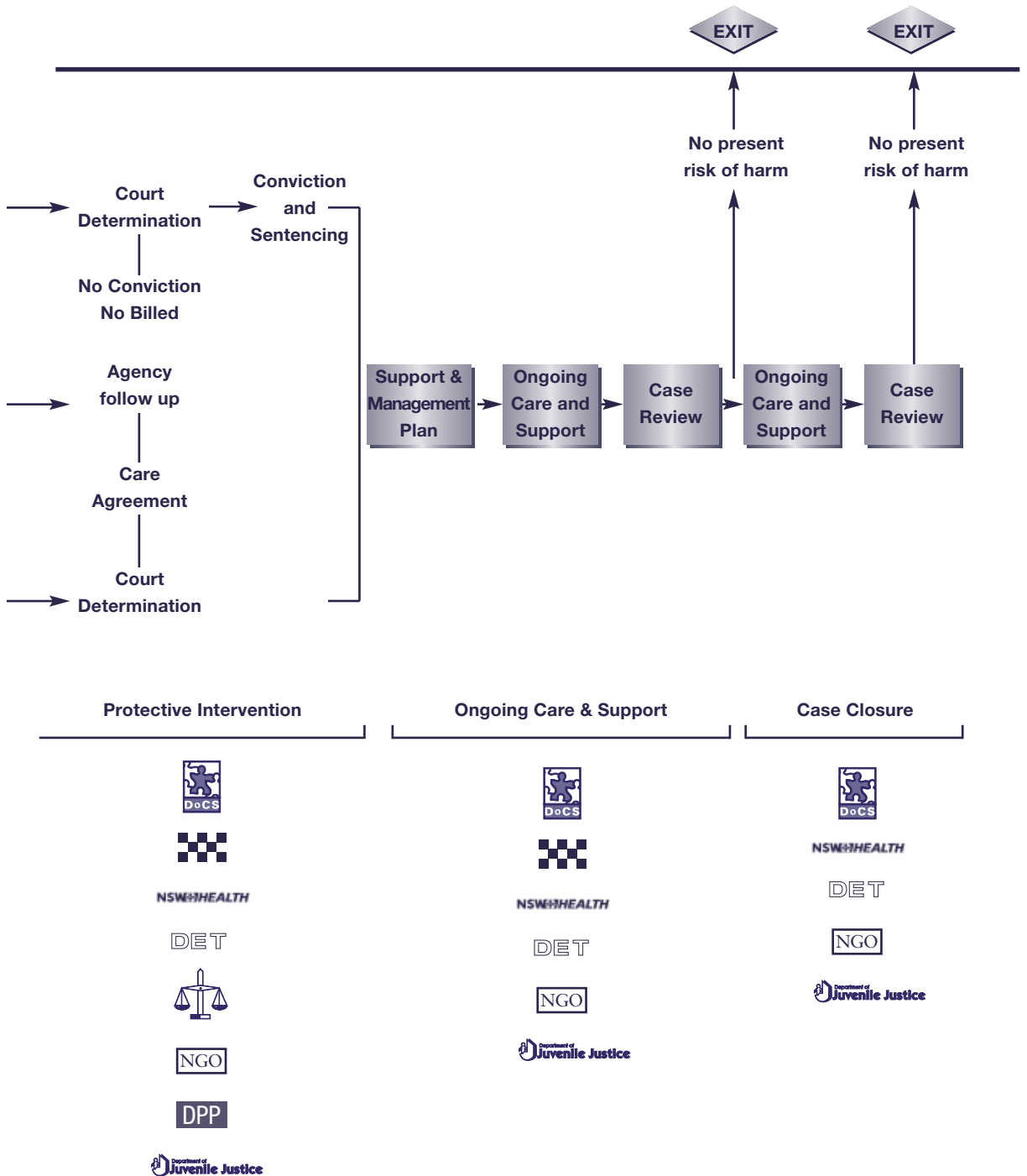
- 1 recognition**
- 2 reporting**
- 3 assessment and investigation**
- 4 protective intervention**
- 5 care and support**
- 6 closure**

There is overlap between stages and not every child protection case will involve all elements of each stage. Also, elements from different stages can occur simultaneously. The time taken to complete an element may vary markedly between cases. The framework presents the continuum of intervention, though on the whole, intervention is sequential in nature.

The flowchart, 'Interagency Approach in Practice' (page 70), shows the six stage framework for interagency activity, the major activities within each stage and which key agencies are involved in each stage. Points at which clients exit from child protection intervention are shown.

interagency approach in practice







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3.1 recognition

It is helpful for everyone whose work brings them into contact with children, young people and families to be aware of the indicators of abuse and neglect.

Recognising indicators of child abuse and neglect is about forming a responsible concern or well-founded suspicion that there is a risk of harm from neglect or abuse, which is current or likely to occur. In recognising indicators and risk of harm from abuse or neglect, it is not necessary to prove that abuse or neglect has occurred or who is responsible for it.

It is a matter for the courts to determine whether or not a criminal offence relating to child abuse or neglect has occurred, or if a child is in need of care.

Having recognised the indicators and risk of harm from abuse and neglect action should be taken to protect the child or young person and assist the family by making a report.

note It is not the duty of all practitioners to conduct assessment and investigation activities.

3.1.1 being alert

Practitioners in a wide variety of settings observe situations that raise concerns about risk of harm to a child or young person because of appearance, condition, behaviour or family circumstances.

A child, the parents or caregiver, a sibling or another person may tell a practitioner about what has been happening, what they fear or how they feel. This may raise concerns about abuse or neglect.

Practitioners in their work with a parent, caregiver or other adult may observe interactions between that adult and a child or young person which may raise concerns.

In any circumstances, practitioners should take special notice of changes in a child or young person including regression, physical deterioration, or frequency of presentation for assistance in a health, education, community or youth services setting.

note If a child is at serious risk of harm and in immediate danger, contact the police for emergency assistance.

practice point

Intervening early assists practitioners in planning and offering a preventative and supportive response, reducing the risk of harm to the child or young person and allowing family strengths to be supported and enhanced.



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3.1.2 indicators of abuse and neglect

There are many indicators that may raise concern about risk of harm from child abuse and neglect. The following information is presented as a guide to assist practitioners in recognising child abuse and neglect. One sign in isolation may not necessarily indicate child abuse or neglect. Practitioners should use a range of indicators to form a judgement as to whether a child or young person is at risk of harm. In all cases, indicators need to be considered in the context of the child's circumstances. The list of some of the indicators of child abuse and neglect provided in these Guidelines (p74) cannot be considered to be comprehensive.

Circumstances in a child's or a young person's life which relate to all types of abuse and neglect are described. They will be of assistance when considering the likelihood that an injury, behaviour or disclosure of a child is related to or caused by abuse or neglect, and whether there is a risk of harm. The indicators of child abuse and neglect are grouped by neglect, followed by physical, emotional and sexual abuse. The indicators are described in terms of the way a child or young person presents and the behaviours of those who abuse and neglect children or young people.

3.1.3 current concerns

'Current concerns' means that at the time of making a report practitioners are worried about the safety, welfare or well-being of the child or young person. Practitioners may also have concerns about other children or young people who may have current contact with the alleged abuser.

Current concerns may also exist for a child or young person where abuse has happened in the past, and/or where the alleged perpetrator still has contact with children, for example works in a children's service or as a youth worker.

3.1.4 recognising risk of harm

Child protection intervention is concerned with circumstances for children and young people that place their development and safety at risk. There are some established parameters for assessing this kind of risk; however there will always be debate in the child protection field about levels of risk. This debate reflects broader issues about acceptable and unacceptable parenting practices. For example, in the past the impact of domestic violence on children was not readily recognised, but

practice point

Some children with a disability may be more vulnerable to risk due to mobility constraints, dependence on others or limits on their ability to communicate.

practice point

In maternity, mental health, drug and alcohol treatment, and community health settings, practitioners should be alert to the indicators of risk of harm when an adult behaves in a way that raises serious concerns about their capacity to protect a child or young person. This is of greater significance if they have responsibility for a very young child.

practice point

Research shows that children do not always manifest obvious current effects following serious abuse and that disclosure of abuse is commonly delayed. Therefore a child or young person who has experienced past serious abuse, including sexual abuse, should be considered at risk of harm, even if there does not appear to be obvious current concerns. Reporting such abuse enables investigation of offences and referral to appropriate supports. It also enables follow up by employers if the alleged perpetrator still works with or cares for children and young people.

INDICATORS OF ABUSE AND NEGLECT

One indicator in isolation may not imply abuse or neglect. Each indicator needs to be considered in the context of other indicators and the child's or young person's circumstances.

The lists are not in hierarchical order.

Setting the context	Indicators of neglect	Indicators of physical abuse
<p>The following factors in the life circumstances of the child or young person are relevant when considering indicators of abuse and neglect:</p> <ul style="list-style-type: none"> ■ history of previous harm to the child or young person ■ social or geographic isolation of the child, young person or family, including lack of access to extended family or supports ■ abuse or neglect of a sibling ■ family history of violence including injury to children and young people ■ domestic or dating violence <p>Physical or mental health issues for the parent or caregiver affecting their ability to care for the child or young person:</p> <ul style="list-style-type: none"> ■ the parent or caregiver's abuse of alcohol or other drugs affecting their ability to care for the child or young person ■ a deficiency in functional parenting skills required to provide for the safety, welfare and well-being of children and young people ■ the parent or caregiver is experiencing significant problems in managing the child's behaviour ■ the parent or caregiver has unrealistic expectations of age appropriate behaviour in the child or young person ■ The parent is experiencing significant problems in relating to the young person <p>General indicators of abuse or neglect:</p> <ul style="list-style-type: none"> ■ where the child or young person gives some indication that the injury or event did not occur as stated ■ where the child or young person tells you she/he has been abused ■ when the child or young person tells you she/he knows someone who has been abused, may be referring to herself/himself ■ someone else tells you such as a relative, friend, acquaintance or sibling of the child or young person that the child or young person may have been abused ■ poor concentration ■ sleeping problems e.g. nightmares, bed wetting ■ marked changes in behaviour or mood, an escalation in risk-taking behaviours, tantrums, aggressiveness, withdrawal ■ child or young person complains of stomach aches and headaches with no physical findings ■ unrealistic expectations of a young person including failure to allow the young person to participate in decisions that affect them or expecting adult behaviours 	<p>Indicators in children and young people:</p> <ul style="list-style-type: none"> ■ poor standards of hygiene leading to social isolation ■ scavenging or stealing food ■ extended stays at school, public places, others' homes ■ being focused on basic survival ■ extreme longing for adult affection ■ a flat and superficial way of relating, lacking of a sense of genuine interaction ■ anxiety about being dropped or abandoned ■ self comforting behaviour, e.g. rocking, sucking ■ non-organic failure to thrive ■ delay in developmental milestones ■ loss of 'skin bloom' ■ poor hair texture ■ untreated physical problems <p>Indicators in parents or caregivers:</p> <ul style="list-style-type: none"> ■ failure to provide adequate food, shelter, clothing, medical attention, hygienic home conditions or leaving the child or young person inappropriately without supervision ■ inability to respond emotionally to a child or young person ■ child or young person left alone for long periods ■ depriving of or withholding physical contact or stimulation for prolonged periods ■ failure to provide psychological nurturing ■ one child or young person treated differently, for example scapegoated ■ absence of social support from relatives, other adults or social networks 	<p>Indicators in children and young people:</p> <ul style="list-style-type: none"> ■ facial, head and neck bruising ■ lacerations and welts from excessive discipline or physical restraint ■ explanation offered by the child or young person is not consistent with the injury ■ other bruising and marks which may show the shape of the object that caused it (e.g. a hand-print, buckle) ■ bite marks and scratches where the bruise may show a print of teeth and experts can determine whether or not it is an adult bite ■ multiple injuries or bruises ■ ingestion of poisonous substances, alcohol, drugs or major trauma ■ dislocations, sprains, twisting ■ fractures of bones, especially in children under 3 years ■ burns and scalds ■ head injuries where the child or young person may have indicators of drowsiness, vomiting, fits or retinal haemorrhages suggesting the possibility of the child having been shaken <p>General indicators of female genital mutilation which could include:</p> <ul style="list-style-type: none"> ■ having a special operation associated with celebrations ■ reluctance to be involved in sport or other physical activities when previously interested ■ difficulties with toileting or menstruation <p>Indicators in parents or caregivers:</p> <ul style="list-style-type: none"> ■ direct admissions by parents or caregivers that they fear they may injure the child or young person ■ family history of violence, including previous harm to children and young people ■ history of their own maltreatment as a child or young person ■ repeated presentations of the child or young person to health or other services with injuries, ingestions or with minor complaints ■ marked delay between injury and presentation for medical assistance ■ history of injury which is inconsistent with the physical findings ■ history of injury which is vague, bizarre or variable

indicators of emotional abuse

Indicators in children and young people:

- feelings of worthlessness about life and themselves
- inability to value others
- lack of trust in people and expectations
- lack of interpersonal skills necessary for adequate functioning
- extreme attention seeking or risk taking behaviour
- other behavioural disorders (e.g. disruptiveness, aggressiveness, bullying)

Children and young people sustain emotional harm from all the types of abuse.

Indicators in parents or caregivers:

- constant criticism, belittling, teasing of a child or young person, or ignoring or withholding praise and affection
- excessive or unreasonable demands
- persistent hostility and severe verbal abuse, rejection and scapegoating
- belief that a particular child or young person is bad or 'evil'
- using inappropriate physical or social isolation as punishment
- situations where an adult's behaviour harms a child's or young person's safety, welfare and well-being
- exposure to domestic violence

indicators of sexual abuse

Indicators in children and young people:

- describe sexual acts (e.g. 'Daddy hurts my wee-wee')
- direct or indirect disclosures
- age inappropriate behaviour and/or persistent sexual behaviour
- self-destructive behaviour, drug dependence, suicide attempts, self-mutilation
- persistent running away from home
- eating disorders
- going to bed fully clothed
- regression in developmental achievements in younger children
- child or young person being in contact with a known or suspected perpetrator of sexual assault
- unexplained accumulation of money and gifts
- bleeding from the vagina or external genitalia or anus
- injuries such as tears or bruising to the genitalia, anus or perineal region
- sexually transmitted diseases
- adolescent pregnancy
- trauma to the breasts, buttocks, lower abdomen or thighs

General indicators of child or young person's stress should be considered such as:

- Indicators in parents, caregivers, siblings, relatives, acquaintances or strangers:
- exposing a child or young person to prostitution or child pornography or using a child or young person for pornographic purposes
- intentional exposure of child or young person to sexual behaviour in others
- ever committed/been suspected of child sexual abuse
- inappropriate curtailing or jealousy regarding age-appropriate development of independence from the family
- coercing child or young person to engage in sexual behaviour with other children and young people
- verbal threats of sexual abuse
- denial of adolescent's pregnancy by family
- perpetration of spouse abuse or physical child abuse.

Offenders use a range of tactics including force, threats, and tricks to engage children or young people in sexual contact and to try to silence the child or young person. They may also try to gain the trust and friendship of parents in order to obtain access to children and young people

Adapted from:
 John Hunter Hospital, *Child Protection Protocol Revision 10*: June 29, 1994; Solihull Area Child Protection Committee, *Multi-Agency Training in Child Protection Training Handbook* (undated); Humberside Area Review Committees, *Child Abuse Guidelines and Procedures*, UK (undated); *Interagency Guidelines Child Protection*, NSW Child Protection Council, 1991; *New Directions in Child Protection and Family Support: Interim Guidelines*, Government of Western Australia, March 1996; Queensland Centre for Prevention of Child Abuse, *Facts Sheet 4 & 5 – What is Child Abuse?*, Queensland Department of Family Services and Aboriginal and Islander Affairs, 1991; NSW Child Protection Council Fact Sheets 1995.

research has found that it can have a profound impact on children and young people, especially very young children.

Determining the level of risk to children and young people from abuse and neglect requires workers to consider a range of factors. This will not always be straightforward and workers should consult with senior staff in their own agency or the DoCS Helpline if they are unclear about the risk of harm that may arise from circumstance a child or young person faces.

refer Seeking advice p81.

practice point

When considering the harm or potential harm to the child or young person, practitioners need to think about the suspected abuse or neglect, and carefully consider the impact of it on a child or young person. The suspected abuse or neglect may be one event or a series of events, or, particularly in relation to neglect, an accumulation of circumstances.

Risk of harm refers to the likelihood that a child or young person may suffer physical, psychological or emotional harm as a result of what is done (physical, sexual or psychological abuse) or not done (neglect) by another person, often an adult responsible for their care. Risk of harm can also refer to young people who may suffer physical, psychological, sexual or emotional harm as a result of environmental factors (for example homelessness), or self-harming behaviours. Agencies and practitioners are required to make judgements about the risk of harm to a child or young person from abuse or neglect. This requires a consideration of the likely degree of harm taking into account the age, development and vulnerability of the child or young person.

There are a number of elements that will assist practitioners in analysing and deciding whether a child or young person is at risk of harm from abuse or neglect. These elements may include:

- the age, development, functioning and vulnerability of the child or young person.
- the behaviour of a child or young person which suggests they may have been or are being harmed by another person
- behaviour from another person, that has had, or is having, a demonstrated negative impact on the healthy development, safety, welfare and well-being of the child or young person (for example, drug and alcohol abuse or domestic violence)
- contextual risk factors, for example, recent abuse or neglect of a sibling, or a parent recently experiencing significant problems in managing a child or young person's behaviour
- indications that a child's or a young person's emotional, physical or psychological well-being is significantly affected as a result of abuse and neglect.

In making judgments about risk of harm, practitioners need to give consideration to the factors that may heighten the risk of harm such as poverty, social isolation, presence of disability, or absence of educational opportunities. These factors do not of themselves constitute risk of harm

in relation to Section 23 of the *Children and Young Persons (Care and Protection) Act* but may influence a judgment on both the level of risk and the degree of harm that may occur.

refer Section 71(2) *Children and Young Persons (Care and Protection) Act 1998*.

Alternatively, there are factors that may help reduce the risk of harm and provide protective factors for children and young people. These include nurturing and secure relationships with at least one parent and another adult such as an uncle, aunt or teacher; positive school or childcare environments; positive personal achievements (eg academic, sporting); involvement in pro-social peer groups.

3.1.5 types of risk of harm

It is helpful to consider each of the circumstances that give rise to the risk of harm.

23 *(a) the child or young person's basic physical or psychological needs are not being met or are at risk of not being met*

Neglect is the failure to provide the basic physical and emotional necessities of life. Neglect may be an ongoing situation and can be caused by a repeated failure to meet the child or young person's basic physical and psychological needs.

The neglect of basic physical needs occurs when a parent or caregiver fails to provide the basic staples of life to an adequate degree. These include food, physical support and hygiene. It also includes safety from harm, which may be the provision of appropriate and adequate adult supervision.

The neglect of basic psychological needs occurs when a child or young person is not receiving sufficient or appropriate interaction, encouragement, nurturing or stimulation from their parents or caregivers. Neglect also refers to the persistent ignoring of a child's signals of distress, pleas for help, attention, comfort, reassurance, encouragement and acceptance. Without this care a child or young person is at risk of harm in that they may not develop appropriate attachments with primary carers and others, significantly impairing their ongoing emotional, cognitive and physical development. The lack of awareness and ignoring of a child or young person's emotional needs may lead to disruptions in their development, of a sense of identity and associated feelings of sadness and isolation which may have compounding adverse effects on growth, development and well-being. In young people this may include disinterest in all aspects of a young person's life by parents or caregivers.

Behaviours that might indicate that a child or a young person is at risk of harm from neglect include:

- being focused on basic survival
- scavenging or stealing food
- young person left alone for long periods
- being deprived of physical contact or stimulation for prolonged periods.

refer Indicators of abuse and neglect p74.

Reporters should consider these questions in qualifying the notion of ‘basic’, that is, not just all needs.

Are the child or young person’s basic physical needs NOT being met? OR are at risk of not being met? Are the child or young person’s basic psychological needs NOT being met? OR are at risk of not being met?

practice point

Children and young people may be perpetrators of abuse. Practitioners should ensure that in protecting a child or young person from a peer or sibling there is minimum disruption to the lifestyle or relationships of the victim. For example, in cases of sexual or severe physical abuse it may be more important to move the young person inflicting harm from the home than to move the victim.

- 23 *(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care*

Practitioners need to consider whether the risk of harm is likely to arise from the failure to arrange necessary medical care. For very young children, the risk of harm in not receiving medical attention may be quite high. There are some conditions for which parents may not seek medical care, but do not pose a risk of harm to the child. Other conditions such as burns may be quite critical and, depending on severity, require medical attention.

Some forms of medical intervention that are widely debated in the community, for example immunization, would not come under this definition as necessary medical care. This definition may not include circumstances where culture or parental beliefs lead a parent or caregiver to decide on a particular course of treatment for a condition.

Reporters should consider these questions in qualifying the notion of ‘necessary’ medical care.

Does the child or young person require necessary medical care? AND Have their parents failed to arrange for necessary medical care AND are unable or unwilling to?

- 23 *(c) the child or young person has been, or is at risk of being physically or sexually abused or ill-treated*

Physical abuse or ill-treatment is assault, non-accidental injury and/or physical harm to a child or young person by a parent, caregiver, another person responsible for the child or young person, or other child or young person. It includes injuries or harm which are caused by excessive discipline, beating or shaking, bruising, lacerations or welts, burns, fractures or dislocation, female genital mutilation, and attempted suffocation or strangulation.

Sexual abuse or ill-treatment is any sexual act or sexual threat imposed on a child or young person. Adults, adolescents or older children who sexually abuse children or young people exploit their dependency and immaturity. Coercion, which may be physical or psychological, is intrinsic to sexual abuse and differentiates it from consensual peer sexual activity.

refer Indicators of abuse and neglect p74.

23 *(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm*

There are numerous definitions of domestic violence, with general agreement that it is violence, abuse and intimidatory behaviour perpetrated by one person against another in a personal, intimate relationship. It is partnership violence that includes violence perpetrated when couples are separated or divorced. The acts of domestic violence are mainly, but not only, perpetrated by men against women within heterosexual relationships but can also occur within same sex relationships.

Domestic violence occurs between two people where one has power over the other causing fear, physical and/or psychological harm. Domestic violence can have a profound effect on children and young people. Some of the forms of domestic violence are physical assault, sexual assault, psychological abuse, social abuse (being isolated socially or geographically against your will) and economic abuse (having no access to or control over money and other resources).

