Protecting children and young people

A participant’s resource for the Community Services Training Package CHC08 – Version 2
Unit of Competency CHCCHILD401A Identify and respond to children and young people at risk
CHCCHILD401A
Identify and respond to children and young people at risk

Learner guide
Version 2

INDUSTRY SKILLS UNIT
MEADOWBANK
Enquiries

Enquiries about this and other publications can be made to:
Training and Education Support, Industry Skills Unit
Meadowbank
Meadowbank TAFE
Level 3, Building J
See Street
Meadowbank NSW 2114

Tel: (02) 9942 3200       Fax: (02) 9942 3257

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ISBN 978-1-74236-096-6
Acknowledgments

The Training and Education Support, Industry Skills Unit, Meadowbank of TAFE NSW would like to acknowledge the support and assistance of the following people in the production of this resource package.

Writers:

Marilyn Farrell
Teacher, Welfare Studies
TAFE NSW

Margaret Sheringham
Head Teacher, Children’s Services
TAFE NSW

Contributors:

Bronwen Elliott
Good Praxis Pty Ltd

Maree Aldwinckle
Teacher, Children’s Services
TAFE NSW

Karen Robertson
Teacher, Welfare Studies
TAFE NSW

Dianne Nixon
Early Childhood and Social Welfare Consultant

Project Manager:

Gail Horwood
A/Education Programs Manager
Child and Family Services Programs

Further acknowledgments

A considerable amount of the material in this learner resource has been developed from the following resources:


This resource was developed collaboratively by an interagency working party from the following NSW agencies: The Centre for Community Welfare Training, Education Centre Against Violence (ECAV), Department of Community Services, Department of Corrective Services, Department of Education and Training, Department of Juvenile Justice, and the NSW Police Department. The copyright of this resource rests with the NSW Crown.

- *NSW Interagency Guidelines for Child Protection Intervention 2006*

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Introduction

General

Target groups

Target groups include individuals who wish to achieve competency in the unit CHCCHILD401A. This could include:

- Learners enrolled in courses such as Children’s Services, Welfare or Community Services that deal with the care of children and young people

- New staff employed in the government and non-government sector that are responsible for identifying and responding to risk of harm and significant harm, including those mandated under s.27 of the Children and Young Persons (Care and Protection) Act 1998. These workers include those involved in community services, health, policing, juvenile justice, recreation, family services, education, work with alcohol and other drugs, and mental health

- Volunteers and workers in community groups such as Scouts Australia, Guides, youth centres, sporting groups and church groups who work with children and young people.

The contents of this Participant Guide reflect current legislation, guidelines and policies. The Participant Guide focuses on the concept of risk of harm, it reflects recent research regarding the vulnerability of young children, and it contains material customised for specific work settings. Most importantly, it acknowledges that child protection is a responsibility shared by everyone in the community.

It may be necessary for you to access further resources such as books, videos and other library material. These are listed under the ‘Resources’ heading and references to them are made at the relevant sections of the Participant Guide.

Situations of child abuse and neglect are particularly stressful for all those involved. Some of you may have had personal experiences that you relate to when working through this book, and these may
cause distress. You may find that you need to contact a support person at this time to help you work through your feelings in a healthy and constructive way. This can help you emerge stronger, more committed and often better able to help children and young people than those who have had no such experiences.
**Unit of competency overview**

This material relates to the following Unit of Competency from the nationally endorsed CHC08 Community Services Training Package.

CHCCHILD401A: Identify and respond to children and young people at risk of harm.

This material will help you to:

- implement work practices which support the protection of children and young people
- address duty of care requirements
- apply relevant legislation, policies and procedures in responding to children and young people
- report indications of possible risk of harm
- apply ethical work practices in your work with children and young people.
Elements and performance criteria

1. Implement work practices which support the protection of children and young people

1.1 Identify children and young people at risk of harm by observing signs and symptoms, asking non-invasive questions, being aware of protective issues and using child protection procedures where appropriate

1.2 Respond to disclosure, information or signs and symptoms in accordance with accepted standards, techniques, and legislative obligations

1.3 Comply with lawful instructions, regulations and duty of care in all work activities

1.4 Routinely employ child focused work practices to uphold the rights of children and young peoples to participate in decision-making where it is age appropriate

1.5 Employ communication and information gathering techniques with children and young people in accordance with current recognised good practice

1.6 Ensure decisions and actions taken are within own level of responsibility, work role and legislative requirements

1.7 Maintain own knowledge and skills as required to work effectively and participate in practice supervision processes

1.8 Maintain confidentiality as appropriate

1.9 Provide an appropriate response as determined by organisation procedures, legal and work role obligations

2. Report indications of possible risk of harm

2.1 Accurately record relevant specific and general circumstances surrounding risk of harm in accordance with organisational procedures, ethics and legal requirements

2.2 Promptly report risk of harm indicators accordance with statutory and organisation procedures

2.3 Work collaboratively with relevant agencies to ensure maximum effectiveness of report

3. Apply ethical and nurturing practices in work with children and young

3.1 Protect the rights of children and young people in the provision of services
3.2 Identify and seek supervision support for issues of ethical concern in practice with children and young people

3.3 Develop ethical and nurturing practices in accordance with professional boundaries when working with children and young people

3.4 Recognise indicators for potential ethical concerns when working with children and young people

3.5 Respond to unethical behaviour of others by reporting to the appropriate person.

## Required skills and knowledge

### Essential knowledge

The participant must be able to demonstrate essential knowledge required to effectively perform task skills; task management skills; contingency management skills and job/role environment skills as outlined in elements and performance criteria of this unit.

These include knowledge of:

- Statutory and policy requirements relating to job role
- Ethical obligations as stated in relevant codes of practice, licensing, accreditation registration to professional bodies, service agreements
- Ethical approaches that incorporate the conventions on the rights of the child, and human rights
- Responsibilities to clearly define worker and client roles and responsibilities in regard to ethical conduct and professional relationship boundaries
- State/territory requirements and processes for notifying suspected abuse and reporting process
- Child protection system: including reporting protocols, responses to reporting, inter-organisational policies
- Organisation guidelines and policies for responding to risks of harm to children and young people
- Duty of care responsibilities
- Ethical obligations as defined by the job specification and employing organisation
- Principles of ethical decision-making
- Recording procedures appropriate to job role
- Common risks to child’s safety
• Indicators of the different types and dynamics of abuse including as they apply to age, gender, disability, culture, sexuality
• The different types of abuse: serious psychological, physical, sexual, neglect, domestic violence
• Impact of risk of harm
• Appropriate responses to disclosure
• Overview of legal system and it pertains to the job role
• Outline of common legal issues as relevant to work undertaken with children and young people such as:
  - abuse in all forms
  - domestic and family violence
  - neglect
  - exploitation
  - alcohol and other drugs (AOD) concerns
  - systems abuse.

**Essential skills**

It is critical that the participant demonstrate the ability to:

• Provide an appropriate response to indications of risk of harm.

In addition, the candidate must be able to demonstrate relevant task skills; task management skills; contingency management skills and job/role environment skills.

These include the ability to:

• Apply indicators of abuse to make judgments about risks of harm
• Follow procedures and instructions
• Apply principles of ethical decision-making
• Maintain professional boundaries in work with children and young people
• Provide required reports and records, including effective use of relevant information technology in line with occupational health and safety (OHS) guidelines
• Use child focused work practices including:
  - communication skills
  - awareness and sensitivity to children and young person's needs
  - inclusiveness of children and young people in participatory decision-making
  - making process
  - making special allowances to meet needs of children and young people
  - ways of engaging children and young people
- observance and presence of children and young people as primary clients
- Distinguish between legal and ethical problems
- Work within a legal and ethical framework
- Apply problem solving and negotiation skills to resolve problems of a difficult nature within organisation protocols.

**Prior knowledge and experience**

No prior knowledge is required to complete this Unit of Competency.

In order to gain recognition of prior learning for this Unit of Competency you will need to provide adequate evidence of current competency to your facilitator or assessor.

**Facilitators**

A separate facilitators’ handbook is available that addresses the issues of presentation, assessment, recognition and resources (such as overhead transparencies). All trainers/facilitators will need to ensure that they are familiar with relevant State legislation and any guidelines provided. Facilitators will also need to identify any relevant policy or procedure documents for particular departments or agencies, and if possible have a copy available for reference.

At all times confidentiality within the group of learners must be observed and maintained appropriately.
Resources

General resources

The following resources are useful for this unit:

- Association of Children’s Welfare Agencies:


- Australian Domestic and Family Violence Clearinghouse
  http://www.austdvclearinghouse.unsw.edu.au/

- Australian Government’s My Child website:
  http://www.mychild.gov.au/. This website will provide you with more information including recent Australian Government initiatives and links to useful information on other websites.


- Bursting the Bubble
  http://www.burstingthebubble.com/
  
  This is a new website for teenagers who are living with family violence - witnessing domestic violence, experiencing physical or sexual abuse or neglect. It provides information to help young people identify forms of abuse and violence in families, stories, answers to questions about telling professionals or
child protection, ideas on dealing with feelings, safety planning, services available, and how to help a friend.