Serious psychological harm involves the impairment of, disturbance or damage to a child or young person's physical, cognitive, emotional, behavioural or social development. There are varied manifestations of serious psychological harm that are dependent on age, personality, length of exposure to incidents of domestic violence, nature of incidents of domestic violence and remedial assistance, if any, provided to the child or young person and their family.

Children and young people may experience harm from domestic violence on a number of levels – as direct victims of physical and

psychological abuse, as ‘indirect’ victims when attempting to protect a person, or as victims of emotional and psychological trauma by living in a climate of fear and intimidation.

Serious psychological harm should be assumed in the presence of the following factors:

- the repetition or an escalation in frequency or severity of violence in the household
- where a child or young person has been physically harmed,
- if the partner has required medical attention
- where weapons have been used
- if police officers have attended the house, or where an apprehended violence order has been issued and/or breached.

It is also crucial to consider whether the caregiver’s level of victimisation is such that they are unable to act protectively towards the child or young person, and to note whether domestic violence coexists with one or more factors such as the hazardous use of alcohol or other drugs. Other issues that may increase the vulnerability of the family include the presence of a mental health problem or a disability.

Reporters should consider these questions in qualifying the notion of ‘serious’ physical or psychological harm, not just any harm:

Does the child or young person live in a household where there is domestic violence? AND As a consequence, are they at risk of suffering serious physical harm OR serious psychological harm?

refer Indicators of abuse and neglect p74.

23 *(e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.*

Children and young people sustain harm from all types of abuse and neglect but the focus of section 23(e) of the Act is the harm caused by the psychologically abusive behaviours of the parent or caregiver.

Serious psychological harm occurs where the psychologically abusive behaviour of a parent, caregiver, older child or other person profoundly damages the confidence and self esteem of a child or young person resulting in serious emotional deprivation or trauma. Psychological abuse involves serious impairment of a child’s or young person’s social, emotional, cognitive, intellectual development and/or disturbance of a child’s or young person’s behaviour.

Children or young people may be at risk of harm when parenting or carer practices are characterised by:

- high criticism coupled with low warmth
- domination or excessive, inappropriate or inconsistent discipline
- when the child or young person is the butt of degrading or derisive statements
- ongoing scapegoating
- ongoing social isolation
- inconsistent, inappropriate and unrealistic expectations
- situations where inappropriate behaviour is targeted sustained, and repetitive.

refer Indicators of abuse and neglect p74.

These behaviours damage, or substantially reduce, the creative and developmental potential of crucially important mental faculties and mental processes of a child: these include intelligence, memory, recognition, perception, attention, language and moral development. This abuse fundamentally undermines a child or young person's capacity to manage their environment by creating confusion and fear, thereby rendering them less confident and more vulnerable.

Reporters should consider these questions in qualifying 'serious' psychological harm, not just any harm.

Have the child or young person's parents/caregivers behaved in such a way towards them that the child or young person has suffered serious psychological harm? OR is at risk of suffering serious psychological harm?

refer Risk Assessment for the NSW Department of Community Services and the *Children and Young Persons (Care and Protection) Act 1998*.

3.1.6 seeking advice

Forming a concern or suspicion that a child or young person is at risk of harm from abuse or neglect must be approached carefully and with an open mind.

For an agency staff member who is uncertain about whether to report the matter to the Department of Community Services it is best to consult. In consulting, it is unnecessary to identify the child concerned. Seek advice from colleagues or where possible consult with the intake

practice point

For a child or young person who has limited social networks, remember that you may be the only other significant adult in her or his life. Even though you might be uncertain how to respond, do not avoid or reject them. If you become aware of risk of harm, your support will be very important for the child or young person.

practice point

Developmental disability does not necessarily impede parenting.

practice point

It should be recognised that a child or young person who discloses abuse can often be subject to considerable pressure from family members and others to withdraw their allegations. The child may fear they will be the cause of breaking up the family. It is important to be supportive of the child and discuss any fears or threats that may be made to encourage the child to withdraw their allegations.

officer of the Department of Community Services DoCS Helpline. Other sources of advice may be a staff member at a specialized service such as a disability or early childhood/children's service, sexual assault service, PANOC service, Child and Adolescent Mental Health Service, or a paediatrician. Carefully consider this advice. Remember your first hand contact with the child is very important in forming your judgement about reporting the matter.

If you suspect a child may be involved in some form of abuse which appears to involve more than one child or young person, don't attempt to explore the circumstances; report the matter immediately.

Where you are concerned about risk of harm to a child or young person and suspect that a work colleague may be involved, after reporting it to the Department of Community Services, report it to the senior management of your agency and follow your agency's procedures.

A child or young person with a disability has the same needs as any other child or young person for care and protection. However, some may be more vulnerable because of mobility constraints, dependence on others for personal care or physical care, or communication and limitations in their ability to stop abuse or communicating what has happened. Practitioners should be alert to these circumstances when considering whether to make a report. Assist children with a disability by offering appropriate support. Practitioners can play an important role in advocating for children with a disability.

3.1.7 listening and clarifying

Be prepared to listen and to assist a child or young person when he or she tells you about an event or behaviours that indicate risk of harm. Offer support to the child and be honest about your responsibility for taking action to protect them and what is likely to happen.

The person reporting should seek to provide clear information but should not draw conclusions or engage others in discussion, for example by asking probing questions, accusing parents or discussing the circumstances of the report with them.

Where appropriate, the family should be informed about the decision to report and the reason for making a report to the Department of Community Services. Openly communicating your concerns to the family may increase their willingness to accept services offered to protect the child or young person.

In the case of a young person, the decision to make a report should be discussed with them.

In cases of suspected sexual abuse, it is inappropriate to discuss with the family the nature of your concerns, particularly if it is suspected that a member of the household may be involved in the abuse. If other colleagues have also been involved with the child or young person, consult them and agree on what information will be shared with the family.

refer Agency guidelines.

3.2 reporting

Practitioners have a responsibility to stop child abuse and neglect and should report risk of harm to the Department of Community Services.

The Department of Community Services is the agency with the authority and mandate to respond to reports of risk of harm.

Children and young people will only be protected from risk of harm when community members, practitioners and agencies take action on their behalf by reporting.

refer Who reports to the Department of Community Services p85.

The *Children and Young Persons (Care and Protection) Act 1998* establishes a process for people, who have reasonable grounds to suspect that a child or young person is at risk of harm, to report to the Department of Community Services.

REASONABLE GROUNDS TO SUSPECT

A report is made when there are 'reasonable' grounds to suspect risk of harm. Reasonable grounds relate to the facts of the concern, the nature and seriousness of the risk of harm, being mindful of the child's or the young person's age and circumstances.

Children, young people and their families may seek assistance from the Department of Community Services. Such requests for assistance will enable vulnerable families to be linked with support services from an appropriate agency in order to minimise the risk of harm.

refer Sections 20, 21, 27 and 113 *Children and Young Persons (Care and Protection) Act 1998*.

Allegations of abuse against employees should also be reported to the Ombudsman.

refer Reports to the Ombudsman p95.



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practice point

The aim of making a report is to promote the safety, welfare and well-being of children and young people. A range of support services directed towards strengthening and supporting families is an important aspect of such an approach. In responding to the needs of a child or young person the emphasis is on prevention, early intervention and on communication and planning between agencies in order to respond effectively and as early as possible.

practice point

Children and young people are all vulnerable to abuse and neglect. Issues raised by the age of the child or young person need to be carefully considered in each case.

practice point

Children and young people who exhibit sexually abusive behaviours or who sexually offend may be at risk of harm and practitioners should consider whether a report is required.

3.2.1 what to report

Suspected risk of harm from child abuse or neglect should be reported.

refer Who reports to the Department of Community Services p85.

The grounds for reporting a child or young person are outlined under section 23 of the *Children and Young Persons (Care and Protection) Act 1998*. It states that:

A child or young person is at risk of harm if current concerns exist for the safety, welfare and well-being of the child or young person because of the presence of one or more of the following circumstances:

(a) the child's or the young person's basic physical or psychological needs are not being met or are at risk of not being met

(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care

(c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated

(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm

(e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.

refer Recognising risk of harm p73.

refer Section 23(c) *Children and Young Persons (Care and Protection) Act 1998*.

3.2.2 pre-natal reporting

Reports can be made before the birth of a child where there may be risk of harm after the child is born. Pre-natal reporting is not mandatory.

The principle of pre-natal reporting is to provide an opportunity for early support and assistance to pregnant women where their child, when born, may be at risk of harm, and to reduce the likelihood of the need for out-of-home care after the child is born. Pre-natal reporting may be particularly helpful for pregnant women in domestic violence situations, with mental health or hazardous drug use during pregnancy because reporting can provide the catalyst for assistance. However, pre-natal reporting should only be used where there are clear indications that the

infant may be at risk of harm. It is not intended to be used as a punitive measure against women under stress.

refer Section 25 *Children and Young Persons (Care and Protection) Act 1998*.

3.2.3 who reports to the Department of Community Services

According to the *Children and Young Persons (Care and Protection) Act 1998*, reporting children under the age of 16 is mandatory for certain groups of employees and managers including:

- a person who, in the course of his or her professional work or other paid employment, delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children
- a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly to children.

As this is a necessarily broad category of professionals it is important to check agency procedures for your reporting responsibilities. Staff and managers are only mandated to report if the concerns arise in the course of their work. It is a personal choice to report concerns that arise in a person's private life.

If a person providing residential accommodation for a child believes that the child is living away from home without parental permission, then it is mandatory for that person to immediately inform the Department of Community Services of the child's whereabouts.

It is important to remember that some agencies may determine that a number of professionals not listed in the *Children and Young Persons (Care and Protection) Act 1998* must report by agency direction.

A person who has a mandated responsibility has that responsibility personally. They should follow their agency procedures, but the responsibility for making a judgment and acting upon it rests with the person who has perceived a risk of harm.

Any person including parents, relatives, friends, neighbours and acquaintances, who suspects on reasonable grounds that a child or young person or a class of children or young people is at risk of harm may report.



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Any person may report the homelessness of a child to the Department of Community Services. Homelessness of a young person can only be reported with the young person's permission.

refer Sections 24, 27, 120, 121 and 122 *Children and Young Persons (Care and Protection) Act 1998*.

A report should be made as soon as possible and as a minimum should provide the name or a description of the child or young person and the reason why there is suspected risk of harm.

refer Recognising risk of harm p73.



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3.2.4 reporting young people aged 16-17 years

Under the *Children and Young Persons (Care and Protection) Act 1998* mandated reporters are only required by law to report risk of harm to children under the age of 16 years.

Those working with young people should endeavour to reduce vulnerability to risk of harm through the network of care and support services available. If they have concerns about the level of risk a young person is facing and are unsure if it warrants a report it is important to consult with the Department of Community Services.

Where a practitioner is concerned that a young person aged 16 or 17 years is at risk of harm from abuse or neglect they should make a report. The young person should be involved in the decision to report and the process of reporting, unless there are exceptional reasons for excluding them. If the young person is against the report being made, this information must be conveyed to the Department of Community Services, which must consider the young person's wishes in any assessments and investigations.

refer Sections 24, 27 and 31 *Children and Young Persons (Care and Protection) Act 1998*.

The needs of young people can vary from the needs of children and workers will need to use their judgement about the risks a young person may face.

Young people may be vulnerable because of issues such as hazardous substance abuse, family breakdown or crisis, disability, homelessness or a violent relationship. They may be exhibiting criminal behaviours or be victims of crime. Vulnerable young people are often living with multiple risk factors and engaging in risk taking behaviours themselves.

Protective factors will also need to be taken into account when dealing with the issue of reporting risk of harm. For example, a young person may be homeless but because they are in a youth refuge with supportive adults around them they are therefore considered to be safe. If this young person leaves the refuge, the protective factors may disappear and a report may then be warranted.

In making a judgement about reporting young people, the risk of harm issues are not always clear. At times it is difficult to differentiate the origins of risk of harm that young people face. For example, a young person may be at risk of harm from hazardous substance abuse or self-harming behaviours but it can be difficult to make a judgement as to whether the risky behaviour stems from abuse, neglect or homelessness. Sometimes practitioners may be working with a young person who exhibits a range of indicators or abuse or neglect. The young person may disclose past abuse that has been investigated previously and the matter closed, or they may not have disclosed abuse or neglect but their lifestyle indicates they are experiencing risk of harm from past abuse.

In weighing up whether to make a report practitioners need to ask themselves:

- can the indicators be linked to risk of harm from abuse and neglect?
- what will happen if this young person is not reported?
- how do I negotiate the report with the young person who does not wish to be reported?
- how can I assist in reducing the risk of harm once the young person is reported?
- how can I work with the Department of Community Services to ensure that the report has positive outcomes for the young person?
- can this young person's safety and welfare needs be met if I don't report?

refer Seeking advice p81; recognising risk of harm p73.

3.2.5 how to report

The Department of Community Services is the central point for all reports about risk of harm from child abuse and neglect.

Reports are made to the 24 hour DoCS Helpline on 13 36 27. The Department of Community Services will assess how to respond to the report.



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practice point

When reporting, tell the Department of Community Services about any special circumstances, language, culture or disability that may require special skills or assistance.

When making a report, practitioners and other staff must follow agency procedures and use agreed forms. Where no procedures exist, as much as possible of the following information should be provided:

- the name or a description of the child or young person or class of children/young people
- the child's or the young person's address or a description of her or his whereabouts
- other children or young people who may be at risk
- whether the risk of harm is related to a staff member of an organisation
- when the child or young person was last seen
- name and address of the person suspected of abusing the child or young person and if possible occupation
- the approximate age of the child/children or young person/s (if known), school or centre they attend and if there are other children or young people in the household and their ages
- whether a language or sign interpreter may be required, whether support is required for a person with a disability or an Aboriginal agency should be involved (if known)
- all available information that is relevant to safety welfare and well-being
- the reasons for concerns about risk of harm
- events, conversations and observations that led to your concerns; these should be recorded and available for reference when you report
- your name and contact phone number
- name, address and approximate age of parents (if known)
- if relevant, details of any injuries and the circumstances.

In addition to making a report to the Department of Community Services, police officers must:

- offer appropriate care to the victim if the child or young person is present
- consult with specialist police (JIT/CPIT) if advice on immediate action is required
- consider whether action is needed by local police (containment, crime scene prevention or apprehension of an offender)
- consider whether an apprehended violence order may be required and seek a Telephone Interim Order if required.

Local police should not commence an investigative interview with a child or young person unless requested by a specialist officer from a Joint Investigation Team or Child Protection Investigation Team.

3.2.6 safeguards for reporters

Reports to the Department of Community Services are confidential. Private citizens may give information anonymously if they wish. Those who through their work make a report, whether or not they are required by law to do so, should make known their position and their agency.

Any person who makes a report is afforded the following protection by law if they make a report in good faith:

- the report shall not be held to be a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct
- no liability for defamation can be incurred because of the making of the report
- the report, or its contents, is not admissible in any proceedings as evidence against the person who made the report.
- a person cannot be compelled by a court to provide the report or give any evidence as to its contents.

These protections may be overridden on rare occasions where information about the report is crucial to court proceedings.

refer Sections 29 and 248 *Children and Young Persons (Care and Protection) Act 1998*.

If as a result of making a report to the Department of Community Services, a person is threatened or fears personal violence, this should be reported to the police, who may apply for and pursue on their behalf, an apprehended violence order.

No agency may disclose to a parent, alleged perpetrator, employer or other person the identity of a person who makes a report, to the agency or to the Department of Community Services.

3.2.7 receiving reports

The officer at the DoCS Helpline will seek from the reporter as much information as possible concerning the child or young person and the circumstances of the allegation. Information relevant to the immediate safety and welfare of the child and the risk of harm may also be gathered from other sources as necessary, including the Department of



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practice point

If the Department of Community Services judges that there is no risk of harm, it can directly provide other care and support services or make a referral to another agency. In doing so it can seek information from that agency relating to the safety, welfare and well-being of a child or young person to ensure it can carry out its responsibilities.



practice point

Where it is known that there are special issues relating to the child or young person such as Aboriginality, culture or a disability, assistance should be sought from an organisation with special expertise as early as possible. Assistance may include special child care agencies, community groups, resource centres or specialised workers. It is important to use interpreters when there is a possibility that English communication will be misunderstood. If it is thought that a child, young person or family may be Aboriginal, the practitioner should make reasonable efforts to determine if this is the case.

Community Service's Client Information System, the police and other agencies such as family support services or community health centres.

The authority for the Department of Community Services to investigate and assess the report is contained in section 30 of the *Children and Young Person's (Care and Protection) Act 1998*.

Particular attention should be given to whether an apprehended violence order is in force. Where the report indicates a criminal offence has been committed, this must immediately be reported to either a JIT/CPIT (e.g. cases of child sexual abuse or serious physical abuse) and/or to local police (e.g. common assault, breach of AVO). If it is assessed that the Department of Community Services does not need to intervene and a police-only response is required, then the caller should be referred to the police. Other relevant information may be gathered from professionals and agencies that have had recent contact with the child or young person, their parents or other family members.

If the Department of Community Services officer believes that the child or young person being reported may be an Aboriginal or Torres Strait Islander then they will make any relevant and reasonable inquiries to establish this.

refer Section 32 *Children and Young Persons (Care and Protection) Act 1998*.

The authority for officers of the Department of Community Services to seek information is contained in section 248 *Children and Young Persons (Care and Protection) Act 1998*. This is necessarily a broad power that authorises relevant officers of the Department of Community Services to seek information from any person in carrying out assessments and investigations. Those who aim to stop abuse and protect children and young people should respond positively and promptly to requests for information in these circumstances.

refer Sections 30 and 248 *Children and Young Persons (Care and Protection) Act 1998*; exchanging information p51; agency policy and procedures.

Immediate action may be required in cases where there are serious concerns that a child or young person is in imminent danger of abuse or neglect. All intervention must be based on the paramount interest of the child or young person.



3.2.8 initial assessment

This is the first of a series of assessments that will be made before any decisions about intervention are made. The focus of the initial assessment is on assessing the risk of harm, the level of safety and on determining

the need for further investigation, assessment or other action that is required. The DoCS Helpline carries out the initial assessment.

refer Flowchart p100.

Factors that should be considered in initial assessment are:

- the child's or young person's vulnerability because of age, degree of dependency or disability
- the actual or possible level of severity or impairment or damage to the child's or young person's physical health, emotional state and intellectual functioning
- the child's or young person's circumstances, whether:
 - i) there has been a recent escalation in events,
 - ii) there is a cumulative effect of many events, or
 - iii) if current circumstances continue, severe impairment or damage will occur
- any previous allegations of abuse or neglect of the child or siblings and how recently they have occurred and their seriousness
- the nature and outcome of any previous investigations, including responses to domestic violence
- the current whereabouts of the child or young person and the level of risk to the child or young person's safety, welfare or well-being; this judgement will be informed by the absence or the presence of a protective adult
- the parents' current mental or emotional state, level of intellectual functioning and/or drug and alcohol dependency
- the employer's response if the allegation involves a staff member
- the active involvement of other government or non-government services.

note Initial assessment is also known in the Department of Community Services as Risk Assessment (Guide 1). Risk Assessment is used by the Department of Community Services to assess safety and risk.

If the Department of Community Services decides that there are no care and protection issues, services or advice may still be offered to the child, young person or family. An offer of advice or support services may be important if a family's needs are to be met. Support to children and families in these circumstances can be provided by a range of community-based, non-government organisations and government agencies. Examples might be family support or specific counselling and support services for young people.

practice point

Where the initial assessment indicates that the matter will require a joint response from Police and the Department of Community Services it should be quickly referred to a Joint Investigation Team or a Child Protection Investigation Team, if the case is in the country. This team will formulate an investigation plan and risk assessment. Delays can occur in the investigation if the Department of Community Services develops a plan rather than making a prompt referral.

The Department of Community Services may also decide that although no further Department of Community Services involvement is required the matter should be referred to the police for criminal investigation or to an agency for consideration of disciplinary proceedings.

In emergency situations in rural and remote areas, special arrangements may need to be negotiated by agencies to ensure appropriate services can be delivered to children, young people and families.



3.2.9 required action plans

On the basis of the initial assessment, the officer of the Department of Community Services prepares a required action plan that is approved by an authorised officer. In preparing this plan, the officer may seek the advice of a specialist child protection worker.

The plan must state whether:

- immediate action is required to remove risk of harm
- police should be immediately advised of a suspected criminal offence
- police are to be advised because a child between the ages of 10 and 14 years is exhibiting sexually abusive behaviour (section 42 *Children and Young Persons (Care and Protection) Act 1998*)
- a joint investigation with police is warranted
- a medical examination or other health assessment may be required
- a specialist child protection worker should be involved
- a temporary care order is required for the child or young person
- counselling and support services for the child or family are being provided or are required
- a full assessment and investigation should occur.

At this stage an authorised officer of the Department of Community Services decides on the basis of the information available whether the matter requires further assessment and investigation.

If the matter meets the criteria for further assessment and investigation by the Department of Community Services it is referred to the local office of the Department of Community Services where the secondary risk assessment (Guide 2) will take place.

refer Child, young person and family assessments p109.

If the matter meets the criteria for joint police and Department of Community Service's investigation, the matter is promptly referred to the Joint Investigation Team or Child Protection Investigation Team.

Reports that meet the criteria for joint investigation will have an assessment and investigation plan developed jointly by specialist police and Department of Community Services officers. Children, parents and other relevant witnesses will be interviewed by a Joint Investigation Team or Joint Investigation Response.

There must be close coordination between police officers and Department of Community Services officers to reduce duplication of interviews for children and young people.

3.2.10 reports that do not require protective intervention by the Department of Community Services

The initial assessment will identify those reports which are best responded to with information, material assistance or referral to support services. This approach is appropriate when there are no apparent risks to the child's or the young person's safety, welfare or well-being or there is no need for statutory intervention prior to referral to a specialist service and the issues raised in the report will suggest general parenting or relationship issues.

If it decides to take no further action, the Department of Community Services will take one or more of the following steps:

- indicate that no further action is appropriate
- advise on what the reporter could do to manage the matter in the reporting agency or locally
- ask the reporter to re-contact if the situation deteriorates or new grounds arise
- request the reporter to provide a service
- refer the matter to the police in cases where the child is not at risk but it appears that a criminal offence has occurred
- refer the matter to an employer for agency investigation of alleged child abuse by an employee.