- The Child Safety Network
  This site provides links to a number of Australian agencies working on the prevention of child abuse and neglect.

- Council of Australian Governments,

  This organisation believes that domestic violence is non gender specific and promotes this awareness, and that the safety of all parties of divorce and separation is paramount and in the best interests of children.


  
  * This book is the primary resource for management, staff and families participating in the QIAS process and details the
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quality areas and principles used in the Quality Improvement and Accreditation System for long day care centres. This system will be gradually phased out up to January 2012 when the National Quality Standard will be in place. Refer to National Quality Framework for Early Childhood Education and Care on previous page for details of this.


  * The Handbook contains background information on the QIAS, an overview of the steps involved in the Quality Assurance process and the 7 Quality Areas and 33 Principles of quality care for long day care centres participating in the QIAS.


  * The Quality Practices Guide is the main document to be used by schemes progressing through FDCQA. The Quality Practices Guide is specifically for coordination unit staff, carers, management and families who are participating in their scheme's Accreditation process and details the 6 Quality Areas and 30 Principles of quality care.


  * The Handbook contains background information on FDCQA and an overview of the steps involved in achieving Accreditation. The Handbook is primarily for coordination unit staff, carers, families and management as well as students and others interested in FDCQA.


  * The Quality Practices Guide is the main document to be used by services progressing through Outside School Hours Care Quality Assurance (OSHCQA). The Quality Practices Guide is targeted specifically at staff, management and families and details the 8 Quality Areas and 30 Principles of quality care in outside school hours care.


  * The Convention is an essential document for this Unit of Competency. You may use the full text or a summary of the main provisions. The Convention is made up of 54 ‘Articles’ which establish universal standards about children’s rights.


  * The Clearinghouse collects and shares information on the prevention of child abuse and neglect. This site contains research publications, newsletters, resource guides, program databases and links.

• National Association for the Prevention of Child Abuse and Neglect (NAPCAN) [http://www.napcan.org.au](http://www.napcan.org.au)

  * The Association develops resources and campaigns for the prevention of child abuse. Their site provides information about their work and provides details of resources and how to purchase them.

• Australian Domestic and Family Violence Clearinghouse [http://www.austdvcleaninghouse.unsw.edu.au/](http://www.austdvcleaninghouse.unsw.edu.au/)


  NetAlert has been created to advise the community on safe use of the internet. It aims to play an important and practical role by providing education, advice and support to parents which will assist them to manage their children's time online.
NSW websites

- Australian Government Department of Education, Employment and Workplace Relations for the Council of Australian Governments

- NSW Government, Human Services – Community Services
  http://www.community.nsw.gov.au


- Human Services Net: www.hsnet.nsw.gov.au

- Child Wellbeing and Child Protection NSW Interagency Guidelines


- Families NSW,

  Provides parents and carers with information on a wide variety of services for families in NSW, and how families can access them. This includes the Triple P Program – Positive Parenting Program.

- NSW Government, Human Services – Community Services,
  Building Blocks – CS Children’s Services newsletter, accessed 23/01/2010

- The Office of the Children’s Guardian
  http://www.kidsguardian.nsw.gov.au

  This site provides information on out of home care for children and young people and promotes the best interests of children and young people in out of home care.

- The NSW Commission for Children and Young People
This site provides resources for employers and employees in child-related information, particularly the Working with Children Check. There is also a wide range of resources for children, young people and their families on arts, Internet safety, bullying, drugs and alcohol, law, mobile phones, and relationships. This organisation aims to make NSW a better place for children and young people and reports directly to the NSW Parliament, and the Committee on Children and Young People who oversees their work. The Commission administers the Commission for Children and Young People Act 1998.

- Interagency Guidelines for Child Protection Intervention 2006

- Interagency Guidelines for Domestic Violence 2003


- Australian Institute of Health and Welfare, Canberra. *Child Protection Australia 2004-05*

- Family Court of Australia

- NSW Ombudsman
  *Fact Sheets are available at*

- Australian Centre for Child Protection

Reflecting the increasing community concern about child abuse and neglect, the University of South Australia and the Australian Government established the Centre to address this problem on a national basis. The Centre is making a valuable
contribution to a knowledge-based approach to preventing and responding to child abuse and neglect. The centre is pioneering a public health model of child protection through supporting the innovation, evaluation, dissemination and transplantation of successful strategies.

**Other States/Territories: information and legislative links**

- Parenting South Australia  

- Department for Families and Communities, South Australia  
  The department provides support and assistance to the community, especially those experiencing disadvantage or who are in need of care and protection.

- Families SA (formerly known as Children, Youth and Family Services)  

- The Department of Education and Children's Services, South Australia  
  Information is included on DETE child protection policy, mandatory notification, the Child Protection Act and links to other sites.

- Child and Adolescent Mental Health Service, South Australia  
  The Centre for Health Promotion has a large range of health information material and information about community services and support groups. There are many free brochures as well as resources for sale. For brochures go to  

- Department of Health and Human Services – Family, Child and Youth Health Service, Tasmania  

- The Commissioner for Children (part of the Department of Health and Human Services, Tasmania)  

- Victoria Department of Human Services (DHS)  
  For the Office for
Children go to

- Department of Community Development, Western Australia
  http://www.community.wa.gov.au. For the Department for Child Protection go to


- Queensland Commission for Children and Young People and Child Guardian website,

- Department of Communities, Queensland
  www.communities.qld.gov.au

- Department of Child Safety, Queensland

- Office for Children, Youth and Family Support, ACT

  The Office is an administrative unit of the Department of Disability, Housing and Community Services and provides child abuse education and protection to meet the needs of the people of the Australian Capital Territory.

- Northern Territory Family and Children’s Services

**Other links to relevant information**

- Australian Institute of Criminology  www.aic.gov.au

- Australian Institute of Family Studies  www.aifs.org.au

- South Eastern Centre Against Sexual Abuse
  http://www.secasa.com.au

- Legal information
  http://www.austlii.edu.au

- Association of Children’s Welfare Agencies
The Family Court of Australia  

Human Rights and Equal Opportunities Commission  

Protective Behaviours Consultancy Group of NSW Inc  

Protective Behaviours is a living skills program which enables people of all ages to develop strategies to help them deal with all forms of difficult situations. As a safety program it can also be used as a non threatening method of looking at more specific areas such as child abuse and domestic violence.

Other resources

The following resources are referred to throughout this book. They are not essential to completing this Unit of Competency but will provide you with a valuable source of further information about child protection issues.

- Bowles, Wendy; Collingridge, Michael; Curry, Steven; Valentine, Bruce, 2006, Ethical Practice in Social Work, Allen & Unwin: Sydney.


Journals

• Early Childhood Australia Inc

  The ECA magazine, Every Child, has regular articles about legal issues in children’s services. They also publish the Australian Journal of Early Childhood.

  PO Box 7105, Watson ACT 2602, Australia
  T: 02 6242 1800; 1800 356 900 (freecall in Aust)
  F: 02 6242 1818


• Australian Journal of Social Issues


• Australian Social work

  Australian Social Work, the journal of the AASW, addresses contemporary thinking on social work, social welfare and social policy. It is essential reading for social and welfare workers, and for professionals in front-line management, planning and policy positions in government and non-government human service organisations.

- *Broadside* is a politically-orientated newsletter dealing with political issues affecting the child care industry. *Rattler* is a quarterly publication containing high-quality articles, interviews, reviews and reports from children's services leaders, workers, specialists, parents and others. Both publications are available from the Community Child Care Cooperative Ltd (NSW). http://www.cccensw.org.au/

- *Child Abuse Review*  
  http://www3.interscience.wiley.com/journal/5060/home?CENTRY=1&SRETRY=0


- *Developing Practice: the Child, Youth and Family Work Journal*.  
  http://search.informit.com.au/browseJournalTitle;res=IELHSSjissn=1445-6818

- *Family Matters* - is the research journal of the Australian Institute of Family Studies  

- *Journal of Child Abuse and Neglect*  

- *Journal of Child Sexual Abuse*  
  http://journalseek.net/cgi-bin/journalseek/journalsearch.cgi?field=issn&query=1053-8712

- *Putting Children First*, The quarterly newsletter of the National Childcare Accreditation Council; formally known as *Accreditation Update*.  