Advice or support services may be important in promoting the welfare and well-being of the child, young person and the family. Support to children and families in these circumstances can be provided by a range of community-based, non-government organisations and government agencies, such as family support and specific counselling and support services for young people.



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practice point

Practitioners should check their agency's internal policies and procedures before providing parents with details concerning a report.

3.2.11 feedback to reporters

It is the responsibility of the Department of Community Services to provide feedback to the person reporting. In some situations it may be possible to provide immediate information to the reporter. The person reporting will be advised in writing of what action has been taken and it will then be possible to phone the designated local officer to get information on what follow up has occurred. The person who makes a report can also contact the DoCS Helpline for information about what action has occurred, after 24 hours, or after an initial risk assessment.

It is not always possible or appropriate to provide detailed information but in the majority of cases it should be possible to tell the reporter, for example, who the case manager is, if known; that the need for support services is to be discussed with the child, young person and family; that a home visit will be made; that there are to be further discussions with the police or that, on the information available, no further action is to be taken.

Providing feedback to reporters also provides an opportunity for the reporter to offer further information about the child or young person. It is not uncommon for the reporter to recall or have further information after they have made the report. This contact provides the opportunity for the Department of Community Services to make constructive suggestions about any support a reporter could give to the child, young person or family. This is particularly relevant for reporters such as teachers, family support workers and child care workers who may be in daily contact with the child or young person and parents. If the child or young person or family is aware that a report was made, it is important to inform them about what action has been taken following the report.

3.2.12 requesting reviews of Department of Community Services' decisions

It is the role of the Department of Community Services to make a decision on what action, if any, is required after receiving a report. If an agency or a reporter is concerned about the course of action taken by the Department of Community Services, the Department of Community Services will promptly review the decision after the concerns have been received.

The process for such a review requires that the agency or the reporter should contact the DoCS Helpline or the Departmental unit supervising the case (if it has been referred on) asking for a review and providing the information on which the request is based. Any requests for review made verbally should also be put in writing.

The Department of Community Services will review its decisions promptly after receiving the request and will provide the agency or reporter with its reasons for the review decision giving particular attention to any new information presented.

3.2.13 reports to the Ombudsman

Recent amendments to the *Ombudsman Act 1974* require the head of agency of all public authorities and certain non-government agencies to notify the Ombudsman within 30 days of becoming aware of any child abuse allegation or conviction made against the employee of a designated agency [section 25C(1)].

note The test for making a report (notification) of an allegation of child abuse to the Ombudsman is significantly lower than that required for a report to the Department of Community Services pursuant to the *Children and Young Persons (Care and Protection) Act 1998*. Any allegation of child abuse made against an employee, irrespective of whether the head of agency believes the allegation to be unfounded, malicious or vexatious, must be reported to the Ombudsman.

refer Definition of child abuse p37; section 25A *Ombudsman Act 1974*.

The following designated government and non-government agencies have a particular obligation under the Act to report any allegations of child abuse involving employees irrespective of whether the alleged offence occurred inside or outside the workplace:

- Department of Community Services
- Department of Corrective Services
- Department of Education and Training
- Department of Juvenile Justice
- Department of Health
- Department of Sport and Recreation
- area health services
- the Ambulance Service
- non-government schools
- child care centres
- agencies providing substitute residential care
- statutory health corporations
- affiliated health organisations.



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IMPORTANT TERMS AS DEFINED IN PART 3A OMBUDSMAN ACT 1974

Child abuse allegation means an allegation of child abuse against a person or an allegation of misconduct that may involve child abuse.

refer Investigation of child abuse allegations against employees of designated agencies p153.

Child abuse conviction means any conviction of a person, in this State or elsewhere, of an offence involving child abuse, and includes a finding by a court that a charge for such an offence is proven even though the court does not proceed to conviction.

Employee of an agency includes:

- any employee of an agency, whether or not employed in connection with any work or activities of the agency that relates to children, and
- any individual engaged by the agency to provide services to children (including in the capacity of a volunteer or foster carer).

Head of agency means the chief executive officer or other principal officer of the agency.

Regulations can prescribe other public authorities or non-government agencies as designated agencies. Regulations may also specify the person who is to be regarded as the head of a particular agency.

OMBO

Upon receipt by the Ombudsman, the notification of the child abuse allegation or conviction will be assessed to determine if a risk assessment has been undertaken by the agency and whether appropriate action has been taken as the result of this assessment. The matter will then be allocated to an Investigation Officer for monitoring purposes pending the outcome of the final report from the agency. The Ombudsman will acknowledge the notification and advise the agency of further information required as necessary.

Once the agency has concluded the investigation of the child abuse allegation or conviction, a final report with supporting documentation is sent to the Ombudsman. The final report should include the results of the investigation, copies of all statements taken in the course of the investigation, all other documents on which the report is based and advice as to the action that has been taken with respect to the child abuse investigation or conviction.

After considering the material provided by the head of agency, the Ombudsman will determine whether the child abuse allegation or conviction was properly investigated, and whether appropriate action was taken as a result of the investigation.

The Ombudsman can also conduct a direct investigation into the handling of or response to any child abuse allegation or conviction against an employee of a designated agency. The decision to directly investigate may occur where there is evidence of a conflict of interest, insufficient agency resources to conduct an investigation or a systemic issue.

Employers are also required under the Act to set up systems within the agency to ensure that employees are made aware of their obligations to report allegations or convictions of child abuse to the head of the agency. Employees will become aware of allegations through a variety of sources. They need to be made aware of the systems in place to report allegations to the appropriate officer in their agency so that the head of agency can make a notification to the Ombudsman.

Employers should provide advice to service users that, if they have concerns about an employee of the agency relating to possible child abuse, they must report these concerns to the appropriate officer in the agency so that a notification can be made to the Ombudsman.

An allegation of child abuse against an employee of an agency may be the subject of a complaint to the NSW Ombudsman before the head of agency is made aware of it. In such cases, the Ombudsman will generally refer the complaint back to the agency for a response or other appropriate action.

Section 26G(2) empowers the Ombudsman to conduct an investigation concerning any inappropriate handling of, or response to, a child abuse allegation or conviction whether on the Ombudsman's own initiative or in response to a complaint.

refer *The Ombudsman Act 1974*; Responding to allegations of child abuse against employees, NSW Ombudsman.

3.2.14 coordinating risk of harm reports with investigations of allegations against employees

Special procedures have been put in place to deal with allegations of child abuse against employees of agencies providing services to children and young people.

refer Reports to the Ombudsman p95.

Investigations by designated agencies of allegations against employees will at times take place in conjunction with Department of Community Services and/or police investigations, or they may take place without the involvement of these agencies if there are no risk of harm or criminal issues.



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All investigation processes should be carefully planned and coordinated to ensure that children and young people's safety and welfare are being addressed and that investigating bodies do not act unilaterally. This will also help to ensure the integrity of an investigation. A case manager should be appointed where there is more than one agency involved. This person should be from the Department of Community Services if there are risk of harm issues, where the Department of Community Services is not involved the case manager role should be negotiated between the police and the designated agency.

If agencies are concerned about their capacity to undertake fair and proper investigations of allegations against employees they should seek advice from the NSW Ombudsman, their funding body or the Department of Community Services.

note If practitioners receive an allegation of child abuse against an employee of another organisation they should make a risk of harm report to the Department of Community Services.

PROCESS FOR DESIGNATED AGENCIES

It is the responsibility of the employee, under the *Children and Young Persons (Care and Protection) Act*, to make an assessment about whether any grounds exist for suspected risk of harm. If the employer is concerned about risk of harm from child abuse they should follow agency procedures for reporting risk of harm to the Department of Community Services. Many agency staff will be mandatory reporters of risk of harm to the Department of Community Services.

If there is risk of harm and a likely criminal offence, in the first instance the employer should contact the Department of Community Services and the Department will refer the matter to a Joint Investigation Team/Response or the Police Service.

If the employer suspects a criminal offence without suspected risk of harm from child abuse, they should report this directly to the police who will investigate if they think it likely that the allegation involves a crime.

In some cases the Department of Community Services will decide not to respond to a risk of harm report where they are satisfied that risk of harm has been reduced through support and intervention, internal investigation and disciplinary processes being undertaken by the employer. For example, the employee may have been removed from contact with children, and the child or young person's care and support needs have been addressed.

Where the Department of Community Services decides not to intervene, they should provide the reasons for this decision to the employer in

cases where this will assist the investigation of the allegation against the employee.

In addition, the *Ombudsman Act 1974* requires the head of the agency to notify the Ombudsman of any allegation of child abuse against an employee irrespective of whether there is risk of harm or criminality involved and take appropriate disciplinary action as a result of the investigation.

The agency must report the outcome of any relevant completed disciplinary matters to the Commission for Children and Young People.

refer List of designated agencies p95.

PROCESS FOR NON-DESIGNATED AGENCIES

If an allegation of child abuse against an employee is made in an agency not covered by the *Ombudsman Act 1974*, the matter should be reported to the Department of Community Services.

The Department of Community Services will provide assistance with the investigation process if the agency is licensed or funded by the Department of Community Services, or if the agency or group is not funded or licensed by any other designated agency.

The agency must report the outcome of any relevant completed disciplinary matter to the Commission for Children and Young People.

refer List of designated agencies p95; risk of harm p73; reporting procedures for risk of harm p87; investigations of child abuse allegations by employees p133; section 25c *Ombudsman Act 1974*.

3.3 assessment and investigation

Assessment and investigation are two complementary stages, which include a number of distinct but concurrent activities where several agencies are involved. Both of these processes are part of a continuum.

Activities include:

- planning investigations and assessments
- undertaking investigations
- conducting assessments.

The purpose of the assessment and investigation stage is to identify the needs of the child, young person and family and to gather information to decide what, if any, protective intervention is required.

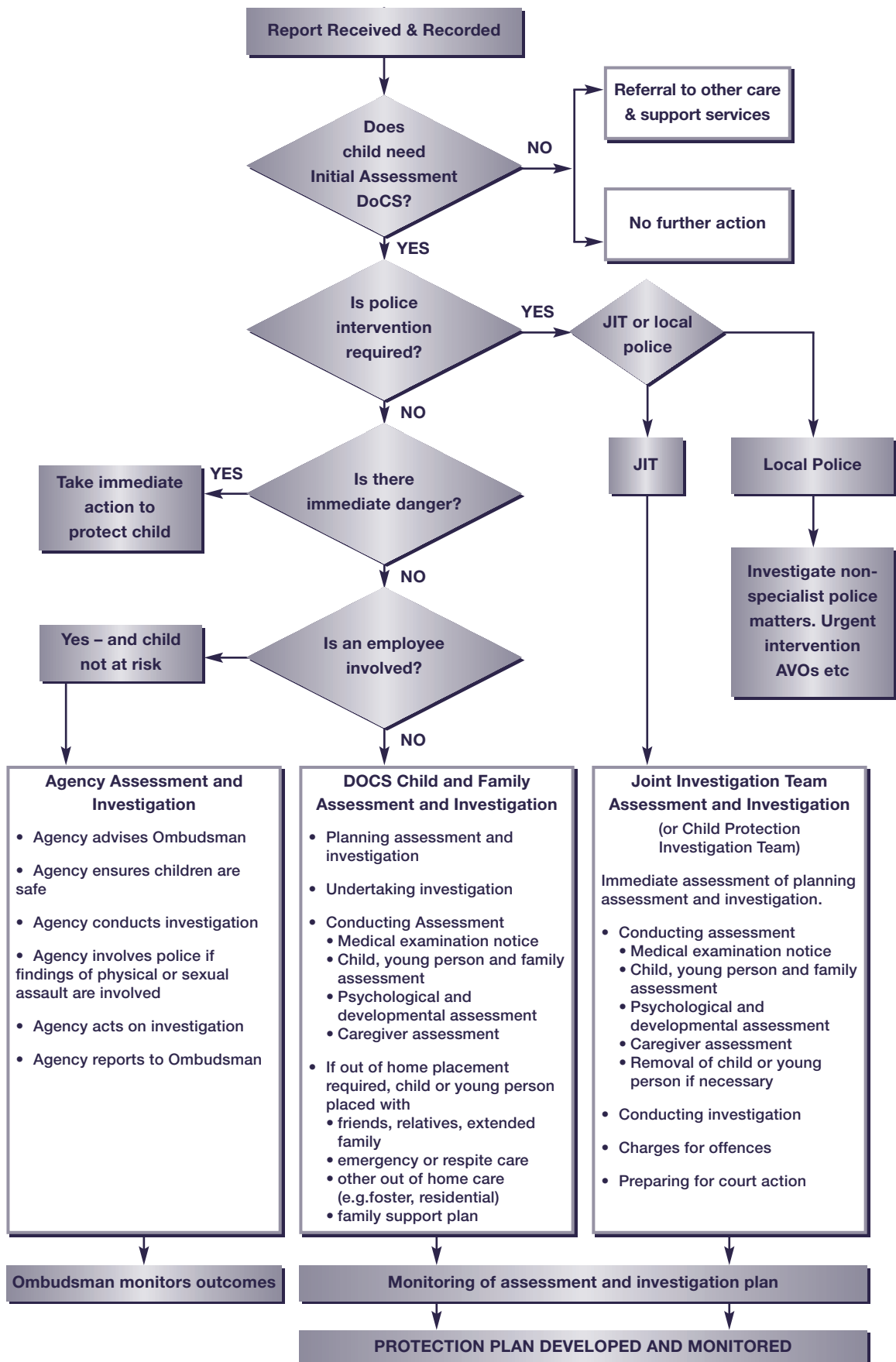
The conclusions derived from investigations and assessments inform decisions about the future needs of a child, young person and family,

practice point

It is important to have a proactive, preventative approach to assist groups with their responsibilities as employers. Relevant government agencies should assist non-government agencies to develop codes of conduct and procedural guidelines.



intake, investigation and assessment process



necessary protective intervention and whether criminal charges are warranted.

The focus of the assessment should not be on establishing whether statutory grounds for care proceedings exist but on what grounds any intervention or response should be taken to ensure the needs of the child, young person and their family are met.

note Section 37 of the *Children and Young Persons (Care and Protection) Act* provides for the Department of Community Services to consider alternative dispute resolution as a process for responding to a report, allowing children, young persons and their carers or parents to focus on appropriate solutions without resorting to formal Children's Court action.

ASSESSMENT

Assessment in this context is a process used by the Department of Community Services for organising and analysing information that determines the impact of a situation or the cumulative impact of behaviours that affect the child or young person. It also shapes judgements on the risk of future harm to the child and the needs of the child, young person and family in securing their safety, welfare and well-being.

INVESTIGATION

This is a process of gathering and analysing information in response to a report conducted by officers of the Department of Community Services and/or by police officers in response to a suspected criminal offence against a child. The investigation focuses on a single incident or series of incidents that have already occurred. The purpose of an investigation is to establish what happened. An investigation may include interviews and other enquiries into a child's or a young person's circumstances and any risk to the future safety of the child or young person or other children and young people.

3.3.1 appointing a case manager

Following a report, a worker from the Department of Community Services is appointed as a case manager. The role of the case manager is to coordinate the interagency intervention from assessment and investigation to closure.

refer Role of the case manager p60.

practice point

While assessment and investigation is taking place, the case manager should arrange a protection planning meeting. The meeting will address the safety, welfare and well-being needs of the child or young person are addressed. If it is in a position to do so, the meeting will recommend to the Department of Community Services the action it should take.





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practice point

Worker safety in conducting the assessment and investigation should be considered. If necessary, contingency plans should be put in place to manage angry or violent reactions. This may include contacting the police to seek advice or support.

practice point

Contamination of evidence arises when the evidence of a child or young person is judged as unsound to be admitted in court. This may occur when victims of the same offender are interviewed in each others company, when victims are rehearsed or coached on their account of the abuse prior to making a statement or giving evidence, or when children or young people are interviewed using leading questions. Practitioners need to be mindful of these issues and work collaboratively across agencies to identify and prevent possible sources of contamination.

3.3.2 planning assessments and investigations

An interagency approach is essential to effective child protection assessment and investigation. Each case will require a clear assessment and investigation plan that outlines what needs to be done, by whom and the timeframe for each activity.

Issues for consideration in planning assessments and investigations include:

- how the child's or the young person's views will be taken into account throughout the assessment and investigation
- how the continuing safety of the child or young person is assured while further assessment and investigation occurs
- how to inform and involve parents or carers, how they will be interviewed and the best time and place for interviews
- how parents' views will be taken into account during assessment and investigation, whether they will accompany the child to any interviews or how they will be involved if a child or young person has not disclosed abuse
- how provision will be made for a child or young person or parents with a disability to participate fully and whether this will require suitable communication mediums such as technology, Braille, Maketon and signing interpreters
- which members of the extended family should be interviewed, including siblings and who should do this and when
- what services or personal support will the family need to help them through the assessment and investigation process
- who will explain to the child, young person and parents what is to happen and what their rights are
- whether a worker already known to the family should conduct the investigation or whether another worker should be involved.

In planning an investigation there are a number of processes to consider, including:

- sighting the child and determining if there is a need for immediate action such as removing the child or young person from the home on a voluntary basis or by use of statutory powers; or whether the non-offending parent or carer is able to provide sufficient support and protection to the child or young person if they remain in the home

- whether a medical examination of the child or young person is needed in the first instance, and, if so, will a notice need to be served on the parent or carer; what action will be taken if the parent or carer refuses to respond to the notice
- how to interview the child or young person; will it require a joint interview by police and Department of Community Services, who will lead the interview, where will it be conducted and how will it be recorded, i.e. by video, audio or hand written record
- will there be a need to involve a specialist support person, i.e. interpreter, disability support service, Aboriginal or ethnic liaison person and how will this be negotiated with parents
- should an apprehended violence order be sought in the first instance
- gathering forensic evidence including crime scene analysis by specialist police and taking possession of items as exhibits
- is there sufficient evidence and a need to apprehend the perpetrator in the first instance.

In situations where allegations involve multiple victims, there are indicators of organised abuse, or other complex factors such as repeated presentation of a child or young person to health services with an illness or injury with unexplained symptoms, a planning meeting should be convened by the Department of Community Services and the other agencies involved. If suspected criminal activities are involved, the police must be involved. A decision on how to pursue a joint investigation can be made at the meeting, based on all the available information. This decision should be consciously made by the meeting and not by default as the result of one agency simply not attending a planning meeting convened by the other.

In cases where criminal behaviour has been alleged, where a child or young person has exhibited sexually abusive behaviours, or where there are serious concerns for a child's safety, the assessment and investigation plan should be prepared in conjunction with other agencies. Police, Department of Community Services and NSW Health are those most likely to be involved.

note Where there are serious concerns for the immediate safety and welfare of a child, initial assessment may be completed by the Department of Community Services within hours of receipt of the report. The initial assessment and the assessment and investigation plan in urgent cases may be done concurrently with the intervention occurring.

refer Initial assessment p90.

When the assessment and investigation plan is agreed, the case manager should ensure steps in the plan are promptly documented and provided to



each person who has a role in assessment and investigation. It is essential that the timing of, and responsibility for, each step is clearly recorded.

It is essential that a case manager for the case is named quickly and that this person immediately assumes responsibility for coordinating the plan's implementation.

Implementation of the assessment and investigation plan requires interagency cooperation and coordinated effort. The case manager should ensure that all parties referred to in the plan are kept informed about what is happening. If an agency or practitioners are failing to act promptly to the plan, the case manager should contact them to negotiate what must be done. If there is a continued failure to act, a concern should be raised in accordance with procedures.



practice point

Assessment and investigation should occur as quickly as possible to enable referral of the child or young person for counselling. Therapeutic intervention may be delayed until the child or young person has been interviewed.

3.3.3 timing of assessments and investigations

The time taken to complete planned investigations and assessments will vary depending on the seriousness and complexity of the case. Not all cases of serious child abuse are complex, nor do all complex cases involve serious allegations of abuse.

No strict timeframes can be imposed. However, every effort should be made to complete the assessments and investigations as promptly as possible to minimise the trauma to the child or young person and their family. Medical examinations, where required, should be carried out without delay in order to secure forensic evidence and provide treatment required. The guiding principle for the timing of assessments and investigations should be the safety, welfare and well-being of the child or young person.

Compliance regarding timeframes will be measured in accordance with agreed interagency service standards and with timeframes set in case plans.



3.3.4 undertaking investigations

The purpose of an investigation following a report to the Department of Community Services is to gather information which, when considered together with the outcomes of assessments, shapes a judgement on what protective intervention, if any, is required.

Investigations can be undertaken by police officers or an officer of the Department of Community Services.

Police officers may use the information they gather as evidence to a criminal court and information gathered by an officer of the Department of Community Services may be used as evidence in care proceedings. However, evidence gathered by officers of either agency can be used in either court. Evidence gathered by investigators from both organisations may also be used in disciplinary proceedings by an agency. More commonly, the information gathered by officers of the Department of Community Services is used to assess the risk to the child or young person and any future needs of the child and family.

note Officers of the Department of Community Services must advise police of all cases where it is suspected that a criminal offence has occurred in relation to a child and in cases where a child between 10 and 14 years has exhibited sexually abusive behaviours.

refer Section 42 *Children and Young Persons (Care and Protection) Act 1998*.

3.3.5 preparing to interview the child

Appropriately trained and experienced workers from the Department of Community Services or the NSW Police Service will be involved in interviewing children and young people.

note Agency investigations of child abuse allegations against employees may not involve the Department of Community Services or police. In these situations only people trained in interviewing children should interview them.

refer Agency investigations of allegations against employees p153.

Planning for the interview is vital. Talk to fellow workers and decide where the interview will take place, who will lead and who will record the interview. Avoid confusion and being rushed by being prepared and remaining open to pausing the interview process if you need to confer with a colleague.

In preparing for interviews the following issues should be addressed:

- there should be clear written objectives for each interview
- there should be a written interview plan to guide questions
- there should be agreement on how interviews will be recorded and who will record.

Consider key questions such as how best to engage the child or young person. Engaging the child may be facilitated by the use of a support person. If interviewing in the presence of a support person, discuss their role with them before the interview. It is important that the support

practice point

In preparing to interview a child or young person, interviewers need to:

- recognise that children and young people may have been threatened about providing information or may think they will get into trouble for providing information;
- recognise that children and young people may not want any family members, regardless of their role in the abuse and neglect, to get into trouble; maintain a supportive approach whilst not rewarding or punishing the child or young person for giving details; recognise that children and young people may not be able to comprehend what is occurring; they should not be asked to make decisions where they do not understand the implications or where their safety may be compromised; consider how the wishes of the child or young person will be taken into account.



practice point

In preparing to interview children or young people, it is important to consider whether the child's or the young person's right to participation will be improved by the presence of a support person. They can be consulted about whether they want a support person and if so who they want. It is important to heed the child's or young person's wishes in the choice of a support person. The support person should not be a person under 18 and should not be someone who is likely to be called as a witness.

practice point

In criminal matters, always use an interpreter if English is the child's, young person's or parents' second language, or if the child or young person and parents are not confident speaking English and request an interpreter. When dealing with interpreters, always face the child or young person and parents and talk to them, not the interpreter. In other matters, bilingual workers can be used.



person does not participate or interfere in the interview process. This will be easier if they are clear on how they can support the child or young person, and how the interviewers will manage the interview process. Where interpreters are being used, make sure they understand that they must accurately translate what is said and do not summarise or paraphrase the child's or young person's statements.

Other issues such as a suitable venue and time for the interview need to be carefully considered. These include using a quiet private room free of interruptions and taking breaks and refreshments as the child or young person may require. If a child or young person becomes distressed, suspend the interview.

For children or young people with a disability, it may have taken a long time to provide information of risk of harm. They may not provide information until they trust an adult. Teachers, teachers' aides or respite care workers or others with regular relationships are very important advocates for children or young people with a disability. They represent constant adults who can interpret their communication accurately (e.g. eye movements). Consider having such an advocate available when planning to interview a child or young person with a disability.

note

Accredited government interpreters should be used where court action may follow. It is important for investigating officers to brief the interpreters on their role and to stress the need for absolute accuracy in translating matters that will be formal statements or become part of records of interview.

When children are required to undergo repeated interviews with investigators who have interests in different aspects of the investigation, their stories tend to lose immediacy and spontaneity. In reacting to what a child may feel is an unnecessary intrusion into his or her life, a child may begin to relate the experience without any emotion, which often results in the statements appearing slick and rehearsed. A child may grow frustrated with the investigation process and become uncooperative. Other problems occur when a child picks up a new terminology from an interviewer and uses the adult term for actions or body parts, abandoning his or her original words.

3.3.6 interviewing children and young people

When there are serious concerns for the safety of a child or young person, interviews should be commenced immediately. In all circumstances, sufficient time should be set aside to complete the interview.

All persons who interview children or young people should have the following skills:

- experience in techniques for interviewing children and young people at risk of harm
- specialised training in areas of sexual, physical, psychological abuse and neglect
- understanding of legal issues and laws relevant to abuse
- knowledge of child development, especially of language
- ability to give evidence.

Generally, the consent of parents should be sought before interviewing a child or young person. However, in cases of serious abuse where there is either a concern for the safety of the child or young person or the possibility that either or both parents will intimidate the child, then an interview of a child can proceed without parental consent.

If interviewing children 10 years and over, their consent to be interviewed should be obtained. Understanding the child's developmental stage is important in seeking their consent.

It is the responsibility of the Department of Community Service to inform parents that an interview has been conducted before a child is collected from a school or service.

3.3.7 interviews at school

While the Department of Education and Training has procedures in place for interviews of students or staff in schools, the following basic principles apply:

- interviews at school need to be managed carefully
- principals will permit an interview at school only when they have been assured by the Department of Community Services or police officer that there is no suitable alternative and the person has agreed to be interviewed
- no person should be interviewed against their wishes
- it is the principal's responsibility to inform the child or young person of this.

If interviews have to take place at school, discuss with the principal how to make the school environment conducive for the interview. Plan with the principal for the conclusion of the interview, particularly how the child will return to the classroom or playground and how to handle other students' curiosity and possible questions.

practice point

Ensure interview questions are open questions (i.e. not leading questions), age appropriate and contain only one thought.



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For younger children who may be interviewed while in child care, pay particular attention to their need for breaks. If the child becomes distressed, stop the interview and comfort the child appropriately.

note Department of Education & Training has specific instructions for interviews of students at school. See *Department of Education & Training: Protecting and Supporting Children and Young People (2000)*.

refer Department of Community Services Child Protection: *Procedures for Recognising, Reporting and Responding to Child Abuse and Neglect*; NSW Police Service Child Protection: *Procedures for Recognising, Reporting and Responding to Child Abuse and Neglect*; and Department of Education & Training Child Protection: *Procedures for Recognising and Reporting Child Abuse and Neglect*.



3.3.8 sighting the child or young person

In all cases that proceed to assessment and investigation, the child or young person who is the subject of a report must be sighted by the officer conducting the investigation. In practice, several visits may need to be made to the child's or young person's home before it is possible to see the child. Where there is a concern that a child or young person has been physically abused, or that an infant or very vulnerable child is involved, it will be necessary to see the child or young person as quickly as possible. This should be done with the permission of a parent and with sensitivity to the child's age, dignity and privacy. It is advisable to do this in the presence of another adult who is not the alleged abuser. If, after repeated attempts, it has not been possible to see the child, consideration should be given to using statutory powers to search for the child.



3.3.9 interviewing parents

Persons with parental responsibility must always be interviewed, even if they do not live in the home of the child or young person. Other adults residing in the household should also be interviewed.

note For Joint Investigation Teams/Joint Investigation Responses, where during an interview (or at any other time) a Department of Community Services officer believes there is enough evidence to establish that the parent has committed an offence and may be prosecuted, if present, the police should take over the lead role in the interview. If police are not present the Department of Community Services officer should make clear that there is no obligation to say anything, but anything else said can be used in criminal proceedings. After saying this, the officer can continue gathering information.

3.3.10 child, young person and family assessments

Families should be engaged in the assessment wherever possible. With the family's agreement, a lot of information can be gathered that will assist in forming a picture of circumstances and the general functioning of the family. When conducting an assessment, it is important to gain an understanding of:

- relationships between family members and anyone else in the household (consider the intensity of relationship between the primary caregiver and their adult partner)
- the child's or young person's age and level of functioning and development, behaviour management and child rearing practices
- interactions between the parents and children
- interactions between siblings
- the family's strengths and resources
- access to supportive family members and other relatives or friends
- willingness of the family to use community services and supports
- religious, racial, cultural and linguistic considerations
- the child's or young person's and family's perceptions of the problem
- solutions the whole family has already tried
- willingness and capacity to change
- capacity of parents to accept responsibility for circumstances and to see the child's needs as separate and important
- impact of migration or refugee processes
- a family member with a disability
- stresses within the family
- the impact of poverty or environmental disadvantage (e.g. isolation).

If information during assessments is collected in a consistent and systematic way, it can be objective, and with periodic reassessment, permit the family and practitioners to assess change in family behaviour and the influence of care and support.

note At this stage a secondary assessment (Risk Assessment Guide 2) is carried out by the Department of Community Services and is a process for assessing safety and risk. The assessment process contains compulsory fields that guide the worker through the risk assessment process and builds on the initial assessment completed by the DoCS



practice point

Non-English speaking families may require more time for assessment and support when assessing the child, young person and their family in order to fully understand cultural and linguistic factors.

Special consideration should also be given to parents with a cognitive limitation such as acquired brain injury, intellectual disability and psychiatric disability. These parents will normally require more time for assessment and they should be supported by an advocate who can interpret and clarify information on their behalf.

practice point

When completing an assessment with Aboriginal families, be certain to take full account of the role and influence of extended family members and seek to understand other community and cultural factors of significance. These issues should also be considered when conducting an assessment with families from non-English speaking backgrounds.

practice point

The Family Court does not perform any direct assessment or investigation of child abuse and neglect allegations and relies on results from Department of Community Services or police investigations and assessments. If Family Court proceedings are underway, consider whether an adjournment should be sought pending the outcome of assessment and investigation. Consideration should also be given to which court is the best forum for ensuring the safety, welfare and well-being of the child or young person.

**practice point**

If the child or young person is from a non-English speaking family, then an interpreter is essential for the child, young person and their family.



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Helpline. The worker uses a combination of knowledge, skills and professional judgement in identifying and analysing the risk level for the child or young person. This process can take up to 84 days to complete.

refer Risk Assessment Guide 2, Risk Assessment for the NSW Department of Community Services: A Guided Professional Judgement Approach to Risk Assessment in Child Protection.

3.3.11 advice from out-of-home caregivers

An out-of-home caregiver can often be in a good position to observe a child's or a young person's behaviour. This should not mean that the caregiver interviews or probes the child for information. Rather, the caregiver can keep a record of everyday behaviours such as eating, sleeping and play. The caregiver can also advocate for the child or young person about issues that may need follow up and consideration in case planning. If a parent is having contact with the child, the caregiver may also note the child's or the young person's reactions to visits. The case manager should ensure that parents are informed that the caregiver has been asked to keep such information to assist in future planning to meet the child's or the young person's needs.

note Out-of-home caregivers may provide services for either non-government or government agencies. Where an out-of-home caregiver is contracted by a non-government agency, it is necessary for the non-government agency to be approached first by the case worker/case manager to request that the caregiver make a contribution to an assessment process. The non-government agency will then liaise with the caregiver regarding the request.

refer Making referrals p122.

3.3.12 immediate action

Immediate action is required in cases where there are serious concerns that a child or young person is at imminent risk of harm. The action may involve removal of the child or young person or removing the person who is a cause of risk.

Immediate action can be taken for the purpose of:

- minimising the risk of harm to the child or young person
- facilitating medical examinations
- restraining the alleged abuser.

ENSURING SAFETY

If, during an investigation, it is apparent that to leave a child or young person in their home would be to place the child in immediate danger of serious harm, alternative arrangements for the temporary care of the child should be made.

FAMILY LIVING ARRANGEMENTS

In the first instance, suitable arrangements that would safeguard the child or young person should be discussed with the parents or caregiver and their agreement to such arrangements sought.

Arrangements might include:

- one or more adults residing elsewhere (with or without an urgent application for an apprehended violence order under the *Crimes (Apprehended Violence) Amendment Act 1989*)
- the child being placed temporarily with friends or extended family members
- use of respite care or other voluntary out-of-home care arrangements
- when indicated, admission to hospital for treatment.

USING APPREHENDED VIOLENCE ORDERS TO PROTECT A CHILD OR YOUNG PERSON

The Crimes Act directs police to apply for an apprehended violence order where the officer suspects that a child may have witnessed or been assaulted as a result of domestic violence.

Police have powers under part 15A of the *Crimes Act 1900* to make an application to a local court seeking an interim apprehended violence order on behalf of the child or young person. A police officer must make a complaint for an order if they suspect or believe that a child abuse offence has been or is likely to be committed.

refer Section 227 *Children and Young Persons (Care and Protection) Act 1998*.

To ensure minimum disruption of the child's or young person's life, it will often be preferable to remove the person causing risk to the child or young person. An apprehended violence order may specifically require that a person not reside with or have contact with a child. After hours, a Telephone Interim Order can be sought. If granted, the order is effective only after the police officer has served the defendant with a copy of the order.



practice point

An apprehended violence order can be sought by a police officer to cover the child or young person and, if appropriate, the caregiver and other family members.

Police can be called to assist in the removal of a child or young person to prevent a breach of the peace.

In some cases an apprehended violence order will be sufficient to ensure the safety of a child. However in more serious cases, other action may be needed depending on the assessed level of risk to the child.

REMOVAL OF THE CHILD OR YOUNG PERSON FROM THE HOME

Where there is an immediate risk of serious harm and it is not possible to secure the agreement of a parent or caregiver to safe arrangements for the care of a child or young person, the removal of the child or young person from the home using the powers of the *Children and Young Persons (Care and Protection) Act 1998* is indicated.

note Before exercising these powers, carefully consider options for the safe care of the child or young person and make it clear to the parents or caregiver that if they do not agree to safe arrangements, the powers to remove the child will be exercised. An apprehended violence order should be first considered as a means of removing a parent, sibling or other adult who causes a child or young person to be at risk. Practitioners must be satisfied that an apprehended violence order would not be sufficient action to protect the child or young person.

refer Section 43 *Children and Young Persons (Care & Protection) Act 1998*.

REMOVAL OF A CHILD OR YOUNG PERSON FROM OTHER PREMISES

An officer of the Department of Community Services or a police officer may enter and search premises in which they suspect a child or young person is in immediate danger of risk of harm or is on premises being used for the purposes of prostitution, acts of child prostitution or pornography. A child or young person may be removed from such premises and kept in the care of the Director-General, Department of Community Services, pending a care application to a Children's Court.

Parents, the person in charge of the premises, and children over 10 years of age must be given an explanation for their removal followed by written advice. The case manager should ensure that the written advice is forwarded to family members. The child or young person should be informed why they are being removed from home. A child over 10 years and a young person should be informed that an application can be made for discharge from the Department's care and the procedures for making such an application. The Department of Community Services must ensure that the child's or young person's parents are kept informed of the whereabouts of the child or young person unless there is reason to believe that the disclosure threatens the welfare and interests of the child or young person.

refer Sections 51, 64 and 234 *Children and Young Persons (Care and Protection) Act 1998*.

The Department must apply to the Children's Court the next sitting day after removal for an emergency care and protection order, an examination and assessment order or any other care order. If the child or young person is removed and the Department does not apply for a care order, the Department of Community Services must explain to the Court at the first opportunity why no care application was made.

refer Section 45 *Children and Young Persons (Care and Protection) Act 1998*.

ASSUMPTION OF CARE AND PROTECTION

Where a child or young person is in a safe place such as a hospital, respite service or family day care placement and an authorised officer of the Department of Community Services suspects on reasonable grounds that a child or young person is at risk of serious harm and is satisfied that it is not in the best interests of the child or young person to be removed from the premises, the Department of Community Services may assume care responsibility by means of an order in writing signed by the Director-General on the person who appears to the Department of Community Services to be in charge of the premises. Exercising this power ensures that a child is not returned to an environment in which they are in immediate danger of further abuse. When care and protection is assumed in this way, the Department of Community Services must promptly apply for a care order. This must be made no later than the next Children's Court sitting day.

refer Sections 44 and 45 *Children and Young Persons (Care and Protection) Act 1998*.

3.3.13 medical examinations

The medical examination of children and young people can provide important information for assessing their needs and assist in the investigation of alleged abuse and neglect. Findings or opinions as a result of a medical examination can be used as evidence in care or criminal proceedings. Also information from medical examinations, including findings and opinions, can be used to determine treatment or the need for other interventions such as counselling or support. A decision about whether a medical examination is warranted should be made in consultation with the relevant health service.

Where necessary, medical examinations will normally occur after initial interviews unless there is a medical emergency. In order to prevent loss

practice point

When hospitals, respite care or other services are used as a safe place, staff will need clear instructions about access and visitation rights of family members.



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practice point

It is appropriate to offer transport assistance or child care if this is required by the parents to enable them to present the child for the medical examination.

practice point

Parents should be advised that medical examinations may provide no evidence that the child or young person has been abused especially in cases of sexual abuse. This does not mean that the child's allegations are not true. The medical examination provides an opportunity to reassure the child and family and plan any necessary treatment.

practice point

In emergency situations, special arrangements may need to be negotiated between agencies to ensure services are available to children, young people and their families living in rural and remote areas.

practice point

It is important for practitioners to be sensitive to cultural issues when arranging and conducting medical examinations and that the child's or the young person's consent to the examination has been sought.

practice point

When families present at hospitals after hours and make a disclosure, the Department of Community Services should be available to interview the child, young person and family before the medical examination takes place. Failure to do this can risk contamination of evidence.

of forensic evidence, this may at times require the child to be interviewed at very short notice.

Police officers and authorised officers of the Department of Community Services may serve a notice on a person who has the care of a child requiring that person to present the child for a medical examination. If the person named in the notice fails to comply with the requirements in the notice, an authorised officer or a police officer may organise for the child to be presented for examination at a hospital or to a medical practitioner. From the time the child or young person is presented for the medical examination until it has been completed, or until 72 hours has expired, the Director-General of the Department of Community Services is deemed to be the parent of the child for the purpose of enabling the medical examination to be carried out.

note

This power should be exercised only when it has been established through direct contact with the parent or other person who has care of the child that they will not respond to a properly served notice.

refer

Section 173 *Children and Young Persons (Care and Protection) Act 1998*.

Before referring a family for a medical examination, arrangements should be made with the medical practitioners, hospital, or in the case of sexual abuse, a NSW Health Sexual Assault Service, regarding the time and place of the medical examination. It is the responsibility of the medical officer to provide the Department of Community Services or the police with a written report following the examination. Where section 173 orders are served, the names of children to be examined and any reasons given by the parent as to why they have not agreed to the notice requiring a medical examination should be included.

When serving the notice, the parent should be told, as far as possible, what the concerns are for the child or young person and why it is considered necessary that the child be medically examined.

Where a parent or other person who has the care of a child fails to comply with the notice and does not present the child for medical examination, an officer of the Department of Community Services or a police officer can apply to an authorised justice for a search warrant. If granted, the search warrant empowers officers to search premises for the child and to remove the child and present the child to the medical practitioner.

Medical examinations should follow the standard procedures for forensic examinations.

In cases of child sexual abuse, medical examinations should be conducted only by doctors working as part of a NSW Health Sexual Assault Service, using the child sexual assault forensic protocol. Medical

examinations may have an important role in supporting the child, young person and family by providing reassurance about the child's or young person's health or well-being. At Sexual Assault Services, counselling is also available for the child and non-offending reporters and family members.

In cases of medical examinations, a child or young person should be asked whether they want a support person present. This person should be the child's or young person's choice and may be their counsellor.

refer NSW Health procedures for child protection medical examinations.

note There are agreed procedures for taking photographs of injuries to a child or young person.

refer Joint Investigation Team Manual.

The medical practitioner must prepare a written report on the result of the examination for transmission to the Department of Community Services. A medical practitioner who transmits a report prepared under these circumstances is not in breach of professional etiquette or professional conduct. No liability for defamation can be incurred.

refer Section 173(7) *Children and Young Persons (Care and Protection) Act 1998*.

3.3.14 psychological and developmental assessments

The purpose of these assessments is to get expert opinion as to the level of functioning of the child or young person, including their physical (e.g. fine motor skills), verbal, emotional, social, educational and intellectual functioning.

A Children's Court may make an order for the physical, psychological, psychiatric or other medical examination and/or assessment of a child or young person upon application to the Court by the Department of Community Services or, in the event that proceedings are already pending before the Children's Court, on application by any party to those proceedings.

In deciding whether to make an Assessment Order, the Children's Court must have regard to the following:

- whether the proposed assessment is likely to provide relevant information that is unlikely to be obtained elsewhere

practice point

In seeking a care order in the Children's Court, the Department of Community Services must furnish details of the support and assistance provided for the safety, welfare and well-being of the child or young person, the alternatives to care orders that were considered before the care application was made and information indicating reasons the alternatives were rejected.



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practice point

Assessments may cause distress to a child or young person. They should be sought only when the information is necessary to plan and provide for safety, welfare and well-being.

practice point

Where there are no care proceedings already pending before the Children's Court concerning a child or young person, an application for an Assessment Order regarding that child or young person should only be made where it has been established through direct contact with the person who has care of the child or young person that they will not comply with a request that the child or young person be assessed. In the event that a medical examination is sought, the procedures in relation to section 173 of the Act rather than those in respect of Assessment Orders should be followed.



- whether any distress the assessment is likely to cause the child or young person is outweighed by the value of the information that might be obtained
- any distress already caused to the child or young person by any previous assessment undertaken for the same purpose
- any other matter the Court considers relevant.

A Children's Court may also order an assessment of a person's capacity to parent a child or young person, but only if that person consents to the making of the order.

Any report prepared pursuant to an Assessment Order is considered to be a report to the Court, rather than evidence tendered by a party to any proceedings before the Court, and must be forwarded directly to the Court by the person undertaking the assessment and/or examination.

refer Sections 52–59 and 173 *Children and Young Persons (Care and Protection) Act 1998*.

note Agreement to providing the assessment should be sought prior to the Court order.

3.3.15 monitoring the assessment and investigation plan

The value of the plan is that it encourages regular review of progress. It is not possible for practitioners to plan for all contingencies when assessing and investigating risk of harm arising from child abuse and neglect. Nor is it possible to anticipate what may emerge. It may be necessary to reassess tasks or to reconsider the need for immediate action in the light of new information. When changes are necessary, it is the responsibility of the case manager to reconvene the assessment and planning meeting to reach agreement on changes. When changes are of a minor nature, the case manager should ensure all those involved are advised promptly. The case manager from the Department of Community Services will encourage cooperation and coordination, which is essential to ensure that tasks are completed within planned timeframes. A professional intervention requires clear roles for the case manager and key contributors.



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3.3.16 outcome of assessment and investigation

Where assessment and investigation indicates that abuse has occurred, it must be appropriately recorded. The Department of Community

Services can make this information available to relevant agencies and specialist services providing treatment or support for children and young people. Children and young people should be consulted about this process.

3.4 protective intervention

An interagency approach to protective intervention involves the coordinated involvement of agencies that are providing protection, care and support for a child, young person or family. The various activities undertaken by agencies during this stage should be based on a planned and coordinated response to the conclusions reached in assessments and investigations already completed.

The first activity is to develop the protection plan, using the interagency approach.

3.4.1 protection plan

The purpose of the protection plan is to develop a recommended course of action which will ensure that where abuse or neglect has occurred, it is stopped and that the child or young person and their family receive the services, care and support appropriate to their developmental and assessed needs. It is essential that the child or young person and their family are involved in protection planning as they will play a key role in identifying the strengths and resources available in the family and any child protection concerns that need to be addressed.

refer Case planning p56.

The first activity for the case manager from the Department of Community Services is to coordinate the development of the protection plan, using the interagency approach. The protection plan guides and directs other intervention including care and support for the child and the family, criminal prosecutions and care applications.

A protection plan must be developed if intervention is to occur. It should be done promptly and should involve practitioners who have had contact with the child, young person or family and who are in a position to contribute to their safety, welfare and well-being. This may also involve agencies that are responding to a request for services from the Department of Community Services and need to be involved in protection planning.

note The Department of Community Services may decide that the protection plan forms the basis of part or all of a care plan. Care plans



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can be registered or introduced at the Children's Court in a number of ways.

refer Sections 38, 66, 78 *Children and Young Persons (Care and Protection) Act 1998*.