Children’s books

Books for children disclosing abuse and neglect – reviewed by Alister Lamont (AIFS) at:


Do you have a secret? By Jennifer Moore-Mallinos

Someone Hurt Me by Susan Cavaciuti

Inside Out: A Book About Me and My Feelings by Beth McNamara

Mia’s Secret by Peter Ledwon and Marilyn Mets

I Don’t Want to Go to Justin’s House Anymore by Heather Klassen
Structure of this learning resource

Overview

This Unit of Competency has been structured as a series of learning topics that address the following learning elements:

1. Legislation and standards which support the protection of children and young people.

2. Supporting the protection of children and young people and reporting indicators of possible risk of harm.

3. Applying ethical and nurturing practices in working with children and young people

As workers in child-related employment we must be aware of our responsibilities under the range of legislation that cares for and protects children and young people. We have legal and ethical responsibilities as both individuals and organisations that relate to a number of areas. These include:

- employment screening and the identification of prohibited persons
- informing employees of their responsibilities and of being informed as individuals
- protecting and supporting children and young people by identifying and minimising risk of harm
- recognising and assessing indicators of abuse and neglect, or possible risk of harm
- reporting to our designated statutory organisations
- working collaboratively with other organisations and agencies to protect the safety, welfare and well being of children and young people
- playing a supportive role with children and young people and assisting them to link with other available support services if requested

Our primary responsibility is to the child or young person. We also have a professional and legal responsibility to report harm or risk of harm to children and young people.
Chapter One: Protecting children and young people

An historical perspective

Child abuse is not a new discovery, but has occurred throughout history and across cultures. However, what has been defined as ‘child abuse’ has constantly changed, and has always reflected the value society puts on its children. How a particular society perceived its children determined how those children were treated. For example, until fairly recently, children were viewed as the ‘property’ of their parents (particularly their fathers) with no rights of their own.

During the 19th century and into the 20th century, society was more concerned with the control of delinquent youth than the protection of children and young people from harm. For much of the 20th century, the response to a child or young person in need of protection from harm was most likely that they would be removed from their parents’ care, as such parents were deemed to be ‘bad’ or ‘mad’. Social circumstances such as poverty were frequently seen as grounds for removal. Children generally remained in care, frequently in large state or church run institutions, until they were 18 years of age.

Over more recent years, however, there has been an increasing public and political awareness of child abuse in many countries. This has been accompanied by an increase in the legal status of children, and a recognition of children as individuals with rights. There has also been increasing recognition during this time that governments need to step in to ensure that some children are protected from abuse, because of either the extent of harm they have already experienced or the harm they may be at risk of experiencing.

While many children may experience less than optimal care, the law now defines which children are of such concern that the statutory child protection services should intervene. At the
same time, in Australia, the main response to children and young people at risk of harm has shifted from the removal of the child or young person from their home to early intervention and supporting and assisting the families of children and young people at risk of harm so that, wherever possible, children and young people can remain with their families.

Our changing view of child abuse also reflects changes and developments in child-rearing practices. Many child-rearing practices that are considered abusive today were once regarded as reasonable ways of disciplining and raising children. There has also been a shift towards focusing on the impact of parental or carer behaviour on a child, and whether the child has suffered harm, rather than solely focusing on the behaviour. As a society, we also increasingly recognise the vulnerability of young children, and the links between harm and deprivation in childhood and later life prospects and parenting capacity.

However, there are still issues for concern in the way societies treat their children. Some of the issues that continue to affect child-rearing practices in modern societies include:

- parents’ versus children’s rights
- ownership of children (for example in family law proceedings)
- the changing nature of families, and
- the impact of social, economic and cultural factors on children

There are also concerns as to how we as a society respond to children who are at risk of being harmed and their families. Do we respond in a way that puts the needs of the child or young person at risk of harm first? How do the various government and non-government institutions (for example the legal system, educational system, religious institutions, health systems, etc) respond to children and young people at risk of harm? Should we as a society be putting more effort (money, services, and workers) than we are now into providing services to vulnerable families which will help them to meet the physical, social and emotional needs of their children, or should we wait until there is actual harm and then respond?
Current responses

Over the past 10 years, it has been increasingly recognised that a large number of reports of child abuse to child protection authorities are in relation to parents who are not coping with their parental responsibilities. Many State government policies and legislation now reflect an emphasis on promoting and supporting prevention and early intervention with vulnerable families, as well as community education and involvement. For example, the NSW government developed the ‘Families First’ strategy to assist parents of children up to the age of eight through building supportive communities and child and family services, and by connecting parents to each other. This strategy also reflects the move towards a greater involvement of other government and non-government services apart from the statutory child protection services in responding to risk of harm. ‘Families First’ is delivered by five government agencies (Area Health Services, Community Services, Education and Training, Housing and Disability, and Aging and Home Care) in partnership with parents and community organisations.

Equally, statutory child protection authorities across Australia are increasingly focusing on collaborating with and assisting parents through an early intervention approach, with the aim of preventing or minimising the need for more intrusive child protective interventions by the child protection system (such as removing children from their parent’s care).

In NSW, Human Services – Community Services developed the ‘Brighter Futures’ early intervention program which targets and supports families with young children aged 0-8 years who are dealing with problems that affect their ability to care for their children, such as parental mental health problems, lack of parenting skills, child behaviour management problems, and parental drug and alcohol misuse. The program is voluntary, involves Early Intervention caseworkers working intensively with families and community agencies, and enables families to access services such as home visiting, parenting programs and quality child care with the aim of strengthening positive parent-child relationships and improving long term benefits for children, including preventing abuse and neglect, and promoting healthy child development.

On 30th April 2009 the Council of Australian Governments (COAG) endorsed the first “National Framework for Protecting Australia’s Children”. The National Framework
recognises that the best way to protect children is by preventing abuse and neglect from happening in the first place. Child protection needs to move from a response to abuse to promoting the safety and well-being of children. States and Territories are making substantial reforms that focus on early intervention. The effectiveness of these reforms relies upon coordination with Australian Government programs, policies and payments. This national approach recognises that protecting children is a shared responsibility – within families, communities, professions, services and governments.

Some of the reforms include national standards for out of home care, improved information sharing and data collection, a common approach to assessment and referral, and a national research agenda for child protection.

For more information on the National Framework view this fact sheet:

In 2008, a Special Commission of Inquiry into Child Protection Services in NSW was conducted by retired Justice James Wood at the request of the NSW government to investigate changes needed for the child protection system to provide more effective services to protection children and to meet future levels of demand. The Inquiry stemmed in part from the deaths of two children known to Community Services the previous year, and from the difficulties the department had experienced in responding effectively to the increasing number of reports of risk of harm received each year.

Findings of the Commission identified that New South Wales had one of the lowest reporting thresholds in Australia, contributing to the overloaded system. The number of reports had significantly increased in recent years (four times that received in 2000). Only about 13 per cent of all reports were responded to by Community Services and a large number did not meet the threshold at all. More than half the total number of reports related to the top 20% of a group of frequently reported children and young people (between 2,500 and 7,500 families).

Organisations were using reports to update Community Services and multiple reports often related to the same child or family. Mandatory reporters did not receive sufficient information about the outcomes of reports made to Community Services. This often resulted in re-reporting in the
hope of escalating the child within the system. The Inquiry found that because of the increase in re-reporting most children now reported have a history of prior reports to Community Services.

Children and young people in Out of Home Care were increasing while the pool of carers was declining. Aboriginal children and young people were over-represented with 18.3% of reports referring to Aboriginal children and young people. This overloaded system was leading to vulnerable children being overlooked due to the focus on escalating reports, inappropriate reporting and investigation of low risk families.

The Inquiry made a number of recommendations for significant changes to the current child protection system in NSW. Key recommendations included raising the mandatory reporting threshold to unblock the Helpline to ‘significant harm’, the establishment of a new intake, referral and management framework that provides alternate reporting pathways for less serious cases, comprehensive universal, secondary and tertiary services, the exchange of information between prescribed bodies, more cooperation between agencies, an enhanced role for non-government agencies, responses to the over-representation of Aboriginal children in the system, and improvements to the court process.

In response, the NSW government has adopted most of the suggested reforms in its five year Action Plan *Keeping Them Safe: A Shared Approach to Child Wellbeing* (March 2009). The emphasis in the Action Plan is on a ‘whole of Government’ response, rather than Community Services having the sole responsibility for responding to reports of risk of harm to children and young people. The Department of Premier and Cabinet is the lead agency in the reform agenda. A $750 million Keep Them Safe funding package over five years was announced by the Premier in the 2009-2010 State Budget. More than 40% of the package will go to non-government organisations (NGOs) to support their role in working with children and families and enhance collaboration and coordination across government agencies and NGO services.

This integrated system supports vulnerable children, young people and their families. It includes the establishment of new reporting and referral arrangements to allow families to access services without having to come into contact with the statutory child protection system.
Key reforms include establishing Child Wellbeing Units in various government departments (NSW Police, NSW Health, Department of Education and Training, and the Department of Human Services who are responsible for over 60% of all reports to the Community Services Helpline) to advise mandatory reporters of the new statutory threshold for ‘risk of significant harm’; expanding the grounds for making a report to include where parents or carers fail to ensure a child’s education, and clarifies that the risk of significant harm may relate to a single act or omission or to a series of acts or omissions (cumulative harm); the expansion of services such as the Brighter Futures early intervention program (with priority being given to Aboriginal children), as well as extending intensive family preservation services to support families. A new partnership with non-government agencies to provide funding for the establishment of new Family Referral Services (previously known as Regional Intake and Referral services); and a reform of funding arrangements to support Aboriginal communities to address the over-representation of Aboriginal children and young people in the child protection system was also included.