3.4.2 protection planning meetings

Protection planning meetings are compulsory where a child or young person is at risk of harm and assessed by the Department of Community Services to be in need of care and protection and should be held as quickly as possible.

The protection planning meeting is an interagency process that provides a forum for pooling the skills, knowledge and expertise of agencies.

Functions of a protection planning meeting are:

- to gather and jointly analyse information
- to harness the strengths and resources of the family to meet the needs of the child or young person
- to combine and coordinate resources for the protection of the child or young person
- to consider ongoing risks and other issues and to identify and determine the factors that will contribute to the safety, welfare and well-being of the child or young person
- to identify and put in place services required for the safety, welfare and well-being of the child, young person and the family
- to recommend to workers and agencies with statutory powers whether statutory action needs to be taken to lay criminal charges against any person or make a care application to the Children's Court
- to recommend whether services, care or support are required by the child and family
- to recommend on agency responses to the report
- to develop a protection plan which allocates responsibilities and assigns timelines for action and review.

In complex cases, more time may be needed for the meeting and a variety of specialists may need to attend.

note In protection planning, *Risk Assessment for the NSW Department of Community Services* is a useful tool as it assists in reviewing identified levels of risk, as well as attending to other



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practice point

Other agencies can request the case manager convene a protection planning meeting. In making this request talk over your concerns for the child, young person and family with staff from the Department of Community Services.

key issues for family members such as health, education and social networks.

refer Risk Assessment (Guide 3), *Risk Assessment for the NSW Department of Community Services: A Guided Professional Judgement Approach to Risk Assessment in Child Protection*.

3.4.3 those involved in protection planning

Judgement is required to ensure that those who can assist in developing the protection plan are involved. Those who have been gathering information to assess the degree of risk to the child or young person, including those who have undertaken examinations and assessments, should be involved. Police should be invited to all protection planning meetings if they have been involved in the investigation.

The child, young person and family should be well prepared for their involvement in the meeting. They should be informed about the purpose of the meeting and given the opportunity to express their views about whether they attend, what support is available and what happens as a result of the meeting. This information needs to be provided in a format that they can understand.

Participation of the parents in all or part of the meeting may be inappropriate in some cases, particularly those involving serious allegations of physical and sexual abuse where they are the alleged perpetrator. Worker safety should also be considered where the threat of violence is present.

refer Case planning with children and young people p57.

3.4.4 when protection planning meetings are held

Protection planning meetings should occur at the earliest possible point of the protective intervention stage. This is the responsibility of the case manager. A plan may also be required when the immediate risk of harm no longer exists but there are long term concerns that need to be considered.



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3.4.5 responsibility of agencies

The responsibilities are:

- the case manager from the Department of Community Services will convene the protection planning meeting
- the Department of Community Services is responsible for chairing the meetings or organising an alternative chairperson
- where other agencies or departments are asked to participate in the protection planning meeting, then they should do so.

A protection plan recommends action to be taken by agencies with statutory and service provision responsibilities. The planning meeting does not make decisions. It is the responsibility of each agency or department to decide whether to use their statutory powers or service provision responsibilities in relation to the safety, welfare and well-being of children. One of the main outcomes of a protection planning meeting should be a joint plan based on collaborative action. It is expected therefore that recommendations will be implemented. Nevertheless, recommendations are not binding on individual agencies or departments. If agencies cannot implement the recommendations, the meeting should be reconvened and the agency/department concerned should explain why it has not been possible to carry out the agreed action.

note The protection planning meeting is not a substitute for making referrals. A separate referral process is necessary to ensure that expectations are clarified for all parties.

refer Referrals p122.

refer Protocol between the Family Court and Department of Community Services.

note Ad hoc meetings do not replace the protection planning meeting.

3.4.6 conducting a protection planning meeting

Chairing a protection planning meeting requires considerable skills as well as knowledge of the roles and responsibilities of agencies, available resources and services, and an understanding of families' needs in a child protection context. Responsibility for chairing these meetings rests with the Department of Community Services. This chairperson could be an independent person, or from another agency approved by the Department of Community Services. However, this approach should not

practice point

The overlap of federal and state jurisdictions in relation to children and young people raises a number of issues where proceedings may be or are started in both the Children's Court and the Family Court. When deciding which court is most appropriate, the situation of the individual child or young person and family must be properly assessed. If there are current or previous proceedings in the Family Court and proceedings in the Children's Court, it is crucial that the Department of Community Services inform the Children's Court.



override the requirements that the person chairing the meeting has the required knowledge and skills for the task.

In some instances it may be necessary to conduct the protection planning meeting via a telephone conference. This approach may be indicated in cases of serious abuse or neglect where immediate, decisive action is required, or in rural or remote areas, given the location of representatives from relevant agencies.

note Alternative Dispute Resolution (ADR) should be considered as a tool for conducting protection planning meetings where this would be of benefit to the child, young person and family. If ADR is used the person chairing may be from another section of the Department of Community Services and not involved in the case, or an external ADR provider.

refer Alternative Dispute Resolution p61; section 37 *Children and Young Persons (Care and Protection) Act 1998*.

note Practitioners should use the processes outlined under resolving differences if they are concerned about any aspects of the protection planning process.

3.4.7 recording the protection plan

Protection planning meeting recommendations should be recorded and circulated to those agencies with responsibility to act on a recommendation. It is the responsibility of the person chairing the meeting to ensure this occurs within the timeframe agreed by the meeting. The plan is a record of the agency chairing the particular protection planning meeting. The case manager should sign it. Where appropriate, a copy of the protection plan should be given to the child or young person and parents.

The meeting should record recommendations that arise from discussion. These recommendations may record who is responsible for particular actions, a timeframe for each action, and other recommendations relevant to achieving client outcomes. Brief notes may also be made of the content on which the recommendations were made. Where there is dissent, those involved should be asked whether they want the dissent recorded in the document.

note If Alternative Dispute Resolution (ADR) is used in protection planning, any record of the meeting made by the ADR facilitator should be given to the case manager.

practice point

Expert advice from paediatricians, child psychologists, psychiatrists, occupational therapists, school and TAFE counsellors, sexual assault counsellors, specialist child protection workers, ethnic workers, youth workers or other specialists may be best accessed via a telephone conference. This may be especially appropriate in rural or remote areas.





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3.4.8 implementing the protection plan

The protection plan will recommend what protective intervention needs to be taken by agencies.

It may include one or more of the following major courses of action:

- care and support
- criminal prosecution
- disciplinary proceedings
- care proceedings.

Alternatively, no further protective intervention may be required.

A recommendation to initiate care proceedings or to lay criminal charges does not mean that care and support services should not be offered to the child or family. Rather, the fact that such proceedings are recommended provides further reason why such services should be offered. Where a protection plan involves more than one course of action it is critical for the child and family that agencies coordinate intervention to minimise the likelihood of further trauma as a result of intervention.

note Criminal prosecutions, by their nature, take time. While criminal prosecutions, care proceedings and services to support and care for the child may all be initiated simultaneously, and at times will be occurring in parallel, outcomes are more likely to be staggered over many months or even years.



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3.4.9 care and support

Protective intervention involves working with the child, young person and family to secure a safe and protective environment responsive to the child's or young person's needs for care, support and nurturing, and to strengthen the family's capacity to meet these needs.

The protection plan will recommend the action agencies need to take to care for and support the child or young person and to assist parents. It will be tailored to meet the assessed needs of each child and young person and will take into account the impact of any criminal proceedings or care applications before the Children's Court.

REFERRALS

Referring children, young people and their families to care and support services is one of the most frequently used casework strategies and good referrals are critical to child protection work. This is a point where families are connected to the services that will help them to stop

harming the child or young person. Research shows that many families fail to connect with the services to which they are referred.

In making a care and support referral, practitioners should:

- include the child or young person and their family in the decision about which agency to contact and present the range of referral options
- discuss with the child or young person and family the goals and outcomes from the service to be provided and ensure the family members are clear on what they can expect from the service
- ensure that the child or young person and their family can access the service and have information about how to make contact with the service
- ensure that family members are aware that the agency will be keeping in contact with the Department of Community Services
- provide all appropriate and relevant information to the service
- consider a face to face referral meeting between the family, the Department of Community Services and the service
- ensure that the agency accepting the referral is made aware of their obligation to contact the case manager at the Department of Community Services if the family does not take up the referral or ceases to attend the service
- record the referral
- establish with all parties the mechanism for review.

WORKING WITH CHILDREN, YOUNG PEOPLE AND THEIR FAMILIES

In implementing those aspects of the protection plan that aim to offer care and support, professionals and agencies should seek to work in partnership with children, young people and families. Good working relationships between parents and agencies means openly acknowledging that tensions will arise.

Treating children, young people and families with respect and being open and honest with them about the reasons for intervention and what it hopes to achieve can help in establishing a working partnership with families.

Parents are most significant in the lives of their children. They have strengths that can be supported and developed and they can be active on behalf of themselves. It is only some parents who are unable to play a constructive part in a child and young person's life due to the serious nature of the abuse.

practice point

Respond as you would to any child or young person, in planning the protection plan for a child with a disability. With information and support, practitioners in family support and other agencies are able to effectively respond to the needs of the child, young person and family with a disability and their parents.

practice point

Community resources and infrastructure as well as accepted community child rearing standards influence the nature of service responses where there is risk of harm from abuse or neglect for a child or young person in an Aboriginal community. Realistic strategies that have the support of the extended family or community leaders will be most effective if they can be negotiated.

refer Section 10 *Children and Young Persons (Care & Protection) Act 1998*; case planning p56.

3.4.10 respecting diversity

Professionals and agencies should recognise that for effective intervention with families from non-English speaking communities, culturally appropriate support workers should be considered. Families should be consulted about their preference for involvement of ethnic specific agencies or use of mainstream services.

Issues that need to be approached sensitively include:

- reluctance to use external help because of shame within their community
- belief that the harm is a result of an accepted cultural or religious practice
- fear that intervention will further stress newly arrived and immigrant families
- associating government intervention with previous experiences of torture, trauma or war
- practice of female genital mutilation
- reluctance to seek help that does not accept the same religious belief structure of the family.

A protection plan relating to an Aboriginal child or young person and their family takes into account the family's preference for involvement of a local Aboriginal agency, members of the local Aboriginal community or an Aboriginal worker. In working with Aboriginal families, diversity of Aboriginal communities must be reflected in the services offered and protective strategies mobilised at the community level. Service availability, location and mobility also need to be considered.

While each child, young person and family will have unique needs, the service types that may be required include:

- **for the family:**
 - housing
 - income support
 - material assistance
 - legal aid
 - counselling

- domestic violence services
- alcohol and drug treatment
- advocacy services
- mental health services
- health care
- physical abuse and neglect services
- disability services
- family support
- child care
- respite care
- sexual assault services
- religious or spiritual advice
- **for the child or young person:**
 - temporary care
 - health services
 - sexual assault services
 - counselling
 - advocacy services
 - therapy services
 - school support
 - recreation and cultural activities
 - Physical Abuse and Neglect Services
 - education and training services
 - disability services
 - mental health services
 - alcohol and other drug services
 - religious or spiritual advice.

3.4.11 criminal prosecutions

For information on criminal prosecutions refer to part IV, p141.

practice point

Attendance at health and non-government care and support services is voluntary and in some cases careful preparation will be necessary to encourage children, young people and families to understand what they will gain from a referral.

practice point

Prompt referral for counselling from a health service is important as discovery or disclosure of abuse is a crisis for a family.

practice point

Where a child or young person is to be referred to a health service, consider inviting a health worker to meet the child, young person and family. A face-to-face referral may make further contact easier.



practice point

While safety will be the priority, the principle of participation should be respected. As far as possible, the child or young person should be given information on plans for care in a manner and a language he or she can understand. Any views they express should be carefully considered in the light of the circumstances and maturity of the child or young person.

practice point

Many children who come into care have already experienced significant school failure, often for behavioural problems. Effective early information exchange between schools and the Department of Community Services can focus the systems on addressing these behaviours.



3.4.12 care plans

A care plan is a document that sets out the services for the family and the parenting arrangements for a child or young person that are required to reduce risk of harm. A care plan has a particular role under the *Children and Young Persons (Care and Protection) Act 1998* in care proceedings before the Children's Court.

Care plans should be made, as far as possible, with the agreement of the child or young person and their family. They may be developed by direct negotiation with family members or by using alternative dispute resolution processes. A care plan that is agreed to by the Department of Community Services and family members may be registered in the Children's Court. If the agreed care plan re-allocates aspects of parental responsibility for a child or young person, an order approving the care plan must be made by consent in the Children's Court if the care plan is to be given effect. No care application need be made to the Children's Court when registering a care plan or seeking consent orders that a care plan which re-allocates aspects of parental responsibility be given effect.

If the Department of Community Services or family members are unable to reach agreement on a care plan, or if the arrangements in an agreed care plan are not adhered to by family members, then the Department of Community Services may make an application to the Children's Court for a care order. Documented attempts to reach an agreement on a care plan or the fact that an agreed care plan was not followed may be used by the Department of Community Services as evidence of an attempt to resolve the matter without making an application for a care order.

Where a care application has been made to the Children's Court seeking an order that parental responsibility be re-allocated, the Department of Community Services must submit a care plan to the Children's Court before it can make an order. In these circumstances, the care plan may or may not be agreed to by family members. However, as far as possible the care plan submitted to the Court should be made with the agreement of the child or young person and their family.

refer Sections 38 and 78 *Children and Young Persons (Care and Protection) Act 1998*.

3.4.13 care proceedings

A care application can be made to a Children's Court by an officer with delegated authority in the Department of Community Services if they have grounds to believe that a child or young person is in need of care and protection. The option for pursuing court action in the Children's Court should be seen as an option of last resort when other mechanisms

have not protected the child or young person. The *Children and Young Persons (Care and Protection) Act 1998* requires the exploration of alternatives to seeking a care order from the Children's Court.

When making a care application, the Department of Community Services must provide details of the alternatives considered and why those alternatives were rejected.

refer Section 63 *Children and Young Persons (Care and Protection) Act 1998*.

Under the *Children and Young Persons (Care and Protection) Act 1998*, the role of the Children's Court includes:

- registering care plans negotiated with children and young people and families and carers
- deciding applications for emergency protection orders and assessment orders, prior to any decision to bring care proceedings
- hearing and adjudicating care proceedings
- monitoring the effectiveness of its orders through progress reports.

refer Care Applications, Part 2, sections 34, 60–91 and Children's Court Procedure, Chapter 6, sections 92–109 *Children and Young Persons (Care and Protection) Act 1998*.

A recommendation initiating care proceedings will come from a protection plan. It is therefore important to ensure that a protection plan includes care and support for the child, young person and the parent at all stages of care proceedings.

An officer with delegated authority in the Department of Community Services makes the decision about whether or not a care application will be made. In making this decision, all the information and the conclusions of the protection planning meeting should be taken into account. Preparation of the evidence for a care application should be undertaken in accordance with the procedures of the Department of Community Services, in consultation with Departmental legal advisers.

It is important that, while support agencies seek to empower parents and support them during care proceedings, practitioners do not lose the focus on the child or young person and parental responsibilities.

refer Human Rights and Equal Opportunity Commission (1997), *Bringing Them Home: A Guide to the Findings and Recommendations of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*.

refer Sections 11–14 *Children and Young Persons (Care and Protection) Act 1998*.

practice point

Care proceedings involving Aboriginal or Torres Strait Islander children and young people evoke strong feelings among family members and the broader Aboriginal community because of the association between care proceedings and past practices of removing Aboriginal children from their families.

Practitioners should recognise and be sensitive to these feelings. Comments of parents should be sought to enable close consultations with representatives of Aboriginal agencies to occur prior to initiation of care proceedings.

When care proceedings are initiated, it is the responsibility of the officer making the application to ensure that the case manager is advised of the progress and outcome of the proceedings. The case manager will inform other relevant agencies of progress.

note Orders under sections 74,75, 78 2(e) and 115(b) *Children and Young Persons (Care and Protection) Act 1998* should not be made without first consulting the service involved and agreement being reached that the service is both appropriate and available.

In cases where criminal proceedings have also been initiated, the case manager must ensure that the police officer in charge of the case or the relevant person in the Office of the Director of Public Prosecutions is kept informed of any progress or outcomes in the Children's Court.

Also, the officer making the care application should ensure that the case manager is advised if any matter which is of relevance to the child is before the Family Court of Australia so that appropriate liaison can occur with the Registrar of the Court and any appointed separate legal representative of the child.

note The Family Court is limited in the orders it can make where a child is subject to child welfare law. Also, the Family Court can adjourn proceedings where the child is involved in the Children's Court.

refer Section 69ZK *Family Law Act 1975*.

Professionals from health or educational settings and from a range of workers in non-government service agencies may be called upon to give evidence in care proceedings. In most instances, evidence will be by way of sworn affidavit rather than as a witness before the Children's Court. Children's Courts have the power to subpoena witnesses, including workers, in care proceedings.

Where the Department of Community Services applies to remove a child from parental care, it must submit a care plan before an order is made. The care plan is enforceable only to the extent that its provisions are embodied in the order of the Children's Court.

The care plan must include provision for:

- allocation for parental responsibility between the Minister, the Children's Guardian, the parents, other family members and another agency, for the duration of the period of removal
- provision for placement of the child including an interim arrangement
- arrangements for maintaining key relationships of the child or young person
- the agency designated to supervise

practice point

Maintaining key relationships of a child or young person will almost always include continuing their involvement in education. Teachers and child care workers may have very important relationships with children and young people. Health workers may have important relationships with children and young people who have chronic health problems.

- the services that need to be provided.

The outcome of care proceedings may involve an order by the Children's Court for the child or young person to be placed in out-of-home care. This decision may be based on assessments and recommendations contained in reports to the Children's Court, following other alternatives being pursued unsuccessfully.

Issues that need to be considered include:

- the ongoing suitability of the recommended placement (this needs to take into account the selection, training and support and management of alternative carers in an ongoing way)
- location of the placement for continuing parental contact
- the child's or the young person's involvement in decisions about placement options
- the child's or the young person's reaction to the decision of the placement.

Court-ordered, out-of-home care for Aboriginal children and young people must be planned and implemented so that the child or young person is placed with a person belonging to the same cultural group as the child or young person. Only where the child or young person or the family expresses a wish to the contrary is this principle not applied.

refer Sections 10–14 *Children and Young Persons (Care and Protection) Act 1998*.

3.5 ongoing care and support

Ongoing care and support is a critical stage that involves case planning and review for the child and young person. This stage is about coordinating the delivery of a range of care and support services that will work together over time to address the long-term needs of the child, young person and the family. Often momentum is lost at this stage. Therefore a committed interagency approach to care and support of children, young people and families is required. It is also the stage where the motivation of parents may decrease and they may begin to drop out of services, and children and young people may drop out of school.

practice point

Efforts should be made to ensure that parents have access to legal representation and support agencies during care proceedings.

practice point

Children's Courts are conducted with as little formality and legal technicality as the circumstances permit. The Children's Court is not bound by the rules of evidence but may consider any statement, document or information that in its opinion will assist in the proceedings.



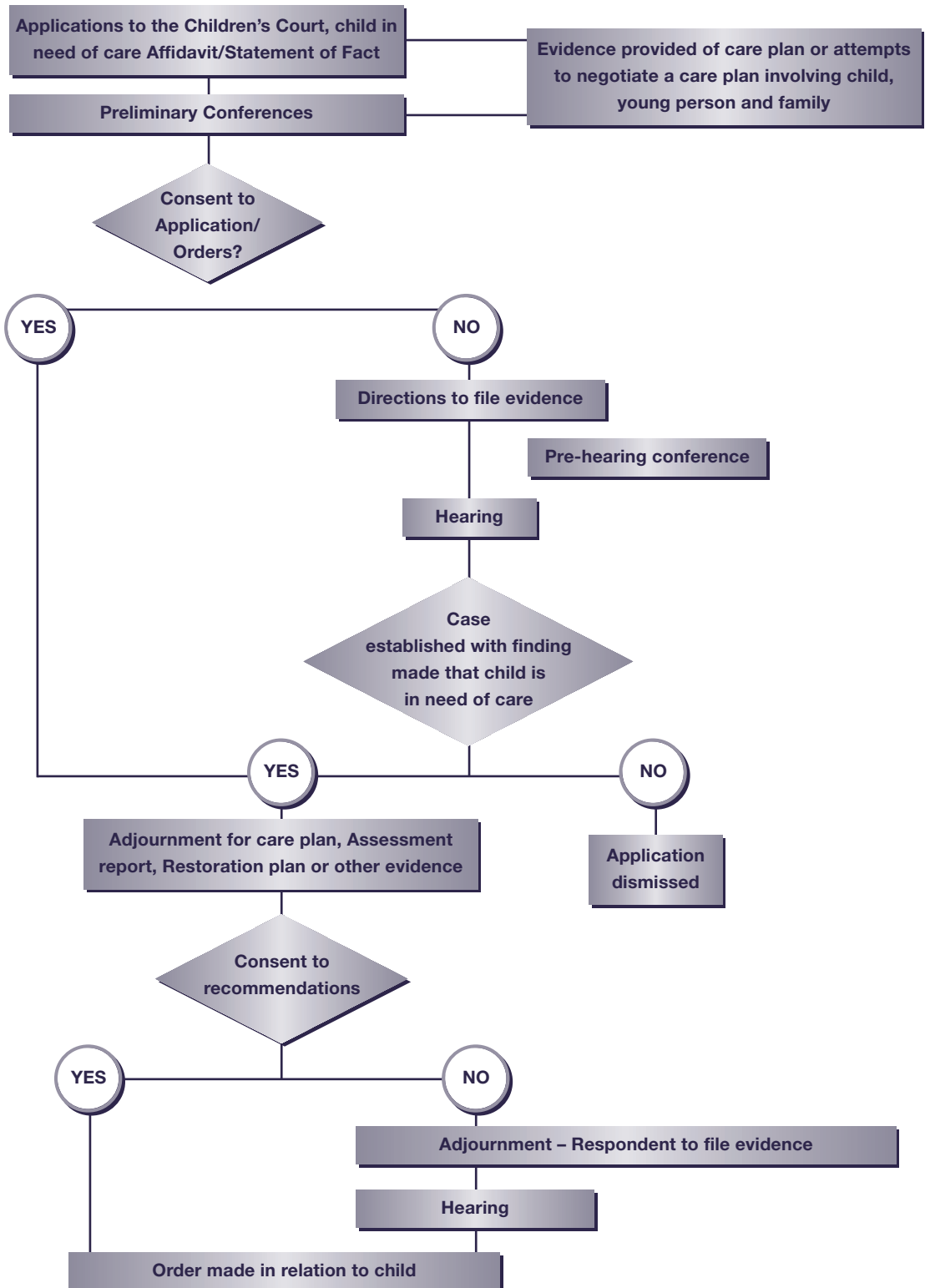
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a flowchart of children's court proceedings



3.5.1 maintaining ongoing care and support

The pressures to intervene and refer can mean that ongoing care and support become a lesser priority than other aspects of child protection work. It is essential that practitioners invest time and energy in ongoing care and support to avoid future risk of harm.

Practitioners should:

- where appropriate, involve all family members in care and support decisions
- provide care and support that takes account of the environment in which the child, young person and family live
- be aware that interagency conflicts can emerge at this stage as professional agendas may conflict
- contact the case manager and request a case meeting if conflict threatens to undermine care and support strategies
- watch for children or young people dropping out of school or families dropping out of services and, if motivation is waning, the case manager should be informed and strategies for re-engagement explored
- be vigilant for deterioration in the family's circumstances or for an increasing likelihood of risk of harm and alert the case manager and the Department of Community Services where they are involved
- inform family members of any monitoring role and their duty to contact the case manager if the family's circumstance deteriorates.

If a child, young person or their family fail to keep appointments or drop out of a service, the worker from that service must inform the case manager and the Department of Community Services if they are still involved. Where the Department of Community Services is no longer involved practitioners should consider making a report if they have concerns about risk of harm.

3.5.2 a support and management plan

When key milestones are achieved in protective intervention, such as determination of a care application, resolution of criminal proceedings or changes in the child's or the young person's circumstances, further thought must be given to determining:

- if the child or young person still has protective needs which warrant intervention



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practice point

Carers and workers should place educational achievement high on their planning agenda from the beginning of intervention. Consideration of the child or young person's educational needs should not be left until after other matters, such as emotional trauma, have been dealt with.



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practice point

Young people in care have identified two major factors which help them achieve well educationally: they need to be treated in the same way as the other students in the school and they need the support of an understanding teacher or counsellor during their years at school.

- what kind of intervention is required
- which agencies need to be involved to provide these ongoing care and support services.

The effective planning and combination of services is important in providing a coordinated response to the child's, the young person's and the family's needs. Similarly, the adjustment and review of the protection plan is necessary to ensure that as the situation changes so does the agency response.

The support and management plan builds upon and updates the protection plan. The protection plan is often developed in a point of crisis. Support planning allows for reflection, discussion and input from agencies and importantly, the child, young person and family.

Support and management plans should take account of any court ordered or registered plans such as care plans and alternative parenting plans. If appropriate, and where adequate interagency agreements have been reached about care and support, the support plan can be subsumed into the court ordered and/or registered plan.

refer Sections 38 and 115 *Children and Young Persons (Care and Protection) Act 1998*.

note The support and management plan can be developed as a result of Alternative Dispute Resolution.

refer Section 37 *Children and Young Persons (Care and Protection) Act 1998*; Alternative Dispute Resolution p61.

note The Department of Community Services will start implementing the Looking After Children (LAC) Case Management System in 2001. This system is aimed at improving case management for children and young people in out of home care.

In developing the support and management plan consider the following factors:

- have the child's or the young person's circumstances changed because care proceedings have been finalised?
- do arrangements for out-of-home care need to be reassessed or changed?
- have the criminal proceedings been resolved?
- is there clarity about individual agencies' ongoing roles and expectations of the level, type and timeframe for services to be provided by each agency?
- what are the views and expectations of the child, young person and family and have they changed at all?

- have all the agencies agreed to the case plan recommendations?

Where the child or young person is in out-of-home care, the support plan must be lodged with and examined by the Children's Guardian.

refer Section 181 *Children and Young Persons (Care and Protection) Act 1998*.

3.5.3 support and management planning meeting

The case manager convenes the support planning meeting. It is the responsibility of the case manager to ensure every child, young person and family has a support and management plan which is updated regularly and at key milestones. Information provided to support and management planning meetings can be by way of written reports or verbal contributions. Regardless of the method of presentation, information needs to be current, accurate, based on thorough assessment and considered carefully by the meeting.

Recording conclusions and recommendations of meetings is the responsibility of the case manager. Recommendations must be circulated to agencies with ongoing responsibilities in the case.

If any agency is unable to attend and recommendations made will impact in a significant way on that agency, these should not be seen as agreed until the case manager has canvassed these recommendations with that agency. The case manager may need to make contact with other agencies that were not present at the case planning meeting if referrals are required for ongoing care and support.

All agencies are, however, responsible for implementing their agreed care and support activities as part of achieving the support and management plan goals. Agencies that may have an important and ongoing role in the support and management plan are non-government organisations, children's services, schools, health and police. On request of the case manager the Office of the Director of Public Prosecutions may also continue involvement where criminal proceedings are outstanding.

The case manager role can be transferred from the Department of Community Services to another appropriate agency at the ongoing care and support stage. This must be negotiated with the Department of Community Services and agencies involved must be informed that the case manager has changed.

refer Role of the case manager p60.

In cases where the child or young person returns home, particularly after a lengthy placement away, attention must be given to coordinated



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restoration planning and support, including organising community support services for parents and a planned approach to increasing contact between the child or young person and their parents. Community support services must be reliable and be provided in the context where continuing monitoring has ceased. The supports organised for the family should be sufficient so that the placement does not break down.

Contingency plans are also helpful to parents if something does occur. These plans may provide parents with emergency numbers and access to a safe adult if assistance is required. Parents need to be reassured that asking for help does not imply their child will be removed. Non-government organisations are often involved during this intensive family support stage.

Support and management plans should be updated at a minimum of every six months. Amendments to a plan cannot occur unilaterally. Proposed amendments need to be referred to the case manager who will either seek agreement to changes by telephoning workers involved or call a case review meeting to discuss these changes.

Permanency planning issues should be considered regularly as part of case updates. For example the issue of adoption may need to be discussed where a child or young person will not be returning home, or sole parental responsibility may provide greater stability in long term placements where adoption is not an option and return to the birth family is not in the best interests of the child or young person.

Support and management planning meetings also provide the opportunity to discuss conflicts that may have arisen between agencies or between agencies and the family. Conflict may stem from disagreement about the level of intervention, the effects of intervention on the child, young person and family, differing perceptions about the capabilities of parents to change, and differing expectations about the level and types of service to be provided by individual agencies. Reiterating the goal of intervention may help to clarify and resolve disagreements.

note If care and support services are concerned about suspected risk of harm the Department of Community Services must provide all necessary support to prevent any further maltreatment or placement breakdown.

3.5.4 a case review

It is essential to good case practice that all cases involving children and young people be formally reviewed at a minimum of every six months or sooner if:

- the child or young person indicates she/he wants a change in the case plan
- the child's or the young person's placement breaks down or alters significantly
- other major changes happen, for example, the child or young person leaves school
- the child or young person is the subject of a further allegation of abuse or neglect
- the child's or the young person's behaviour, psychological state or health deteriorates
- the child or young person is engaged in criminal activity
- restoration is likely
- other siblings are taken into care or are the subject of child abuse and neglect allegations
- major changes occur in the family structure or relationships
- the protective adult leaves the family
- the parent's psychological state or health deteriorates to the extent that it affects their parenting capacity
- the family moves
- other major stresses impact on the family
- the offender is released from custody, conditional release provisions are altered or supervision terminated.

note A copy of the reviewed case plan should be forwarded to the Children's Guardian.

refer Section 181(1)(d) *Children and Young Persons (Care and Protection Act) 1998*.

note In situations of the death of a child or young person, a case review is required even though the case will have been referred to the Child Death Review Team.

The key considerations in review meetings are to:

- assess what changes have occurred to make the child or young person safer
- ensure the child's or the young person's continued safety
- ensure the child's or the young person's needs are being met
- ensure permanent, continuous arrangements are being put in place

- enable the child, young person and family to participate and express their opinions as to future intervention goals.

Case reviews should include:

- looking at the status of the original allegations
- providing updates from agencies in relation to their intervention, particularly from the case manager
- assessing progress towards case plan goals
- if progress has not occurred, exploring the reasons why (e.g. lack of follow through by an agency or change in client's presentation)
- identifying any new concerns or other variables
- recommending alternative case plan goals or further service options.

The case manager is responsible for convening the case review meetings. It is essential that the worker with case responsibility also attend. A record of the meeting must be provided to all agencies, the child, young person and family. This record will indicate what ongoing services are required.

The case manager has responsibility for the record and follow-up implementation with other agencies.

note The views of the child, young person and parents must be sought either at or prior to the case review meeting. As case reviews may involve a number of people, family members should be asked about how they wish to participate. It may not be appropriate or possible for parents to be involved in all parts of the review meeting. A separate advocate for the child or young person and support person for the parents may be necessary when the family participates in the case review meeting.

3.5.5 a leaving care plan

At a time when the case review indicates that a child or young person can leave care, the case planning meeting should develop a Leaving Care Plan.

The plan should include:

- arrangements for consulting the child or young person on the implications of leaving care
- provision of access to available information and resources
- defining the assistance required in terms of financial help, accommodation, education, training, employment, legal advice, counselling and support



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- any arrangements for transition to adult services to ensure continuity of support, especially for young people with disabilities.

The plan should be prepared in collaboration with the child, young person and family.

3.6 closure

Case closure is preceded by a case review meeting where a recommendation is made to close the case. It is very important that all the agencies are brought together at the review meeting prior to a case being closed so that all information is presented and discussed.

The types of information to be discussed when considering recommending case closure are:

- what was the harm or risk which intervention aimed to alleviate
- what has been needed to change to achieve the child's or the young person's safety and protection
- the extent to which these changes have been made
- the degree of change in a parent's behaviour, the child's or the young person's needs, the home environment and the reasons for closure of the case.

3.6.1 case manager's role

The case manager is responsible for calling a meeting of those involved with the child or young person and family to make a recommendation on closure.

The case manager's responsibilities include:

- calling a meeting of key practitioners to formulate a plan for leaving care and closure
- documenting and circulating the plan to practitioners, the child or young person and family
- ensuring the child or young person and family have access to information.

note Cases should not be closed if the child, young person and family have not been seen recently or there is no current assessment of needs. An agency ceasing service delivery is not a reason to close a case. Where the child or young person states that they do not want the case to be closed, often phrasing this as wanting to continue to receive a service, this request should be respected. Where there is any ongoing criminal



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investigation and/or court proceedings, it is advisable that the case remains active.

Of critical concern in case closure is:

- whether the child or young person has continuing protective needs
- whether intervention is still required to meet these needs
- what other supports or services are required to ensure the child's or the young person's safety and protection.

In planning closure, schools have an important role where the teacher may be the only significant other adult in the child's or the young person's life. This significance may increase on closure of a case.

Older children being returned home should know what to do to stay safe. This should include whom to go to for help if they require safety and protection. Remember children and young people are often most vulnerable and need assistance during outside hours, so the safe adult must be accessible to the child or young person and able to take action. Draw on the child's or the young person's knowledge and feelings about who they believe can protect them. Confirm that this adult is willing to fulfill this role should the need arise.

note The child or young person is never responsible for ensuring their own protection; this is an adult responsibility.

note School staff can only provide support within the scope of their normal duties.

When a child turns 18 years of age or is ready to live independently, case closure and termination of guardianship occurs. It is especially important to plan for the child's exit from guardianship as this is frequently a highly vulnerable time for young people. If relevant, the case manager should contact a leaving care service to ensure appropriate supports are in place as both the worker and the young person need to be confident that he or she can live independently, and has adequate financial resources, housing and supports to make a successful transition.

In most cases, a minimum of six months should be a sufficient time period to demonstrate the safety of the child or young person in this situation.

In the event of the death of a child or young person, case closure would also occur but this would not occur until the circumstances of the child's or the young person's death have been examined by relevant authorities and the safety and well-being of siblings assured.

The final decision to cease protective intervention lies with the Department of Community Services as the agency with lead responsibility. Even where the Department of Community Services has

had no active involvement for a number of years it is important that they be involved to ensure that all protective concerns relating to the initial report and subsequent interventions are attended to.

When a case is closed, the file is also closed and referred to the appropriate archive. The worker with case responsibility also needs to write and inform other agencies, the child, young person and family that the case has been closed. It may be appropriate for this letter to outline the support and the involvement of other agencies.



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While child protection intervention can protect a child and their family, often it is only the successful criminal prosecution or appropriate disciplinary action that protects other children and young people from offenders. Access to mandated treatment and community supervision is dependent on successful outcomes in the criminal justice system. When an offender is charged with an offence, even if it does not proceed to court, this action may increase the ability of agencies to put in place other protective processes such as disciplinary proceedings and the Working With Children Check.

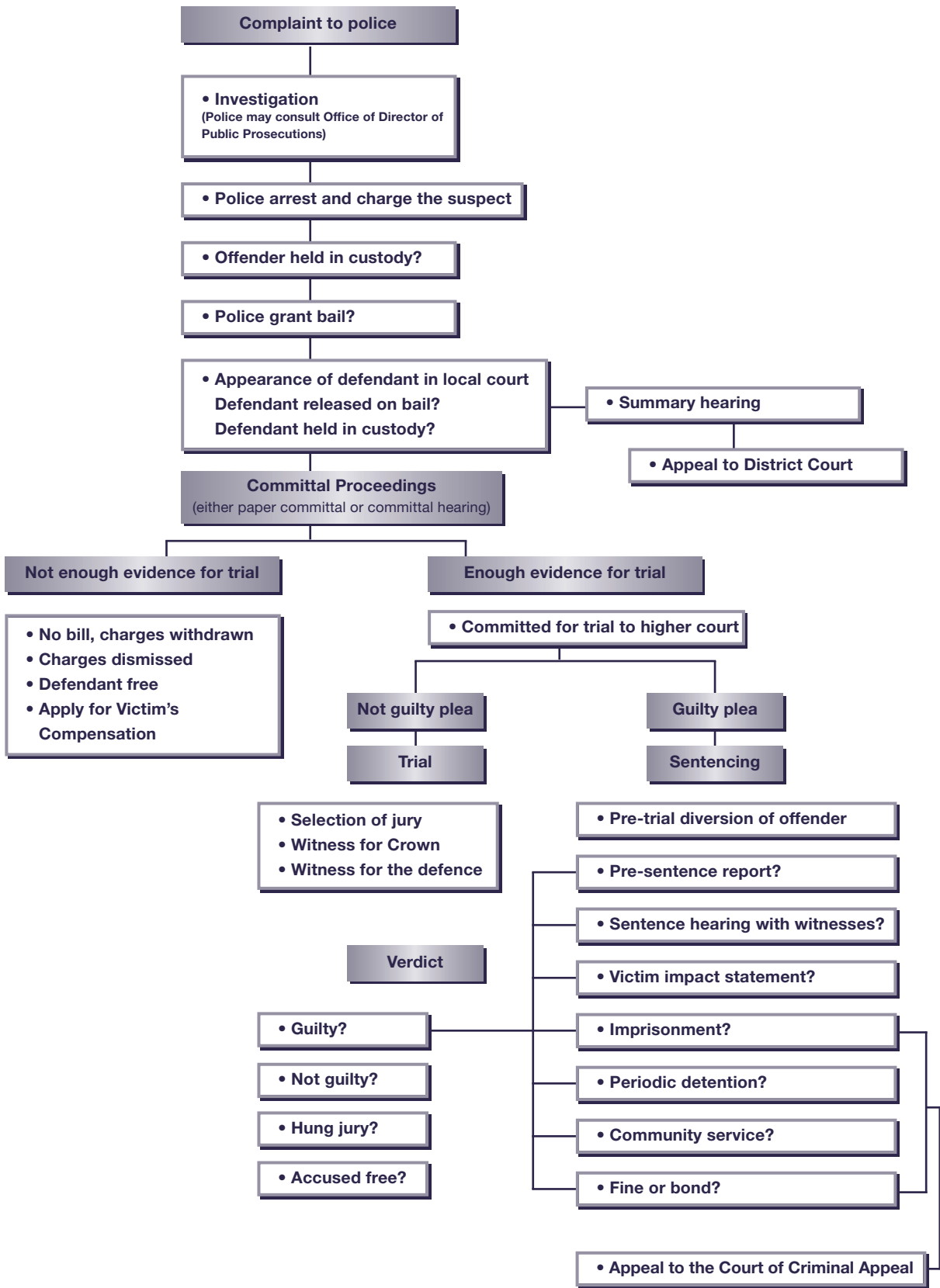
It is the responsibility of police to charge, decide whether there is sufficient evidence and make an assessment about the emotional and cognitive competency of the child or young person. The DPP is responsible for determining the likelihood of a successful prosecution which includes evaluating prospective witnesses in terms of perceived honesty, credibility and ability to handle the rigours of the court process. Participating in criminal proceedings has a significant impact on children and families. Families may have reservations about the child's participation in criminal proceedings and these need to be addressed. Children and their carers need clear information in relation to the process of criminal prosecution and need to be consulted and informed as steps are taken. However, families should not be given responsibility for making decisions in the first instance about whether offenders are charged, or expected to make decisions in the early days following discovery of abuse.

Practitioners and agencies need to be responsive to the dilemmas faced by families going through criminal prosecutions and work with children, young people and families to:

- reduce uncertainty by providing as much information as possible about court processes and procedures, including dates and the purpose of proceedings
- increase support and practical assistance
- acknowledge the reality of their distress.

When it is recommended as part of a protective plan that criminal charges should be initiated, the police officer in charge of the case should seek advice. If the charges are of a summary nature, the sufficiency of the available evidence and appropriate charges should be discussed with a senior officer or police prosecutor.

police and court processes



When criminal charges in relation to child sexual assault or serious offences of violence against children are being considered, police may seek advice from the Office of the Director of Public Prosecutions regarding the sufficiency of available evidence, the appropriateness of charges and whether or not charges should be laid.

4.1 coordinating proceedings

After criminal charges have been laid in relation to sexual assault offences or serious offences involving violence against children or young people, the police will forward a brief of evidence to the Office of the Director of Public Prosecutions. That Office will screen the brief and allocate it to a lawyer to prosecute or to brief and if necessary instruct a Crown Prosecutor.

At this stage the Office of the Director of Public Prosecutions assumes responsibility for the conduct of the criminal proceedings.

Where charges do not involve child sexual assault offences or indictable offences involving serious violence against children or young people and are to be heard in a Local Court, the police retain responsibility for the prosecution. The police officer in charge of the case assumes responsibility for coordinating criminal proceedings and keeping everyone informed.

4.2 communicating changes

During the progress of criminal proceedings issues will arise that need to be communicated to those working with the child or their family. The case manager should advise the Office of the Director of Public Prosecutions that they have the role and how they can be contacted. It is the responsibility of the Office of the Director of Public Prosecutions or the police officer in charge of the case, when less serious charges are involved, to keep the case manager informed.

They should be informed about:

- dates of court listings, hearings, trial adjournments
- dates for the hearing of evidence from a victim
- bail applications, granting of bail and any conditions
- breaches of bail conditions
- progress of proceedings
- charges withdrawn by the Crown (no bill applications)
- findings or determinations of courts



DPP

practice point

A coordinated interagency approach will reduce the trauma to a child victim during the court process. For this reason it is important that agencies with information about the child's emotional status during the period of preparation for the trial should advise the case manager. Changes of placement, attempted contact by the alleged offender, any pressure put on the child not to give evidence, outcomes of care proceedings or other significant changes in circumstances should be conveyed to the case manager. It is the responsibility of the case manager to keep the prosecutor informed of these developments.



DPP

- sentencing decisions
- appeals
- any other matter that arises and is relevant to the safety or welfare of the child.

The Office of the Director of Public Prosecutions should advise the case manager of changes as they occur.

It is the responsibility of the case manager to ensure this information is conveyed to other relevant agencies and, if appropriate, adjustments made to the protection plan in light of the new information.



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4.3 counselling and support

A child or young person who has been abused or neglected is likely to be receiving counselling from a NSW Health Sexual Assault Service or a Physical Abuse and Neglect Service. Those providing counselling to victims where criminal proceedings are in progress need to ensure that they have established links with the child's or the young person's case manager and that they are aware of court processes and procedures.



DPP

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4.4 court preparation of child victim

A child or young person who is required to give evidence in criminal proceedings must be offered information to assist their understanding of court processes and procedures. There should also be support offered from an adult of her or his choice who should be advised of the role of the court support person by the Office of the Director of Public Prosecutions.

Interpreters need to be organised in advance of the court appearance of the child or young person. It is an Office of the Director of Public Prosecutions responsibility to arrange interpreters in committals and in trials. The police should advise the Office of the Director of Public Prosecutions if a witness needs an interpreter and it is the responsibility of the lawyer from the Office of the Director of Public Prosecutions to notify the court that an interpreter is needed.

It is the responsibility of the Office of the Director of Public Prosecutions to ensure that a child is appropriately prepared to appear as a witness. This should involve the prosecutor meeting with the child or young person and caregivers well before the commencement of proceedings in order to assess the needs of the child or young person as a witness. If a NSW Health Sexual Assault Service is involved, the

prosecutor should liaise with that service and the case manager to discuss the child's or the young person's specific needs with regard to court preparation and support.

The prosecutor should at this meeting:

- assess the child's or the young person's competence to give evidence
- decide whether the child or young person will give evidence in chief via a tape recording, if this has been made
- form an appreciation of the child's developmental level, including language and conceptual skills, their capacity to understand concepts of time and locality and their capacity to concentrate
- form an appreciation of the child's or the young person's level of anxiety in relation to the proceedings
- establish some trust and rapport with the child or young person
- refer to the Witness Assistance Service of the Office of the Director of Public Prosecutions. Child sexual assault matters are referred early to the Witness Assistance Service to facilitate access to counselling, support and court preparation and support.