For mandatory reporters without a Child Wellbeing Unit, reports of risk of significant harm are still made to the Community Services Helpline. Mandatory reporters will be assisted by the use of a Mandatory Reporter Guidance tool using Decision Trees to help guide the reporting decision. New rules also apply around the sharing or exchange of information by ‘prescribed bodies’ when it relates to the safety, welfare or wellbeing of a child or young person to assist with decision-making, assessment, investigation or service delivery. A common database was established for sharing of information to further assist in coordinated responses.

The establishment of Family Referral Services (FRS) was established as a staged implementation with a trial initially in 3 locations (Dubbo, Mount Druitt and Newcastle). Two models were to be trialled over the first 12 months:

- Telephone advice model
- Coordination of active referrals and case management model

NSW Health is the lead agency to implement FRS with services being run by NGOs and local government. There will be a state-wide roll out within 3 – 5 years.
The establishment of Child Wellbeing Units, Family Referral Services and raising the mandatory reporter threshold will rely on excellent cooperation between government and non-government agencies and is seen as the key to success. The change is seen as promoting the safety and wellbeing of children, rather than merely child protection.


In June 2009 the NSW Premier announced that the Department of Community Services would form part of the new Human Services Department following a decision to create 13 overarching departments in the NSW public sector. This is aimed to provide better services and more co-ordinated decision making by bringing together community services, ageing, disability services, housing, juvenile justice and Aboriginal Affairs. This agency is now referred to as Community Services (CS).

The key messages of the new responses to child protection are:

- Sharing the responsibility
- Collaboration
- Working and engaging with families, rather than just reporting
- New ways of working and new systems
- New threshold for reporting in New South Wales
- Supporting the care, safety and wellbeing of children, young people and their families

As you can now see the shift is from ‘child protection’ to ‘child wellbeing’ with the responsibility being shared and statutory intervention being seen as a last resort.
Issues in defining child abuse

Traditional definitions

Traditionally under State law, four different forms of child abuse or harm have been recognised. These include sexual, physical and emotional abuse and neglect. Children who are living in situations where domestic violence is occurring are also now considered to be victims of child abuse or at risk of being harmed.

Sexual abuse

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, immaturity and trust. Coercion, which can be physical or psychological, is intrinsic to sexual abuse. Perpetrators 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.

Physical abuse

Physical abuse is non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes injuries caused by excessive discipline, severe beatings or shakings, bruising, lacerations or welts, burns, fractures or dislocations, attempted suffocation or strangulation and female genital mutilation. Death can also occur as a result of such physical abuse.

Female Genital Mutilation refers to the surgical excision of tissue from the female genitalia for cultural, religious or other non-medical reasons.

Emotional abuse (now termed psychological abuse)

Emotional or psychological abuse is behaviour by a parent or caregiver that destroys the confidence of a child, resulting in significant emotional deprivation and trauma. This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or
threatening behaviour. When there is neglect of basic psychological needs, the child or young person fails to achieve appropriate attachments with their carers. The child or young person’s intellectual, emotional and physical development may be affected.

Neglect

Child neglect is the failure to provide a child with the basic necessities for their proper growth and development, for example food, clothing, shelter, emotional security, affectionate attachments, medical and dental care and adequate supervision. Neglect may be an ongoing situation and can be caused by a repeated failure to meet the child or young person’s basic physical or psychological needs. It is characterised by a continuum of omissions in parental care giving.

Domestic violence

Domestic violence is any abusive behaviour used by a person in a relationship to gain and maintain control over their intimate partner. It can include a broad range of abusive and intimidatory behaviour causing fear and physical and/or psychological harm. Domestic violence can be physical assault, sexual assault or psychological abuse. It may also include behaviour such as restricting a partner or child’s social contact and financial deprivation (Interagency Guidelines on Domestic Violence 2006).

The acts of domestic violence are usually perpetrated by men against women but can also occur within same sex relationships. There is strong evidence that domestic violence and child abuse exist within the same family dynamic, and that the existence of domestic violence is a strong risk factor for children’s safety.

Current definitions

The definition of what constitutes abuse and neglect of children and young people has changed and broadened over recent times with the shift being away from narrowly defined incidents of abuse and neglect towards a broader assessment of whether a child or young person has suffered harm or is at risk of suffering harm or significant harm. This broader approach seeks to assess the protective needs of the child or young person rather than address the behaviour of the abuser or carer at risk of causing harm. Supportive intervention rather than interference is the principle being applied. Under
the changes to the NSW Child Protection system from January 2010 the focus is on creating pathways for children and families to receive support and services without being reported to the statutory child protection agency.

There is a difference in the terminology used in some States or Territories to describe harm or risk of harm to children and young people. Some of the Acts refer to ‘child abuse’, some to ‘maltreatment’ and some to ‘risk of harm’. What do these different terms mean?

In some legislation, the term ‘child abuse’ is the term used to describe different types of maltreatment or harm inflicted on a child or young person. It covers assault (including sexual assault and exploitation), ill treatment, neglect and exposing the child or young person to behaviour that might cause psychological harm.

**Risk of significant harm**

The NSW Children and Young Persons (Care and Protection) Act 1998, was amended and refers to ‘risk of significant harm’ and has extended the definition of ‘child abuse’ by including serious psychological harm where the child or young person is exposed to domestic violence or not receiving necessary medical care, education, homelessness and exposing an unborn child to risk of harm from alcohol and other drugs. Some States, including NSW, also include female genital mutilation as a separate indicator that a female child or young person may be in need of protection.

**Significant harm**

From January 2010 in New South Wales members of the community and mandatory reporters who suspect that a child or young person is at risk of ‘significant’ harm (the new statutory threshold) should report their concerns to Community Services. Significant is defined as being something that is not minor or trivial and may reasonably be expected to have a substantial and demonstrably adverse impact on the child or young person’s safety, welfare or wellbeing, or, in the case of an unborn child, an adverse effect after the child’s birth. This is similar to the legislation in other states and territories where what is reported is an act/s or omission/s that could cause a significant and detrimental effect on the child’s physical, psychological, or emotional wellbeing.

What is considered to be ‘child abuse’ and ‘harm to a child or young person’ may vary across a community. Factors that will influence how child abuse is defined include:
• individual beliefs, attitudes and values
• cultural/community standards
• legal system definitions of abuse or harm
• policy in State organisations responsible for child protection, and/or
• the child’s experience.

There is a wide range of ideas in the community about child abuse and those ideas change over place and time. Because community ideas vary so widely, we need child protection legislation to clarify at what point there should be a statutory response to concerns about children. We also need legislation that enables us to better mobilise limited resources to assist children who have been identified as causing us concern. A legal definition of risk of harm is a way of working out which children should get priority. The development of a legal definition of risk of harm does not overcome the difficulty of different people having different views, but it does give a more independent standard.

Key factors in a legal definition of child abuse and neglect include:

• the behaviour results in some kind of injury or harm to the child or young person emotionally or physically

• the injury or harm is caused by someone who has care of the child or young person at the time

• the injury or harm to the child or young person is not the result of an accident but rather a deliberate act or failure to act

• The severity of the injury or harm is likely to cause ongoing detrimental effects to the child or young person.
Risk of harm defined under New South Wales legislation

In NSW, section 23 of the Children and Young Persons (Care and Protection) Act 1998 has been amended from the end of January 2010 and now refers to “risk of significant harm” rather than categories of “abuse”. This allows for a wider range of circumstances in which children and young people can be reported as being ‘at risk of harm’ or actual harm. The change in raising the threshold will allow us to distinguish between children and families in need of support and those at risk of significant harm requiring statutory intervention.

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or wellbeing of the child are present to a significant extent.

This means that the circumstances are serious enough to warrant a response by a statutory authority (eg police or Community Services) irrespective of the family’s consent (Keep Them Safe 2009).

The supporting and early intervention role of Community Services and Non Government Organisations (NGOs) is better enabled under this legislation.

Section 23 of the Act previously stated that a child or young person is ‘at risk of harm’ if one or more of the following circumstances is present:

a. the child’s or 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
f. the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

Changes to the *NSW Children and Young Person’s (Care and Protection) Act 1998* in 2010 expanded the categories of significant risk of harm to include the following new grounds:

- (b1) in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990* - the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,

- (2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions. (When viewed together these acts may establish a pattern of significant harm, demonstrating a cumulative effect).

Amendments have also been made to the Education Act 1990: as of January 2010 children will have to attend school until the end of Year 10 and then continue with school, engage in full-time work or participate in approved education or training until the age of 17 years. Parent Responsibility Contracts, which set out a parent’s responsibilities regarding their child’s school attendance, will be used to address habitual non-attendance. Breaches of these contracts will be enforceable by the Children’s Court. Children who are of compulsory school age and who are habitually absent from school (absent a minimum of 30 days within the past 100 school days) may result in significant harm due to the lack of education.

The Act now states that a child or young person is at risk of significant harm if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence of to a significant extent of those circumstances described above.

The Mandatory Reporter Guidance tool used for decision making about whether to report to Community Services or to obtain support for the child, young person and/or their family uses these same circumstances in the construction of the Decision Trees. These will be discussed in detail later in the resource.
Categories of significant harm used on the Mandatory Reporter Guidance (MRG) tool (in NSW)

The MRG has been developed to assist reporters to decide if any of the following conditions are present to a significant extent:

- **Physical abuse** – injuries will require medical assessment and/or treatment; or there are fractures, head, neck or back injury, abdominal trauma, burns, lacerations requiring sutures, female genital mutilation. Explanation is suspicious, inconsistent or injuries are of various ages.

- **Neglect**
  - Supervision – child or young person is alone or not adequately protected
  - Physical shelter / environment – homelessness or living in a dangerous environment
  - Food – not receiving adequate nutrition
  - Medical care – has an untreated or inappropriately treated medical condition
  - Mental health care – has an untreated or inappropriately treated mental health condition
  - Education – a child of compulsory school age is not enrolled or is habitually absent.

- **Sexual abuse** – disclosure of abuse, pregnancy, STI, trauma to genital area, contact with known offender, exposure to pornography, coercion or grooming behaviours.

- **Problematic sexual behaviour** by a child or young person – coercion, aggression, grooming behaviours, contact with known offender.

- **Psychological harm** – exposure to chronic or severe domestic violence, severe carer mental health or substance abuse, carer behaviours that are persistent, repetitive or having a negative impact on the development, self worth or self esteem of the child; parental criminal or corrupting behaviour; or deliberate exposure to traumatic events.

- **Relinquishing carer** – carer no longer willing to provide shelter, food, or supervision effective immediately, or placed in an alternative care arrangement for next 72 hours.

- **Carer Concerns**
  - Parent / carer substance abuse
  - Parent / carer mental health
  - Parent / carer domestic violence.
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Carer’s substance abuse, mental health or incidents of domestic violence impacts on or is likely to impact on ability to meet child’s needs or cause significant harm; child is subject of prenatal report and mother failing to engage in reducing the risk.

- **Unborn Child** – previous history of sibling abuse; circumstances suggest carer unable to care for child after birth (suicidal, substance abuse, mental illness, domestic violence, cognitive disability, medical condition, homelessness, or inadequate preparation for birth).

Decision Trees for each of these concerns assist mandatory reporters in their decision to make a report to Community Services.
Those not meeting the threshold of ‘significant’ harm are to be offered or provided with support.

Adapted from The Structured Decision Making System – New South Wales Mandatory Reporter Guide, 18 December 2009; Children’s Research Centre.

**Other legislative definitions of ‘risk of harm’**

The terms “harm”, “significant concerns for wellbeing” or “detrimental effect of significant nature” are also used in Victoria, Queensland, Western Australia, and the Northern Territory. The concept of ‘risk of significant harm’ focuses on the impact of abuse or neglect on the child or young person’s safety, welfare and wellbeing and factors which may increase the child or young person’s vulnerability, rather than on the nature or intent of the carer’s actions.

The following table lists the specific section of State child protection Acts which defines ‘risk of harm’.
<table>
<thead>
<tr>
<th>State</th>
<th>Relevant Act</th>
<th>Section</th>
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<tr>
<td>New South Wales</td>
<td><em>Children and Young Persons (Care and Protection) Act 1998</em></td>
<td>s. 23</td>
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<tr>
<td>Victoria</td>
<td><em>Children, Youth and Families Act 2005</em></td>
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<tr>
<td>Queensland</td>
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<td>Tasmania</td>
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<td>Western Australia</td>
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<td>s. 28</td>
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<tr>
<td>Northern Territory</td>
<td><em>Care and Protection of Children Act 2007</em></td>
<td>s. 15</td>
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<tr>
<td>Australian Capital Territory</td>
<td><em>Children and Young People Act 2008</em></td>
<td>s. 344</td>
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<tr>
<td>South Australia</td>
<td><em>Children’s Protection Act 1993</em></td>
<td>s. 6</td>
</tr>
</tbody>
</table>
Extent of abuse or harm

Precise figures on the real prevalence of abuse and neglect in Australia do not exist; statistics reflect only those cases that have been reported to and investigated by Community Services or its equivalent welfare department in each State. Between the States, definitions of what constitutes child abuse, policies and practices regarding the way reports of harm are classified, the range of designated professional groups mandated (legally obliged) to report, and community willingness to report can vary, and this makes it difficult to obtain consistent and comparable national statistical data. However, what data collection does show is that the number of child protection notifications has markedly increased across most of Australia in recent years, jumping from 137,938 in 2001-02 to 317,526 in 2007-08 (Australian Institute of Family Studies, National Child Protection Clearinghouse, March 2009).

In NSW, there were more than 189,928 reports of risk of harm to children and young persons in 2008 as compared with 72,986 in 1999-2000 (Australian Institute of Health and Welfare 2008). The Department of Community Services Annual Report for 2007-2008 claims that there were 303,121 child protection reports in NSW in the 2007-2008 period and 185,198 in the 2003-2004 period.

These increases may be due to changes in legislation, policies and practices within States, or it may be due to increased community awareness and responsiveness to concerns about the safety, welfare and well being of children and young people. It may equally indicate an actual increase in the number of children and young people at risk of harm.

Aboriginal children were clearly overrepresented in the child protection system across all States and Territories. In NSW, the Special Commission of Inquiry into Child Protection Services (2008) found that Aboriginal children and young people are 3 times more likely to be reported to Community Services than non-Aboriginal children, are more likely to be the subject of multiple reports, and comprise one third of children in Out of Home Care (Keeping Them Safe Report, 2009). This is even more significant when you consider that 2.1 percent of the NSW population identify as Aboriginal and Aboriginal children account for 4% of the total NSW population of children aged 0 – 17 years.
In the 2007/2008 period Aboriginal children and young people accounted for 18.3% of all reports. Aboriginal children aged under one year were 5 times more likely to be reported than non-Aboriginal children and more likely to be the subject of multiple reports. Aboriginal children and young people are similarly over-represented in the juvenile justice system. (Special Commission of Inquiry into Child Protection in NSW, Final Report 2008).

Also, see the Resource Sheet published by the AIFS entitled “Child Protection and Aboriginal and Torres Strait Islander Children” at [http://www.aifs.gov.au/nch/pubs/sheets/rs10/rs10.html](http://www.aifs.gov.au/nch/pubs/sheets/rs10/rs10.html). The authors cite ATSI children accounting for 23% of all confirmed reports of abuse or neglect, making them 6 times more likely than other children to be subject of a confirmed report.


The Wood Inquiry in 2008 found that in New South Wales 60% of the reports were made by police, health, education and human services. Police accounted for approximately one third of all reports, followed by health and schools/child care. Most reports concern domestic violence, psychological abuse, neglect, carer substance abuse, carer mental health and/or sexual abuse.

A large proportion of reports are of the same ‘frequently reported families’. The top 20% of the children and young people who were frequently reported in 2006-2007 accounted for more than half the reports made. Of the reports made to Community Services 13% were not ‘risk of harm’ as defined under the Act and that while the family may have required assistance they should have been referred to a more suitable agency for support. 33 percent of reports received some attention but not a face to face visit. Only 13% of reports resulted in a home visit from a Community Services caseworker as part of the assessment process. 20% of the reports made concerned children and young people already being assessed.
The overall finding was that too many reports are made that do not warrant a statutory intervention, considerable resources were used to manage these reports, and the majority made were receiving little assistance.

These findings showed that there was an overwhelming need for change in the NSW child protection system and this change would need to share the responsibility across the community to ensure the safety, welfare and wellbeing of children, young people and their families. Services would need to be reshaped and support provided earlier to those requiring support and intervention.
Our role

As workers dealing with children and young people, we do have specific roles and responsibilities relating to the protection of children from harm or risk of harm. In order to do this we need to be able to:

- understand why abuse happens and what we can do about it
- recognise physical and behavioural indicators of harm or risk of harm
- determine the significance of the impact of the indicators and report appropriately or consult with Child Wellbeing Units if appropriate and available; or
- refer to support services concerns not meeting the threshold for significant harm
- respond appropriately following organisational policies and procedures
- protect children and young people from further harm
- maintain a child-focussed practice
- apply ethical and nurturing work practices.
Learning activities

1. If you are interested in the history of child abuse in Australia and how child protection measures have been developed over time, read Adam Tomison’s ‘A History of Child Protection’ (in Family Matters, No. 60, Spring/Summer 2001, Australian Institute of Family Studies).

2. Write down some examples of child-rearing practices that were accepted in the past but would now be considered harmful to children.

3. What are some current issues that may impact negatively on child rearing practices in Australia?

4. As noted in this chapter, government departments with statutory responsibility for child protection are increasingly focusing on early intervention approaches. Why do you think they are taking this approach?