This contact, if involving very young children, may need to occur over several meetings. It will enable the prosecutor to decide what special arrangements should be sought from the court to facilitate the child giving evidence. There is now a presumption that children will have a right to:

- the presence of a supportive person while giving evidence
- give evidence in chief in the form of a recording, wholly or partly
- give all their evidence by closed circuit television (CCTV), or when CCTV facilities are not available, by alternative arrangements.

note Disrobing (no wigs or gowns) by the judge and counsel may also be possible. It must be made clear to the child and relevant parents or caregivers that the court determines court arrangements for children's testimony. No promises can be given about these arrangements.

refer *Evidence (Children) Act 1997; Evidence (Children) Regulations 1998; Office of the Director of Public Prosecutions, Prosecution Policy and Guidelines.*

All child or young person witnesses and the chosen supporting adult should attend a court preparation program. NSW Health Sexual Assault Services conduct an accredited preparation program that has been developed taking into account all relevant law. Agencies working with children should facilitate a child's participation in such a program by

providing transport for the child and supporting adult or by meeting other reasonable requests of NSW Health Sexual Assault Services.

note This is a highly specialised area. Only those agencies accredited to conduct court preparation programs should do so.

note The Witness Assistance Service is attached to the Office of the Director of Public Prosecutions. The Service works closely with other agencies to ensure children and their carers receive counseling and support. It provides some casework services to victims and other witnesses. Services include preparing the child and other witnesses to testify, court support and debriefing, assessment and referral to other services and facilitating liaison between victims, witnesses and the prosecution lawyers.



DPP



practice point

At the end of the proceedings the prosecutor should take considerable time to discuss the outcome with the victim and caregiver, the child should generally always be praised no matter what the outcome and an acquittal or dismissal should always be framed positively in respect of the evidence given by the child or young person. They should also be advised of the prisoner's right to appeal.

4.5 court determinations

The Office of the Director of Public Prosecutions is responsible for informing the child or young person and the parents, caregivers or guardian and the case manager of the outcome of criminal proceedings or any bargaining agreements reached with the defence. In cases conducted by a police prosecutor, they may choose to delegate this task to the police officer in charge of the case.

When a final court outcome is reached, the case manager should be given details of all orders made.

In cases where the Crown discontinued the prosecution and hence the charges are withdrawn and for non-full time custodial sentences, the case manager should reconvene the protection planning meeting to reassess the safety of the child or young person and her or his ongoing care and support needs. Similarly, if there is a 'not guilty' finding the case manager should reconvene the protection planning meeting to address any protection needs of the child or young person.

Where a conviction has resulted and sentencing has occurred, the prosecutor should advise the case manager in writing of any relevant comments of the sentencing judge.

Learning of a final court determination can be difficult for the child or young person and caregivers. Past experiences and feelings can be rekindled and a sense of confusion and injustice may emerge if charges have been withdrawn or guilt has not been established. Support and counselling at this time is often required. It is for this reason that agencies involved in the provision of care and support services should adopt an interagency approach to ensure that the ongoing needs of the child or young person and the family are met.

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5.1 introduction

On 3 July 2000, legislation commenced in NSW to prohibit convicted sex offenders from working with children and ensure the checking of those who work, or are seeking to work, with children. Together the *Child Protection (Prohibited Employment) Act 1998* and Part 7 of the *Commission for Children and Young People Act 1998* establish the requirements of employers and employees in reducing the likelihood of a child being abused by a person entrusted with their care.

The Working With Children Check has been established by the Commission for Children and Young People to assist employers in meeting their obligations in engaging staff in child-related employment.

The following information is a summary of the Working With Children Check.

refer

Working With Children Check – Guidelines for Employers are available on the internet at www.kids.nsw.gov.au/check.

5.2 what is child-related employment?

For the purposes of both the *Commission for Children and Young People Act 1998* and the *Child Protection (Prohibited Employment) Act 1998*, employment includes:

- performance of work under a contract of employment
- performance of work as a volunteer for an organisation
- performance of work as a minister of religion or other member of a religious organisation
- undertaking practical training as part of an educational or vocational course

In addition, the *Child Protection (Prohibited Employment) Act* includes people who are self-employed within its definition of employment and the *Commission for Children and Young People Act* includes sub-contractors within its definition of employment.



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The *Child Protection (Prohibited Employment) Act* defines child-related employment as being any employment that primarily involves direct contact with children where that contact is not directly supervised:

- involving the provision of child protection services
- in pre-schools, kindergartens and child care centres (including residential child-care centres)
- in schools or other educational institutions (not universities)
- in detention centres (within the meaning of the *Children (Detention Centres) Act 1987*)
- in refuges used by children
- in wards of public or private hospitals in which children are patients
- in clubs, associations or movements (including those of a cultural, recreational or sporting nature) having a significant child membership or involvement
- in any religious organisation
- in entertainment venues where the clientele is primarily children
- a babysitter or childminder that is arranged by a commercial agency
- involving fostering or other child care
- involving regular provision of taxi services for the transport of children with a disability
- involving the private tuition of children
- involving the direct provision of child health services
- involving the provision of counselling or other support services for children
- on school buses
- at overnight camps for children.



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5.3 *Child Protection (Prohibited Employment) Act 1998*

The Act aims to prevent a “prohibited person” from applying for, gaining or remaining in child-related employment. An employer cannot employ a prohibited person for work that primarily involves direct contact with children where that contact is not directly supervised.

A prohibited person is a person convicted of committing a serious sex offence.

Section 5(3) of the *Child Protection (Prohibited Employment) Act*, defines a serious sex offence as:

- a) *an offence involving sexual activity or acts of indecency, that was committed in NSW and that was punishable by penal servitude or imprisonment for 12 months or more, or*
- b) *an offence, involving sexual activity or acts of indecency, that was committed elsewhere and that would have been an offence punishable by penal servitude or imprisonment for 12 months or more, if it had been committed in NSW, or*
- c) *an offence under Sections 91D-91G of the Crimes Act 1900 (other than if committed by a child prostitute) or a similar offence under a law other than a law of NSW, or*
- d) *an offence under Section 578B or 578C of the Crimes Act 1900 or a similar offence under a law other than a law of NSW, or*
- e) *an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs, or*
- f) *any other offence whether under the law of NSW or elsewhere, prescribed by the regulations.*

A prohibited person may apply to the Industrial Relations Commission or the Administrative Decisions Tribunal for an exemption from this Act. An exemption can be given if the Commission or Tribunal consider that the person does not pose a risk to the safety of children.

Under the Act employers must ask all existing paid and unpaid employees engaged in positions which primarily involve direct contact with children where that contact is unsupervised if they are a prohibited person. Employees must make the declaration to their employer within one month of being requested to do so or, if they are a prohibited person, remove themselves from child-related employment.

Prior to employment, employers must ensure that all people being considered for appointment in either a paid or unpaid capacity declare whether they are a prohibited person or not.

It is an offence for an employer to fail to ask whether a person is a prohibited person or employ a prohibited person.

It is also an offence for an employee not to disclose his or her prohibited person status.

Employers should also ensure that once they have identified a position as being child-related, all information regarding the position clearly states that prohibited persons are not eligible to apply.

5.4 Commission for Children and Young People Act 1998

The Act establishes the Commission for Children and Young People as an independent organisation with an aim to make NSW a better place for children and young people.

One of the major functions of the Commission for Children and Young People is to facilitate screening to determine the suitability of people for child-related employment. Part 7 of the Act, Employment Screening, sets out the requirements to screen people seeking child-related employment to determine their suitability.

The Act requires that all people commencing paid work that involves direct contact with children where that contact is unsupervised, foster carers, ministers of religion and members of religious organisations, must be checked. The checking process incorporates a check for:

Relevant Criminal Records: A criminal record of a person with respect to an offence involving sexual activity, acts of indecency, child abuse or child pornography, if the offence was committed in NSW and was punishable by imprisonment for 12 months or more, or if it was committed elsewhere and would have been punishable by 12 months or more imprisonment if it had been committed in NSW.

Relevant Apprehended Violence Orders: An apprehended violence order (other than an interim order) made by a court under Part 15A of the *Crimes Act 1900*, or an interstate restraint order (within the meaning of Part 15A of the *Crimes Act 1900*), and made on the application of a police officer or other public official for the protection of a child (or a child and others).

Relevant Completed Disciplinary Proceedings: Completed disciplinary proceedings against an employee by an employer or by a professional or other body that supervises the professional conduct of the employee. These proceedings include completed proceedings involving child abuse, sexual misconduct or acts of violence committed by the employee in the course of employment where these acts involve children, are directed at children, or, take place in the presence of children. False, vexatious or misconceived allegations are not “relevant” for the purposes of the Act.

Employers must request employment screening to be undertaken and ensure, where practicable, its completion before offering employment in any paid position that primarily involves direct contact with children where that contact is unsupervised, or, as a foster carer, minister of religion or member of a religious organisation.

Should a situation arise where it is not practicable for screening to be undertaken prior to the commencement of employment, the screening process must be completed as soon as possible after the person is employed. In these cases employers must advise employees that their ongoing employment is conditional on the satisfactory completion of the screening process.

Under the legislation employers must notify the Commission for Children and Young People of any:

- decision not to employ a person as a result of the findings of the employment screening process, and
- relevant completed disciplinary proceeding against an employee.

The Commission for Children and Young People is responsible for the monitoring and auditing compliance of employers and other related bodies with the employment screening requirements of the legislation.

The Act establishes strict confidentiality arrangements in relation to all information obtained during the screening process. It is an offence to inappropriately use any information obtained during employment screening.

The Act also provides protection from liability or similar claim for any person who provides information in relation to employment screening in good faith and with reasonable care.

5.5 relevant disciplinary proceedings

For the purposes of the Working With Children Check relevant disciplinary proceedings include any action taken to investigate matters that have been the subject of allegations involving any of the following matters:

- child abuse
- sexual misconduct, or
- acts of violence committed by the employee in the course of employment.

It is only a requirement to notify the Commission of sexual misconduct or acts of violence in the workplace where these acts:

- involve children
- are directed at children, or
- take place in the presence of children.



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It is not necessary to notify the Commission for Children and Young People where completed disciplinary proceedings have proven the allegations to be false, vexatious or misconceived.

For the purposes of these procedures allegations are considered:

- false if investigation has concluded that the alleged conduct did not occur
- vexatious if investigation concluded that the allegation was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made
- misconceived if the investigation has concluded that, whilst the allegation was made in good faith, a misunderstanding on behalf of the person making the allegation occurred.

For the purposes of the Commission for Children and Young People's requirements, a disciplinary matter is considered completed once the employer or professional body has reached a point where the investigation of the matter has concluded and a finding has been reached, irrespective of whether disciplinary action is yet to be initiated.

Completed disciplinary proceedings also include processes which have been completed at the instigation of the employee, eg: those circumstances where an employee terminates their employment by their own choice prior to an employer having the opportunity to finalise the disciplinary process.

Information regarding relevant disciplinary proceedings must be provided to the Commission for Children and Young People as soon as the proceedings are completed.

Disciplinary information must be provided to the Commission, irrespective of any information required to be provided to the Ombudsman in relation to the same matter.

5.6 past disciplinary proceedings

It is a requirement that employers provide the Commission for Children and Young People with information regarding any relevant completed disciplinary proceedings that have occurred in the five year period prior to the commencement of the legislation (3 July 2000).



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investigations of child abuse allegations against employees of designated agencies



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1 background

The *Ombudsman Amendment (Child Protection and Community Services) Act 1998* commenced on May 7, 1999 extending the jurisdiction of the Ombudsman to include child protection. The Act is a direct result of the findings of the Royal Commission into the NSW Police Service.

The final report of the Royal Commission into the NSW Police Service made it clear that the systems for identifying and investigating allegations of child abuse against employees needed to be overhauled and that new accountability measures had to be introduced to ensure the integrity and improvement of these systems. Pre-employment screening and dealing with employees who were a risk to children were two important recommendations made by Justice Wood to provide protective measures for children.

The May 1999 amendment to the *Ombudsman Act 1974* gave the Ombudsman responsibility for overseeing investigations of child abuse against employees of designated agencies (see page 98 for information about designated agencies).

Heads of agencies are required to report to the Ombudsman, within 30 days of becoming aware, any allegations or convictions of child abuse made against employees. Heads of agencies are required to conduct investigations (which can include preliminary or other inquiries and assessment) into child abuse allegations or convictions and to take appropriate action as a result. Heads of agencies may delegate responsibility for reporting and conducting investigations to other officers, but they have to ensure that the report is made or the investigation is conducted.

As a result of the amendment, there are now two types of “investigation” in the context of child protection:

- those conducted by the Department of Community Services and/or the Police arising from a report that a child or young person is at risk of harm; and
- those conducted by an employer arising from an allegation that the employee has abused a child.

2 important terms

2.1 relevant definitions under the Ombudsman Act (section 25A):

child means a person under the age of 18 years

child abuse means:

- assault (including sexual assault) of a child, or
- ill treatment or neglect of a child, or
- exposing or subjecting a child to behaviour that psychologically harms the child,
- whether or not, in any case, with the consent of the child.

child abuse allegation means an allegation of child abuse against a person or an allegation of misconduct that may involve child abuse.

child abuse conviction means any conviction of a person, in this State or elsewhere, of an offence involving child abuse, and includes a finding by a court that a charge for such an offence is proven even though the court does not proceed to a conviction.

employee of an agency includes:

- any employee of an agency, whether or not employed in connection with any work or activities that relates to children, and
- any individual “engaged” by the agency to provide services to children (including in the capacity of a volunteer).

investigation of a matter includes any preliminary or other inquiry into, or examination of, the matter.

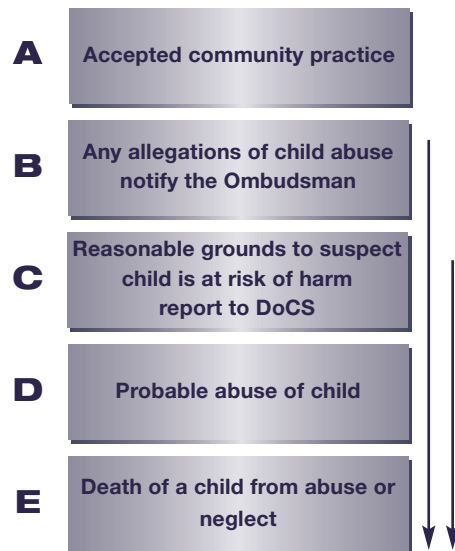
2.2 allegations of child abuse that must be notified to the Ombudsman

For an allegation to be notified to the Ombudsman, the following components are necessary:

1. The person who is the subject of the allegation must be a current employee of a designated agency or public authority or have been an employee at the time of the alleged conduct and must be identifiable. This does not necessarily mean identified by name, as a person may be identifiable by other information including their description and work schedules of the agency.
2. The allegation must contain a description of behaviour that may constitute child abuse.
3. The alleged victim must have been aged under 18 years at the time of the alleged offence or behaviour.

note Reports to the Department of Community Services need to be made where a person has ‘reasonable grounds to suspect’ that a child has been, or is at risk of harm (‘C’ in the diagram). However, the Ombudsman has to be notified of any allegation against a person employed or engaged by an agency, whether or not there is any supporting evidence that the abuse has taken place (‘B’ in the diagram).

CONTINUUM OF REPORTING OBLIGATIONS



(Adapted from *Reporting Child Abuse and Neglect*, South Australian Department for Family and Community Services, 1997).

note For definition of child abuse, physical abuse, sexual abuse and neglect see Part II p37.

2.3 behaviour causing psychological harm

The definition of child abuse in Section 25A of the *Ombudsman Act* refers to “... *behaviour that psychologically harms the child*”.

Although there is no one universally accepted definition of behaviour that may cause psychological harm, types of behaviour may include:

- serious acts that degrade or belittle a child which can be verbal or non-verbal – types of behaviour include harsh criticism, shaming a child for expressing normal emotions or publicly humiliating a child
- subjecting a child to chaotic circumstances e.g. exposure to domestic violence, and setting unrealistic expectations with threats of harm or loss - types of behaviour include threats to physically hurt, kill or place the child (or child’s loved one) in danger
- behaviours that isolate a child by denying a child the opportunity to engage in social activities with peers or adults or that unlawfully confine the child e.g. locking a child in a cupboard
- acts that promote self-destructive, antisocial, criminal and other maladaptive behaviours in children. Types of behaviour include demonstrating anti-social behaviour and permitting children to be involved in behaviours such as drug use, prostitution and violence failure to encourage developmentally appropriate behaviour and restricting the child’s cognitive development
- persistent failure to care for and support the child or withholding emotional interactions.

The following criteria may form the basis for assessment of whether particular behaviour may cause psychological harm to a child:

- presence of behaviour by an adult which clearly falls within one or more of the types of psychological maltreatment outlined above
- sustained or repeated patterns of behaviour or a significant single instance
- the developmental level of the child – as certain behaviours may be considered abusive when directed to children of a particular age and not abusive when directed at another age level
- indication of actual psychological or emotional harm may include constant or chronic poor health, developmental delays, sleep

disturbances, anxiety, bed wetting, extreme attention seeking, bullying or refusal to go to school. However, there may be other explanations for these behaviours.

Adapted from: *Psychological Maltreatment: Behaviour Directed Towards Children Which May Cause Psychological Harm* prepared for the NSW Ombudsman May 2000 by M. Durrant

2.4 misconduct that may involve child abuse

Under the *Ombudsman Act* an allegation of child abuse may include “an allegation of misconduct that may involve child abuse.” Misconduct means misbehaviour or wrongdoing. In terms of child abuse, if there is insufficient information to establish whether an incident is one of child abuse, an allegation may be classified as ‘misconduct that may involve child abuse’. The type of conduct that may fall under this category is generally inappropriate touching (not sexual); language or a relationship (not sexual) between an adult and a child that breaches community and/or employment standards.

2.5 What does the Ombudsman mean by the term ‘agency investigation’?

For the purposes of the *Ombudsman Act*, heads of agencies will need to conduct an internal agency investigation whenever they receive information that comprises an allegation or conviction of child abuse against an employee. It is the agency’s responsibility to gather the information needed to make a decision about the management, supervision or continued employment of an employee against whom an allegation of child abuse has been made or a conviction of child abuse has been recorded.

This is different to both a Department of Community Services or police investigation. The main purpose of a Department of Community Services investigation is to identify whether a child is at risk of harm and whether any care and support issues exist. The main purpose of a police investigation is to establish whether there is sufficient evidence for the prosecution of a perpetrator for criminal behaviour.

The Ombudsman uses the term ‘agency investigation’ as a generic word to describe a broad fact finding process whereby an agency carries out some form of inquiry and assessment and possibly adjudication in relation to an allegation of child abuse against an employee.

practice point

Before making any finding the substance of any proposed adverse comment should be put to the employee and the employee should be given the opportunity to respond.

practice point

Agency investigations provide the opportunity to test out and improve on the effectiveness of their child protection policies and procedures. Where policies and procedures are non-existent, deficient or outdated, agencies should develop or improve these so there is clarity about the agency's response to allegations of child abuse against employees.

The purpose of an agency investigation into an allegation or conviction of child abuse against an employee is to obtain information upon which a sound and proper decision can be made about the validity of the allegation. This means:

- gathering all the facts relevant to the child abuse allegation or conviction and then making a decision as to whether on the balance of probabilities the allegation has been sustained or not sustained;
- providing information to assist in any disciplinary proceedings.

The person in the agency investigating the child abuse allegation is responsible for ascertaining all facts relevant to the allegation (this may include but is not limited to information received from the Department of Community Services at the conclusion of any investigation that may have been carried out by that Department). At the conclusion of the information gathering exercise, the person investigating must make a report about his or her findings and, if appropriate, make relevant recommendations.

refer

Agency risk assessment p159.

Agency investigations may follow two pathways:

1. Concurrent investigation – an agency investigation conducted by the employer or their delegated officer will sometimes run at the same time as an external investigation conducted by the Department of Community Services or the police.

The agency would:

- Assess the risk posed by the employee if the allegation were to be sustained
- Liaise and coordinate with the Department of Community Services or police regarding responsibilities
- Once the Department of Community Services has made a finding, determine what other evidence needs to be collected so that a decision regarding the employee can be made. Agencies should not base their decisions regarding an employee solely on decisions made by the Department of Community Services or on that of any other investigative body
- Put the allegation to the employee and give them the opportunity to respond and take this evidence into consideration
- Make a determination regarding the employee at the conclusion of the formal disciplinary process.

2. Sole investigation – where the Department of Community Services or police do not investigate a matter. In this case, the employer will

have sole responsibility for the investigation and will need to make sufficient enquiries to establish a complete picture of the matter. The head of agency will be expected to conduct a risk assessment, gather facts, and make a determination based on the findings of the investigation

refer Steps in the investigative process p163.

refer Coordinating reports p97; NSW Ombudsman (2000): *Investigating Complaints: a Manual for Investigators*.

refer NSW Ombudsman (2000): *Developing a Child Protection Policy: A Practical Guide for Agencies*.

2.6 agency risk assessment

At the outset and during an agency investigation, it is important to assess and monitor the risk of continued access of the person, the subject of the investigation, to children in the care of the agency. In an initial risk assessment, factors that should be considered in determining whether to leave the employee in position while the investigation is conducted include:

- the nature of the allegation
- the vulnerability of children
- the nature of the position occupied by the employee and the level of supervision of the employee
- the disciplinary history of the employee
- the safety of the employee, and
- the risk to the investigation.

The agency needs to take appropriate action to minimise risks should they be identified as significant.

The process of agency risk assessment should continue (usually informally) throughout the agency's investigation of the allegation and should also occur at the conclusion of the investigation, after a finding is made, when a decision needs to be taken regarding any possible disciplinary action.

3 overview of agency investigation

3.1 principles for investigating allegations of abuse against employees

If you are uncertain as to when or how to commence or conduct an agency investigation against an employee of your agency, seek the advice of the Department of Community Services, the Police Service, the Ombudsman, or the relevant peak, coordinating or advisory body for your agency.

It is important that an investigation into an allegation of child abuse be handled carefully and sensitively. There are a number of factors relating to these sorts of investigations that should be kept in mind when determining what course of action to take in investigating a child abuse allegation.

practice point

In addition to the care and support of victims and their families, employers might also consider the need to provide support to investigators. Continual exposure to child protection cases may result in accumulated distress that will require support such as professional supervision or counselling.

CARE AND SUPPORT

Support and professional counselling should be organised (if not previously organised) for the alleged victim, family members and, if appropriate, other witnesses. Witnesses may be particularly stressed by their involvement in the process and should be offered opportunities for de-briefing and ongoing support from the employer.