   (Information on the NSW Community Services’ approach can be accessed at:

Chapter Two: Child protection and the law

Introduction

Child protection in Australia occurs within the context of both international Conventions and Federal and State legislative frameworks. The Conventions and legislation determine the legal and ethical obligations of organisations and workers in responding to child protection concerns.

Legal obligations are:

- mandated by law
- punishable under the law if breeched
- usually quite specific about what is required and allowed, and
- the minimum standards required relating to particular services or work settings (based on Stonehouse, 1998).

The United Nations Convention on the Rights of the Child

In 1989 the International Convention for the Rights of the Child was adopted by the General Assembly of the United Nations. The Australian Government agreed to accept (ratify) it in December 1990. When a country ratifies a UN Convention, it agrees to take on the responsibilities of meeting the standards set down in that Convention and it makes themselves accountable for this commitment before the international community. Actions and policies developed must be in light of the best interests of the child. This is now the guiding principle behind most child protection legislation within Australia.

The Convention makes a commitment to the protection of children by outlining the rights of children and the responsibilities which governments and parents have to provide for these rights. The Convention on the Rights of the Child is made up of 54 Articles, which set minimum entitlements and freedoms that should be respected by governments and are founded on respect for the dignity and worth of each individual child regardless of their race, colour, religion, gender, birth status or ability. The first 41 Articles outline the human rights to be respected and protected for every child under the age of 18 years; Articles 42–54 cover the obligations of states, governments and the United Nations.

The Convention spells out the basic human rights that children everywhere have. These rights include rights to survival, to develop to the fullest, to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The Convention protects children’s rights by setting standards in health care; education; and legal, civil and social services, (http://www.unicef.org/crc).

Below is a summary of some of the main benefits achieved by the Convention on the Rights of the Child, adapted from the UNICEF website.

**Benefits of the Convention on the Rights of the Child**

The Convention on the Rights of the Child views children as being neither the property of their parents nor as helpless objects of charity. They are human beings and are the subject of their own rights. Each child is viewed as an individual and as a member of a family and community, with rights and responsibilities appropriate to their age and stage of development. The focus is set on the whole child.
Outdated notions that parents ‘own’ their children and have absolute rights over them are replaced by the concept that parents are responsible for protecting their children’s rights. Parents’ rights with respect to their children are linked directly to the need for parents to promote and protect their children’s rights. Parents’ responsibilities with respect to their children’s rights diminish as children mature and begin to understand their society’s values, culture and norms.

The Convention also reinforces the fundamental human dignity of all children and the urgency of ensuring their well being and development. Considered the most powerful legal instrument for the recognition and protection of children’s rights, the Convention draws on the following unique combination of strengths.

**Highlights and defends the family’s role in children’s lives**

- The family is recognised as the fundamental group in society.
- Governments are obliged to support parents by providing material assistance and support programs.
- Governments are obliged to prevent children from being separated from their families unless the separation is necessary for the child’s best interests.

**Endorses the principle of non-discrimination**

- Governments need to identify the most vulnerable and disadvantaged children within its borders and take affirmative action to ensure that the rights of these children are realised and protected.

**Establishes clear obligations**

- Governments are required to establish laws and legislation in line with the Convention.
- Governments are publicly and internationally accountable for their actions.

According to the Human Rights and Equal Opportunities Commission (2008), the **four core principles** of the Convention are:

1. the right to life, survival and development
2. respect for the best interests of the child as a primary consideration

3. the right of all children to express their views freely on all matters affecting them, and

4. the right of all children to enjoy all the rights of the Convention without discrimination of any kind.


Of these, point 2 can be very helpful in guiding the worker’s decision-making and interactions with children. The principle of ‘the best interests of the child’ is set out in Article 3 of the Convention.

**Article 3: Best interests of the child**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, *the best interests of the child* shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children *shall conform with the standards established by competent authorities*, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

(http://www.ohchr.org/EN/Pages/WelcomePage.aspx)

4. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

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(http://www.ohchr.org/EN/Pages/WelcomePage.aspx)

If the ‘best interests of the child’ are a guiding principle, and the child is seen as an individual with rights, the responsibility is therefore on those working with children and young people to ensure their work practices are child rather than adult-focused, with the needs of the child always being of paramount importance.

The Rights of Children are outlined in and committed to by the UN Convention of the Rights of the Child.

These are protected by Federal and State legislation in Australia as we are a signatory to the Convention.

They are further protected in children’s services by:

- State or Territory regulations
- a professional code of ethics
- principles of accreditation, and
- service policies and procedures

There is a further commitment by individual workers in their personal philosophy and beliefs, as well as their professional conduct.
Federal and State legislation relating to child protection

People who are new to working with children and young people are often overwhelmed by the number of requirements that relate to caring for children and children’s services. The responsibility for making sure that the needs of children and young people are met and that they are safe within their families is shared between the family, the community and the government. The responsibility for the well-being of children and young people begins with their parents or carers, whose role is to protect and nurture them.

When adults caring for children do not follow through with their responsibilities, are abusive or exploit their positions of power, it is the wider child protection system and community that becomes responsible for taking action.

The Commonwealth, and each State or Territory has its own legislation governing the care and protection of children and young people. These acts of law define abuse or maltreatment, harm or risk of harm, what age determines being a ‘child’ (usually under 18), who is required (mandated) to report or notify abuse, and the legal processes to be followed after the report has been made (care and protection). Basically, the Act determines who is in need of care and protection.

The table below identifies the Commonwealth and State or Territory’s current legislation.
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<th>Commonwealth</th>
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<td>Family Law Reform Act 1995</td>
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<td>Family Law Amendment (Shared Responsibility) Act 2006</td>
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<td>New South Wales</td>
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<td>Children and Young Persons (Care and Protection) Act 1998</td>
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<td>Child Protection (Offenders Registration) Act 2000</td>
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### Queensland
- **Child Protection Act 1999** (Amendment effective April 2005)
- **Child Protection Regulation 2000**
- **Child Care Act 2002**
- **Child Care Regulation 2003**
- **Health Act 1937 (amended 2004)**
- **Health Regulation 1996**
- **Commission for Children and Young People and Child Guardian Act 2000**
- **Commission for Children and Young People and Child Guardian Regulation 2001**
- **Adoption of Children Act 1964**
- **Adoption of Children Regulation 1999**
- **Child Protection (International Measures) Act 2003**
- **Public Health Act 2005**
- **Public Health Regulation 2005**
- **Education General Provisions Act 2006**
- **Education General Provisions Regulation 2006**
- **Children’s Court Act 1992**
- **Children’s Court Regulation 1997**
- **Child Protection (Offender Prohibition Order) Act 2008**
- **Child Protection (Offender Reporting) Act 2004**
- **Child Protection (Offender Reporting) Regulation 2004**

### Western Australia
- **Children and Community Services Act 2004**
- **Working with Children (Criminal Record Checking) Act 2004**
- **Children and Community Services Regulations 2006**
- **Adoption Act 1994**
- **Adoption Regulations 1995**
- **Family Court Act 1997**

### South Australia
- **Children’s Protection Act 1993 (amended 2000)**
- **Children’s Services Act 1985**
- **Young Offenders Act 1993**
- **Adoption Act 1988**
- **Children’s Protection Regulations 2006**
- **Child Protection Review (Powers & Immunities) Act 2002**
- **Family and Community Services Act 1972**

### Tasmania
- **Children, Young Persons and Their Families Act 1997**
- **Children, Young Persons and Their Families Amendment Act 2009**
- **Children, Young Persons and Their Families (Transitional and Saving Provisions) Act 1998**
- **Child Care Act 2001**
- **Child Protection (International Measures) Act 2003**
- **Youth Justice Act 1997**
- **The Family Violence Act 2004**
- **Screening for Child-Related Work 2005**

### Australian Capital Territory
- **Children and Young People Act 2008**
- **Children and Young People Regulation 2009**
- **Adoption Act 1993 (amendment effective 2004)**
- **Human Rights Act 2004**

### Northern Territory
- **Care and Protection of Children Act 2009**
- **Criminal Code Act 2006**
- **Child Protection (Offender Reporting and Registration) Act 2008**
As you can see, each State or Territory has different pieces of legislation that must be followed and sometimes there are several different Acts that we must look at in regard to the care and protection of children and young people. We are all bound by many different forms of legislation. Knowing our roles and responsibilities is vital if we are to protect children and young people from harm or risk of harm.
Family law

The *Family Law Act 1975* (Commonwealth) set up the Family Court, which is the body responsible for decisions about children where the parental relationship has ended, regardless of whether the parents were married, in a de facto relationship, or never lived together. Those working with children and young people need to have a clear understanding of who has legal responsibility for children in order to make effective and appropriate decisions concerning the children and young people in their care.

A number of key changes were made to Family law in 1995, with the Federal *Family Law Reform Act 1995*, which changed aspects of parenting and family responsibility, including the introduction of joint parenting plans where parents would care co-operatively for their children after divorce. Family law terminology has also changed since 1995.