Employers must also ensure the health and safety of employees and other persons at the workplace. Referral of the alleged offender to an external counselling service should be offered and will assist in meeting obligations under sections 15, 16 and 17 of the *Occupational Health and Safety Act 1983*.

PROCEDURAL FAIRNESS

Procedural fairness must be afforded to persons the subject of an investigation. Failure to provide due process to an employee may be the subject of a challenge in the Industrial Relations Commission, the Government and Related Employees Appeal Tribunal (GREAT), and /or the Courts.

refer *The Complaint Handler's Toolkit and Investigating Complaints – A Manual for Investigators.*

OBJECTIVE INVESTIGATIONS

All investigations must be conducted in an impartial, independent and objective manner. The role and functions of an investigator are quite distinct from that of a mediator, conciliator or adviser, and the procedures used in those processes are generally not appropriate to an investigation. Agencies should contact the Ombudsman if they have concerns about conflict of interest.

The investigator must not have, nor be perceived to have, any conflict of interest in relation to the allegation, the alleged victim(s), the person(s) the subject of the investigation, nor in outcomes that might affect the reputation of the particular agency. Where there is an actual or apparent conflict of interest the agency may take up the option of another internal investigator or an external investigator certified or approved by industry or employer bodies, to undertake the investigation of the child abuse allegation or conviction. The Ombudsman may also directly investigate the allegation pursuant to section 25G(1) of the Act.

DEVELOP OR RELY ON EXPERTISE

The onus of conducting an investigation lies with the agency. However, without appropriate skills or experience in conducting investigations, or in dealing with child abuse matters, agencies often run the risk of compromising the investigation. If an agency does not have the required skills or resources, the agency may need assistance in developing such skills or may need to make alternate arrangements for conducting investigations. Staff of the Ombudsman are available to provide advice to agencies.

Where the head of agency is not going to undertake all elements of the investigation him or herself, the agency still needs to advise the Ombudsman of what action the agency has taken (e.g. moving the employee to alternate duties while an investigation is being conducted).

INTERVIEWING CHILDREN AND YOUNG PEOPLE

It is important to realise that the interview process for children and young people can be very daunting and intimidating, especially at a time soon after they may have experienced abuse. The process for gathering evidence from children has undergone extensive review in recent years, with the aim of ensuring that the evidence obtained is as reliable as possible, and that the child is not subject to any unnecessary trauma. It is therefore essential that interviews of children be conducted by staff trained in interviewing children. Further information on interviewing children can be found in the Ombudsman's *The Complaint Handler's Toolkit and Investigating Complaints – A Manual for Investigators*.

practice point

An investigation is an inquisitorial rather than an adversarial process. Neither the agency nor the investigators are on the side of any party to the allegation. They do not “own” the allegation, or the witnesses for or against the allegation.

AVOID CONTAMINATION OF EVIDENCE

It is essential for staff or children and young people to understand they are not to discuss their statements with other staff or children. It is advisable to offer an appropriate point of contact should they wish to debrief about the matter.

4 investigation by agency

The head of agency is responsible for assessing the risk an employee poses to a child/children or young people once an allegation of child abuse is made and for making a final decision regarding the employee. If an investigation is being undertaken by the Department of Community Services or the police, the agency will need to work closely with those agencies to determine responsibilities and to avoid the risk of contamination or duplication of evidence gathering.

Although every investigation carried out by an agency will be different, an investigation process generally has five stages:

- an allegation is received and a decision is made about the nature and level of response and action required, including whether the matter should be referred to the Department of Community Services or the police (for ‘designated agencies’ and all public authorities, all allegations of child abuse against an employee must be referred to the Ombudsman)
- an investigation is carried out, and finds either that the evidence warrants taking disciplinary action or that it does not
- procedural fairness will be accorded to the person the subject of the allegation
- a final decision is made about what action will be taken as a result of the investigation and what other action may be required as a result of issues raised during the investigation, and
- disciplinary or other management action is taken where necessary or appropriate.

The head of agency should ensure that the reasons for all decisions are documented, whether this is to leave the person subject of agency investigation in their current role, to transfer them to another position, to stand them down pending the outcome of the agency investigation, or some other action.

Proper decision-making can only occur when there has been a full and sound investigation resulting in adequate and valid information on which to base decisions. It is important that the agency investigation function and the final decision-making function not become blurred.

These functions are inherently different and it is generally preferable to have the two roles performed by different personnel. This separation of functions will strengthen objectivity in the agency investigation and decision-making processes. The Ombudsman acknowledges that very small agencies may not be able to allocate the human resources necessary to separate the two functions.

In all instances where an allegation is made against an employee, the head of the designated agency or public authority will need to carry out some form of assessment and possibly adjudication of the matter. Even where the employee is criminally charged and convicted, the employing agency still has disciplinary decisions to make.

note Where another agency has already investigated the allegation, there may be very little additional investigative work required by the agency. However, for reasons of procedural fairness and natural justice, the agency will still need to assess the facts and give the subject of the investigation the opportunity to respond. The employer will still need to assess all relevant information to reach a decision about what action to take about:

- what will happen to the person who is the subject of the allegation
- what will happen regarding the alleged victim
- what should/could change to ensure the safety of other children (e.g. policies and practices).

Investigation does not always mean formal interviewing. Generally, an investigation will be whatever efforts are made by the agency, or by someone else on behalf of an agency, to determine the facts of an allegation made against an employee, as well as any action the agency takes as a result of the findings that may be made. Agencies are expected to conduct a risk assessment, gather facts and make a determination.

4.1 steps in the investigative process

It is important to allocate adequate resources and appropriate personnel to the child abuse investigation and to ensure that all investigative decision making is transparent and justifiable (in particular, document all decisions that could be viewed as diverging from investigative best practice).

Listed below are some fundamental steps in the investigative process for child protection matters where an allegation is made against an employee:

1. Clarify the allegations
2. Ensure all external and internal notifications are made

3. Determine whether the Department of Community Services or the police are going to be involved
4. Carry out a risk assessment of the risk to children posed by the subject(s) of the allegation(s)
5. Set clear objectives for any investigation
6. Draw up a comprehensive and logical investigation plan
7. Decide on necessity to interview the child or children (choose appropriate interview techniques – interviews are only to be carried out where the Department of Community Services or police are not involved and only then preferably by trained interviewers; see Interviewing children and young people p106)
8. Collect all available relevant evidence (ensure all evidence is fully documented)
9. Interview all relevant witnesses (ensure all interviews are adequately recorded e.g. ideally taped and transcribed or a verbatim transcript written during the interview and signed and dated by all present)
10. Interview the person the subject of the allegations (ensure this is done in accordance with all relevant legal considerations and giving them the opportunity to respond)
11. Consider all the evidence (including that which tends to clear the person from fault)
12. Make a finding, based only on the evidence, as to whether the allegation is sustained or not sustained
13. Present all the material to the person required to make a decision on the matter

practice point

An agency may deem it inappropriate to allow a staff member to continue to perform their current duties when an allegation has been made against them. The agency might consider: reassigning the staff member to other duties on a temporary basis; recommending that the staff member take leave; and providing the staff member with special leave on full pay.

4.2 after an investigation

At the conclusion of an agency investigation of a child abuse allegation or conviction, the person required to make a decision on the matter could come to several possible decisions:

- dismissal of the allegation
- referral to an external agency for further investigation, prosecution or other appropriate action
- disciplinary or other management action by the agency which may involve penalty or dismissal, with completed relevant disciplinary proceeding being reported to the CCYP.
- development or review of relevant policies and procedures

5 the disciplinary action

Following an agency investigation and subsequent agency risk assessment, the head of agency needs to decide whether any disciplinary action needs to be taken with respect to the employee. The head of agency needs to act in accordance with any formal disciplinary scheme under which the agency operates. This may be by statute and delegated legislation, such as the *Public Sector Management Act 1988*, the *Public Sector Management Regulation 1996* or the *Teaching Services (Education Teaching Service) Regulation 1994*. For agencies not covered by a legislative scheme, the disciplinary scheme may be contained in Awards, Enterprise Agreements, various aspects of common law principles or in internal policies and procedures.

The disciplinary scheme of an agency not covered by a legislated scheme should specify:

- provisions empowering an agency to carry out and implement a risk assessment on receipt of an allegation about the conduct of employees, and on receipt of the findings of any investigation arising out of any such allegation
- provision for persons to be responsible for authorising, directing and carrying out disciplinary inquiries/investigations and for making determinations and imposing appropriate penalties
- provision of the necessary powers to conduct a disciplinary inquiry/investigation
- a list of the types of conduct that may result in the institution of disciplinary action
- procedures for notifying the employee concerned that disciplinary action has been instituted as a result of an alleged breach of discipline
- provisions for the suspension of employees the subject of disciplinary action where it is inappropriate for the person to remain at work during the course of such action
- procedures for ensuring that persons the subject of disciplinary action are given procedural fairness
- prohibiting those responsible for implementing disciplinary action from disclosing confidential information obtained during the disciplinary action, other than for the purpose of the action or any proceedings arising from it
- provision requiring the production of reports by those responsible for a disciplinary inquiry/investigation

practice point

The person conducting the agency investigation might find that on the balance of probabilities the child abuse allegation of abuse was sustained. The person adjudicating them matter might make recommendations that, having considered risk issues, the seriousness of the abuse, the impact on the child, the nature of the work and the past performance of the employee, management or disciplinary action needs to be taken. The nature of the disciplinary action will depend on the disciplinary scheme under which the agency operates. Depending on the provisions of the disciplinary scheme that applies, this could include, but should not be limited to, supervised access to children, re-training, reduction in redeployment or termination of employment etc.

- a list of the types of penalties that can be imposed on, or management action that can be taken in relation to, employees by the agency.

Disciplinary action may include warnings, demotions, and suspension without pay or termination. Completed relevant disciplinary proceedings should be reported to the Commission for Children and Young People, with the exception of those found false, vexatious or misconceived.

practice point

Employees, the subject of an allegation, do not automatically have the right to know or have confirmed the identity of the person who made the allegation nor to be shown the content of the notification form or other investigation material that reveals all the relevant information provided by other employees or witnesses.

5.1 procedural fairness

Heads of agency and persons conducting agency investigations and/or disciplinary action should be mindful of procedural fairness. Information on the employee's rights, the maintenance of confidentiality and the opportunity to respond to allegations and proposed outcomes should be an integral part of the process.

Failure to afford procedural fairness to an employee, the subject of an allegation might lead to a challenge in the Industrial Relations Commission, Government and Related Employees Appeal Tribunal (GREAT) or the Courts or to the Ombudsman in circumstances where an adverse disciplinary decision has been made about the employee.

Procedural fairness requires the head of agency or the person conducting an agency investigation to:

- inform the person the subject of allegations of the substance of any allegations made against them and grounds for proposed adverse comment
- take necessary steps to protect the notifier at all times
- provide the person with a reasonable opportunity to put their case, either in writing, at a hearing or otherwise
- hear all parties to a matter and consider submissions
- make reasonable inquiries or investigations before making a decision
- ensure that no person decides a case in relation to which they have a conflict of interest
- act fairly and without bias, and
- conduct the investigation without undue delay.

refer The NSW Ombudsman (2000): *Investigating Complaints- A Manual for Investigators* and *The Complaint Handler's Toolkit* (2000).

6 role of the NSW Ombudsman in the investigation of allegations of child abuse against employees

The NSW Ombudsman has a role to oversee the child protection practices of certain public and private agencies. In carrying out this function, this Office assesses the child protection procedures and investigative practices of agencies by comparing them to accepted good practice in this area. Appropriate feedback is then provided to agencies in an effort to improve child protection practices in the agency.

While each case will be different, there are common investigative elements that form the basis of an assessment by the Ombudsman.

- Was the immediate safety of children considered:
 - i) When the allegation was first made?
 - ii) During the investigation?
 - iii) At the conclusion of the investigation?
- Has appropriate assistance, such as counselling, union referrals and management support, been offered, where necessary, for the child (and family), the employee and other parties as warranted?
- Was the overall response by the agency to the allegation prompt and timely?
- Was the allegation clearly defined and treated seriously?
- Was there an adequate investigation plan?
- Were all the relevant people and witnesses approached to give information/evidence (interviews, statements, etc.)?
- Should the child have been interviewed directly or was that evidence better obtained from other sources when the child had already been interviewed?
- Was the child appropriately interviewed and that evidence adequately documented?
- Was the employee the subject of the allegation(s) interviewed and given an adequate chance to respond?
- Was all relevant evidence collected and considered?
- Were parents/carers adequately and promptly involved and informed at all appropriate stages?

practice point

If you want to objectively examine your own investigation before it is assessed by the Ombudsman ask yourself these questions:

1. If my child was the subject of the alleged abuse, would I be satisfied with the process?
2. If I were the employee, the subject of the allegation, would I be satisfied with the process?
3. If I were a concerned member of the public, would I be satisfied with the way the agency handled the process?

Were the necessary reports made internally, and externally to The Department of Community Services, Police, Ombudsman, etc?

Has everything been documented? (i.e. phone calls, meetings, conversations, decisions, etc.)

Has confidentiality been respected?

Was the finding reasonable given the evidence?

Has appropriate action been taken as a result of the finding?

Have policies/procedures been adhered to?

Is the process transparent and accountable?

refer The NSW Ombudsman (2000): *Agency Investigation Fact Sheet*

This Glossary explains:

- terms which have a specific meaning within the context of the Guidelines
- terms that are not defined under the definitions section in Part II of the Guidelines, and uncommon terms that have been included.

adolescent A person at the stage of human development between puberty and adulthood.

advocate A person who speaks in support of another and endeavours to ensure that the other's interests are fairly represented in child protection intervention. An advocate may include a parent, friend, a practitioner from an agency not involved in the intervention or another independent adult.

agency refers to an organisation and includes both government and non-government bodies.

agency investigation See investigation.

alternative parenting plan A plan that sets out how the parenting needs of a child or young person are to be met where their relationship with their family has broken down.

assault is any act done intentionally or recklessly which causes another person to apprehend immediate and unlawful violence, as commonly used assault includes battery (however an assault may occur without battery). The act must be a hostile one. An assault can be reckless with foresight of the likelihood of inflicting injury. Battery is the intentional or reckless application of force.

assessment is a process of organising and analysing information in order to determine the impact of an incident or cumulative impact of a series of incidents upon the child and family. It also shapes judgements on the risk of future harm to the child and the needs of the child, young person and family in terms of securing their safety, welfare and well-being.

assessment and investigation plan An investigation plan is the documentation of the process proposed for deciding whether action is required and if so what action is required to minimise risk of harm for a child or young person. It describes the objectives of an investigation, the processes for carrying it out and allocates responsibilities, time lines and processes for review.

developmental assessment An assessment by a health or education professional of the child's physical, social or cognitive development and functioning.

child and family assessment An assessment of the functioning of a particular family in relation to meeting the needs of a child or young person. The assessment may include an assessment of the child's or the young person's relationship with family members.

initial risk assessment An assessment by an officer of the Department of Community Services of information contained in a report, or gathered subsequent to the receipt of a report, which shapes a decision on whether or not further child protection intervention is required.

psychological assessment An assessment by a psychologist, child psychiatrist, social worker, guidance or education worker of a child's neurological, intellectual, social, emotional, developmental or scholastic functioning.

risk assessment An assessment of the likelihood of further risk of harm to a child from abuse or neglect, based on the seriousness and circumstances of past and current risk of harm, the capacity of adults to protect the child or young person and the age and vulnerability of the child or young person.

care application An application to a Children's Court seeking a finding that a child is in need of care and the making of an order for care.

care and support plan refers to the documentation of the proposed action to be taken to provide for a child's or a young person's care or protection. It defines:

- the action to be taken to provide the care and support necessary to sustain the safety, welfare and well-being of the child, young person and family
- the sequence of such action
- the agencies or practitioners responsible and the processes for review.

care proceedings Proceedings before a Children's Court in relation to a child or young person presenting as in need of care.

caregiver A person who, while not a parent of the child, has actual custody of the child. A caregiver may provide the care with or without fee or reward and can include relatives, friends or acquaintances of a parent, residential care workers, child care workers, youth workers, nursing staff and foster parents.

case manager Following a risk of harm report, a worker from the Department of Community Services is appointed as the case manager. The role of the case manager is to coordinate the interagency intervention until closure.

case planning refers to all planning relating to the safety, welfare and well-being of a child, young person or their family. Such plans should ensure there are no misunderstandings for a child, young person, family and practitioners about either goals or responsibilities. Planning should focus on meeting the needs of the child, young person and family and should wherever possible be done in collaboration with them.

case review A process involving a number of agencies to reassess and update a case plan or to negotiate and recommend changes to a case plan. The meeting should also involve the child, the parent and the child's or the parent's advocate wherever possible.

child Any person under 16 years of age, except where otherwise stated.

Child Protection Investigation Team (CPIT) A service delivery model within the Child Protection Enforcement Agency (CPEA). The CPEA operates under Crime Agencies in the Police Service and responds to child protection matters.

class of children of young persons More than one child or young person who may be at risk of harm because of association with a person or a situation causing risk of harm from abuse and neglect.

closure The decision to discontinue child protection intervention and the process of closing a child protection case.

compulsory assistance A form of intensive care and support for the child or young person which protects them from suicide or other life threatening or serious self-destructive behaviour.

compulsory assistance order An order of the Children's Court authorising the use of compulsory assistance.

criminal proceedings The processes and procedures of Local, District or Supreme Courts or Court of Criminal Appeal concerning criminal charges in relation to offences against a child or young person for whom there are protection concerns.

designated agency An agency identified as designated under the *Ombudsman Amendment (Child Protection and Community Services) Act 1998* and the *Children and Young Persons (Care & Protection) Act 1998*.

disability According to the Section 5 of the *Disability Services Act 1993* a disability (however arising and whether or not of a chronic episodic nature):

- is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments, and
- is permanent or is likely to be permanent, and
- results in:
 - (i) a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care, and
 - (ii) the need for support, whether or not of an ongoing nature.

examination and assessment order An order by the Children’s Court for the physical, psychological, psychiatric or other medical examination of a child or young person.

family support services are non-government agencies providing a range of home-based, group work and community development services with a holistic family focus.

Female Genital Mutilation (FGM) According to the World Health Organisation, FGM comprises all procedures that involve partial or total removal of the female external genitalia, and/or injury to female genital organs for cultural or other non-therapeutic reasons.

interpreter Accredited language or sign interpreters and persons experienced in the use of facilitated communication techniques for people with disabilities.

investigation has different meanings depending on context.

In matters where there is risk of harm and/or a criminal offence it is a process for gathering information in response to a report about risk of harm, conducted by officers of the Department of Community Services or by police officers in response to an allegation of risk of harm or a suspected criminal offence against a child. An investigation may include interviews and other enquiries into all of the child’s circumstances and any risk to the future safety and welfare of the child.

In matters involving an allegation of child abuse against an employee the term “agency investigation” is used and refers to a broad fact finding process whereby a designated agency carries out some form of inquiry and assessment and possibly adjudication of the allegation.

Joint Investigation Team (JIT) Police and Department of Community Services officers are co-located and conduct joint investigations when a report of child abuse involves a criminal act.

Joint Investigation Response (JIR) Specially trained police (CPIT) and caseworkers (Department of Community Services) conduct joint investigations in rural and remote areas when a child abuse report involves a criminal act. However the caseworkers and police officers work in teams that are not located in the same office.

mandatory reporting is the act of a person mandated under s27 of the *Children and Young Persons (Care and Protection) Act* reporting that they suspect a child is at risk of harm.

out-of-home care means residential care and control of a child or young person at a place other than their usual home and by a person who is not the child's or the young person's parent or relative. It can include staying with friends and acquaintances, foster care, residential care, shared family care and other forms of substitute care.

parent Any person having parental responsibility for a child or young person.

parental responsibility All the duties, powers, responsibility and authority, which, by law, parents have in relation to their children.

participation The act or fact of being involved and taking part in decision-making processes in child protection intervention.

practitioner A person who works with or without fee or reward in any government or non-government setting for the benefit of children and includes police officers, teachers, psychologists, welfare workers, health workers and counsellors.

protective intervention The action taken by agencies to protect a child from abuse and neglect by the provision of care, services and support, or the apprehension and prosecution of those responsible for their abuse.

protection plan is the documentation of the process proposed for ensuring the initial safety and well-being of the child or young person. It is prepared by practitioners with responsibilities for the care and protection of a child or young person after negotiating with the child, young person and family. It specifically addresses the safety of the child or young person and the first stages to action to secure their welfare and well-being.

protection planning meeting The protection planning meeting (PPM) is an interagency process that provides a forum for pooling the skills, knowledge and expertise of agencies.

reasonable grounds are grounds which would cause a reasonable person to form a judgement of risk of harm, having regard to the circumstances of the individual case including the nature and seriousness of the allegations made, the age and physical condition

of the child, any corroborative evidence which exists, and other relevant information.

report Information provided, in accordance with sections 23, 25 or 27 of the *Child and Young Persons (Care and Protection) Act 1998*, by a person who forms the belief on reasonable grounds that there are current concerns for a child, young person or a class of children due to risk of harm from abuse or neglect.

reporting The act of making a report to the Department of Community Services.

restoration plan A plan that must be developed and submitted to the Children's Court where there is a possibility that a child or young person may be restored to their parents.

risk assessment for the NSW Department of Community Services is a series of Guides that assist the practitioner to make an assessment of the level of risk for a child or young person.

risk of harm Agencies and practitioners are required to make judgements about risk of harm to a child or young person from child abuse or neglect. The assessment requires an evaluation of both the degree of harm and its probability and must take into account the age and vulnerability of the child or young person.

sole parental responsibility Section 149 of the *Children and Young Persons (Care and Protection) Act 1998* gives foster carers the right to make an application to the Children's Court for an order giving them sole parental responsibility for a child or young person who has been in their care for a period of five years or more, who is under the parental responsibility of the Minister and for whom consent has been given by the person or persons who had parental responsibility prior to the Minister obtaining parental responsibility. This would, in most cases be the parents of the child or young person.

substitute care See 'out-of-home care'.

systems abuse Harm done to children and young people in the context of policies or programs that are designed to provide for their safety, welfare and well-being. It includes harm to children's welfare, development or security as the result of actions of individuals or as a result of the lack of suitable policies, practices or procedures within a system.

young person Any person who is aged 16 years or above but who is under 18 years.

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