Previous terminology included:

**Guardianship:** A guardian was responsible for the child’s long-term welfare and had the right to be involved in all major decisions involving the child’s health, education and religious upbringing. Both parents of a child were guardians unless the Court ordered otherwise.

**Custody:** The right to make decisions concerning the daily care and control of the child. An application could be made to the Court to grant custody to one parent, and the child would reside with the parent to whom custody was granted.

**Access:** The contact children had with the parent with whom they did not reside.

Terminology under the *Family Law Reform Act 1995* included:

**Parental responsibility:** which means that each parent has the responsibility for their children’s welfare, either in the long term or on a day-to-day basis and includes matters such as where the children will live and with whom they will have contact. It is not affected by any change in the parents’ relationship, for example if they separate or remarry.

**Parenting orders:** are orders that the Court will make about parenting arrangements for a child. These orders changed parenting responsibilities and stipulate which parent has what responsibilities.
There were four types of parenting orders:

**Residence:** with whom a child lives, including any shared arrangements and the day to day care of the child

**Contact:** with whom they are not living, or anyone else who plays an important part in their life and can be either face-to-face, or by phone or letters,

**Child support:** financial support and

**Specific issues:** about other aspects of care such as education and religion.

Legislation introduced in 2006 (*Family Law Amendment (Shared Responsibility) Act*) removed the terms residence, contact, support and specific issues and replaced them with references to whom the child lives with, spends time with and communicates with.

Currently, a court can make a parenting order based on an agreement between the parties (consent orders) or after a court hearing or trial. When a parenting order is made, each person affected by the order must follow it.

A parenting order may deal with one or more of the following:

- who the child will live with
- how much time the child will spend with each parent and with other people, such as grandparents
- the allocation of parental responsibility
- how the child will communicate with a parent they do not live with, or other people
- any other aspect of the care, welfare or development of the child.

A parenting order can require the parties to follow certain steps before applying to a court to change an order. It can also state the process for resolving disputes that arise from the order.

If the parenting order provides that two or more people have equal shared parental responsibility, any decision about a major long-term issue in relation to a child must be made jointly. This requires each person to consult with the other person and make a genuine effort to reach a joint decision.
Who has parental responsibility?

The *Family Law Act* makes it clear that both parents are responsible for the care and welfare of their children until the children turn 18. Separation and divorce do not automatically change parental responsibility: the Act holds that arrangements which involved shared responsibilities and cooperation between the parents are in the best interests of their children. If a child or young person is sentenced to a Juvenile Justice (detention) Centre, parental responsibility does not change. If a child or young person becomes homeless or starts living away from the family home, parental responsibility does not change.

An agency worker never has parental responsibility for children in their care.

Parental responsibility only ever changes in the following circumstances:

- the child is adopted by someone else
- the Family Court removes one parent’s responsibility, or
- in care proceedings the Children’s Court will sometimes make the child a Ward of the State, making that child the legal responsibility of the State Minister for Welfare (in New South Wales this is the Minister for Community Services). The Minister can share aspects of parental responsibility with the parents, a foster parent or an agency providing out-of-home care services.

Out of Home care is any residential care and control of a child or young person in any place other than their usual home, by any person other than a parent or relative.

Parental responsibility means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.

The *Family Law Amendment (Shared Responsibility) Act 2006* reforms aimed at helping families deal cooperatively and practically with relationship difficulties and separations. These
changes promote three important principles that form the foundation for the reforms:

- Children have a right to know both of their parents, to be protected from harm and to grow up with their love and support,

- Parenting is a responsibility that should be shared, provided this does not put children at risk of harm, and

- Parents and children benefit when parenting arrangements after separation are resolved outside the court system.

The key changes of the reforms are:

**Equal shared parental responsibility**: Except where there are issues of violence or abuse, the law presumes that it is in the best interest of a child for the parents to have equal shared parental responsibility. This does not mean that the child should spend equal time with each parent. Rather, equal shared parental responsibility means that both parents have an equal role in making decisions about important issues that affect their children, such as schooling and health care.

**Best interests of the child**: When a court is making a parenting order, the Family Law Act requires it to regard the best interests of the child as the most important consideration. This should also be the case for parents making parenting plans.

**Children knowing both parents and being protected from harm**: The right of children to know both their parents and to be protected from harm are the primary factors in determining the best interests of the child.

**Time with parents**: The best interests of the child and practical considerations will be used by the courts to determine whether a child spends equal time, or substantial and significant time, with both parents, including day-to-day routine time and not just weekends and holidays.

**Resolving disputes co-operatively**: there is a requirement for parents to attend family dispute resolution sessions and make a genuine effort to resolve the issues in dispute, before taking a parenting matter to court. This requirement does not apply where there is family violence or child abuse.

**Improved court process**: The family law system reforms change the court process in parenting cases to a case
management approach that focuses on the children and deals with issues such as violence and abuse at an early stage.

**Breach of parenting orders:** The courts are given a wider range of powers to deal with people who breach parenting orders.

**Failure to fulfil responsibilities:** Courts are now able to take into account the times when parents fail to fulfil their major parenting responsibilities, such as not paying child support or not turning up for a contact handover.

**Clarify family violence definition:** The existing definition of ‘family violence’ is amended to include a requirement for the court to assess whether a fear or apprehension of violence is reasonable.

**Time with grandparents:** The changes recognise and acknowledge the importance of children spending time with their grandparents and other relatives, provided this does not put children at risk of harm.

**Practitioner accreditation:** An accreditation system is developed for family dispute resolution practitioners and family counsellors.

**Terminology changes:** The Act removes the references to ‘residence’, ‘contact’ and ‘specific issues orders’. These changes focus the court and the parties on parenting as the central issue and not ‘ownership’ of the child.

**The Family Law Court and child abuse**

When the Family Law Court is deciding what is in the best interests of a child there are two primary considerations:

- the benefit to children of meaningful relationships with both parent
- the need to protect children from the risk of physical or psychological harm (from being subjected or exposed to abuse, neglect or family violence).

This means that when formal allegations of child abuse are made by one parent against another in Family Court proceedings:

1. Family Courts must promptly deal with cases that raise issues of family violence or child abuse
2. The Family Court notifies the relevant State child protection authority (under s.67ZA of the *Family Law Act*, court staff are mandated to report any reasonable grounds for suspecting that a child has been abused, or is at risk of being abused)

3. The Family Court can require State and Territory agencies to provide information and reports they may have regarding allegations of family violence or child abuse

4. The Family Court is not obliged to consider both parents sharing responsibility or equal or substantial time with the child in cases where there is family violence or child abuse.

Additional measures and provisions to deal with issues of family violence and abuse included in the Family Law Act reforms include:

- New provision to address false statements: Where the court is satisfied that a party has knowingly made a false allegation or a false denial in the proceedings, the court must order that party to pay some or all of the costs of the other party.

- New case management approach: to enable the court to better focus on the needs of children and ensure that issues of violence and abuse are dealt with early in proceedings.

It is essential that services do not put families at greater risk of family violence or abuse. Family Relationship Centres and other services, including the Family Relationship Advice Line, will screen for violence and child abuse. Centre and Advice Line staff will have specific training in screening. They will also help families access other services that can assist them with issues concerning violence and abuse. Service providers can also use Family Relationships Online to find local and out-of-area services that might be helpful to their clients.
Child protection legislation

Child protection is the mandated responsibility of the community services or welfare department in each State and Territory. Children and young people who come into contact with these departments for protective reasons include those who have been or are being abused, neglected or otherwise harmed, or those whose parents or unable or unwilling to provide adequate care or protection.

State Human or Community Services/Child Protection departments

In each State or Territory in Australia, one government Department has the statutory (legal) authority to respond to concerns of harm or abuse to children and young people. In all states except Queensland, child protection is part of a broader department of human services, community development/services or family services. In Queensland, the child protection service is a separate specialist department.

Following is a list of the names of the relevant State or Territory child protection departments:

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<th>State</th>
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<td>New South Wales</td>
<td>Department of Human Services – Community Services</td>
<td><a href="http://www.community.nsw.gov.au">http://www.community.nsw.gov.au</a></td>
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<tr>
<td>Australian Capital Territory</td>
<td>Office for Children, Youth and Family Support – Department of Disability, Housing and Community Services</td>
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For each of these services, the guiding principles are that the best protection for children is usually within the family, but the ‘paramount consideration’ is for the child or young person’s safety and wellbeing. This term is used in the Australian Capital Territory, New South Wales, Victoria, Tasmania and South Australia. The Northern Territory uses ‘best interests of the child’. These services are putting children first as their priority. There is also an acknowledgment that the family is central to the lives of children.

The role of the child protection services is usually to:

- receive reports or notifications
- provide advice when people report concerns for a child’s safety or well being
- investigate matters where it is believed that a child is at risk of significant harm
- refer children and families to services that assist in providing the ongoing safety and wellbeing of the children for support
- take matters before the Children’s Court if the child’s safety cannot be assured within the family
• refer criminal matters to the police, and
• supervise children on legal orders granted by the Children’s Court.

A challenge to all western society child protection services are that we are better able to identify children who cause us concern so that we can mobilise resources to assist those children and their families. A legal definition of risk of harm is a way of working out which children should get priority but this does not overcome the difficulty of different people having different views. It does, however, give a more independent standard. Also, legislating particular groups of people who work with children and young people to report their concerns about children who are at risk of harm is another way to assist children and their families. Welfare departments can then implement early intervention strategies to provide better outcomes for children and their families.

**Legislative requirements of reporting abuse or risk of harm**

Currently, all States and Territories except Western Australia have legislation requiring the compulsory reporting of harm due to abuse or neglect of children or young people to community services or State welfare departments. In most States and Territories, only people whose work is primarily involved with children and young people are mandated to report their concerns or reasonable grounds to suspect abuse or neglect of children and young people (mandatory reporters).

‘Mandatory’ means that there is a legal obligation to comply.

In the Northern Territory anyone who has reasonable grounds to believe that a child or young person may be abused or neglected must report this to the appropriate authority. Although Western Australia does not have mandatory reporting, it does have protocols or guidelines in place that require certain occupational groups in government and funded agencies to report maltreatment of children and young people (court personnel, counsellors, mediators and child care providers). Specific personnel are prescribed mandatory
reporters in the ACT (doctors, dentists, nurses, teachers, police, school counsellors, child care providers, home-based care providers, public servants providing services to children and families, community advocates); South Australia (doctors, pharmacists, nurses, dentists, psychologists, police, community corrections officers, social workers, teachers, child care providers, residential care for children, employees and volunteers in government departments); Tasmania (Health workers, registered psychologists, police officers, probation officers, teachers, child care workers, organisations that receive funding from the Crown, and those determined by the Minister) and in Queensland it is doctors, nurses, officers implementing the Act, employees of licensed care services, and educational staff. In Victoria mandatory reporters include doctors, nurses, police, teachers, psychologists, child care providers, youth and welfare workers, health workers and parole and probation officers.

In New South Wales, risk of significant harm must be reported by any person who delivers health care, welfare, education, children’s services, residential services or law enforcement wholly or partly to children as part of their paid work and includes any person who directly manages or supervises both paid employees and volunteers in such work (see section 27 of the Act for more details about mandatory reporters). Anyone can report concerns about a child who is at risk of significant harm but those mentioned previously are legally obliged to report their concerns for the welfare, safety or well-being of a child if those grounds for concern arise during the course of or from the person’s work. It is the duty of the person to report, as soon as practicable, to the Director-General the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

The threshold for reporting in New South Wales to “risk of significant harm” was raised from the beginning of the school year in 2010. Mandatory reporters will report concerns of significant harm either to a Child Wellbeing Unit or to Community Services. Harm that does not meet the threshold will be referred to a Family Referral Service or other NGO service to support the child, young person and their family or provide the service themselves. Legislation requires that mandatory reporters continue to respond to the needs of the child or young person, even after a report to the Helpline has been made. The penalty for not reporting has been removed.
under NSW reforms but the legal obligation to report remains in place.

Mandatory reporters will be guided by the Mandatory Reporter Guidance (MRG) tool, which is available as an interactive online tool or in hardcopy format – The Structured Decision Making System: New South Wales Mandatory Reporter Guide, 18 December 2009 (available on the Keep Them Safe website and on the Community Services website).

Mandatory reporting promotes the notion of child wellbeing as a shared concern and has been retained as a key aspect of the Keep Them Safe reform agenda.

**Child protection legislation in NSW**


The *Children and Young Persons (Care and Protection) Act 1998* covers how Community Services, other agencies, parents and authorised carers should respond when children and young people are at risk of being abused, and how vulnerable families should be helped. The Act mandates Community Services with the statutory (legal) responsibility for the care and protection of children where there are concerns about their safety, welfare and wellbeing. At the same time, the Act recognises that the responsibility to protect and care for children goes beyond the role of a single government department. It highlights the importance of government agencies working in partnership with the community to care for and protect children and young people.

The care and protection of children and young people is a responsibility shared by families, government and communities working in partnership.

The Act also encourages early intervention: the need to identify risk of harm at an early stage, and provide assistance and support before the care relationship becomes unsafe for the child or young person. Parents may seek assistance to help their child remain in, or return to, their care, and a child or young person can contact Community Services or a Family Referral Service for assistance. This assistance may be in the form of emergency financial assistance, counselling, mediation,
parenting education, early childhood health services, family or youth support or accommodation for the homeless.

In the *Children and Young Persons (Care and Protection) Act 1998* a child is defined as a person under the age of 16 years and a young person as a person aged 16 or 17. (This is the same for most States and Territories, but under the *Ombudsman Act 1974* and the *NSW Crimes Act 1900* a child refers to someone under the age of 18. This is also the case in Western Australia.) Young people (aged 16 or 17) are given greater independence and decision-making rights under the Act, and are treated differently in some areas (e.g., in relation to mandatory reporting, which is discussed later).

**Principles of the NSW Act**

The Act contains a number of principles which guide how the Act should be put into practice in child protection and early intervention:

- The safety, welfare and well being of the child or young person are paramount in decision making.

- Children and young people have the right to participate in decision making about their future. This means that they must be given where possible the opportunity to express their views freely and those views are taken into consideration when decisions about their future are being made.

- The culture, language, religion, disability or sexuality of the child or young person must also be taken into account when deciding what action to take for their welfare.

- The least intrusive intervention is used when action must be taken. This means the least amount of disruption to the child’s life, while ensuring that they are safe and secure.

- The name, identity, cultural and religious ties are to be preserved as much as possible when a child or young person cannot remain in their family environment. This means that a child or young person should be able to retain as much of their family and cultural identity as possible, even if living with their family is not possible.

- Unless it is not in their interests, children or young persons in ‘out of home’ care are entitled to maintain
close relationships with the people most important to them, such as family and friends.

- Where a child is to be placed in out of home care arrangements for a safe, secure and nurturing must take into account the need for early decisions regarding permanent placement, recognising the child’s circumstances and age.

- The Act recognises the right of Aboriginal and Torres Strait Islander families and communities to be involved in decision making concerning the care and protection of their children and young people.

- The Act also promotes the concept of early intervention as it enables Community Services to arrange services and to request other agencies to provide services.

- Families are encouraged to seek support and assistance early from Community Services, before situations deteriorate and more intervention is required. A ‘request for assistance’ can be made. For such a request to be made, a child or young person does not have to be ‘at risk of harm’.

Parents and carers should be able to ask for help when they need it to look after their children and keep them safe.

- It is the role of the Minister for Community Services to promote a partnership approach between various organisations/agencies, families and the community in taking responsibility for and dealing with children and young people who are in need of care and protection.

New South Wales also has legislated to create workplaces where children are safe and protected – see Chapter 3 Professional Practice in Child-Related Employment.
Main themes of child protection legislation in other States or Territories

The main themes of other State or Territory legislation are very similar to those in New South Wales.

- Families have primary responsibility for the care and protection of their children.
- The child’s right to protection is of paramount importance.
- Supporting a child’s family is the preferred way to ensure a child’s welfare.
- Culturally appropriate services are provided, such as interpreters in court and the involvement of members of cultural communities in case planning.
- Both the child and the family have the right to participate in decision-making.
- Parents, children and young people have the right to information.
- Decision-makers are held accountable.
- Voluntary intervention is the preferred means of support.
- Non-voluntary intervention is limited to the degree necessary to protect the child, i.e. when the risk is unacceptable and the family cannot be supported or is unwilling to protect the child.

Children from Aboriginal or Torres Strait Islander backgrounds

Child protection legislation in some States and Territories gives special consideration to the care and protection of children and young people from Aboriginal or Torres Strait Islander backgrounds.

This requires that whenever the Children’s Court exercises a power under the Act in relation to an Aboriginal or Torres Strait Islander child, it must consider:

- the views of the recognised Aboriginal or Torres Strait Islander agency for the child, or the views of members of the child’s community
Aboriginal traditions and Islander customs

the general principle that an Aboriginal or Torres Strait Islander child should be cared for within their own community

that at all meetings, consultations and proceedings that involve an Aboriginal or Torres Strait Islander person should be conducted in a culturally appropriate way and in a culturally appropriate location

the requirement that consultation with a recognised Aboriginal or Torres Strait Islander agency must be made before any decision is made about where a child will live

the hierarchy of placement options, which is described to ensure that children are not removed from their own community and to preserve cultural ties as much as possible. This placement principle in child protection legislation is a feature of most state and territory legislation. It has become known as the Aboriginal and Torres Strait Islander Placement Principle or the Aboriginal Child Placement Principle.

(Adapted from the NSW Children and Young Person’s (Care and Protection) Act 1998 No 157 Ch 2 Part 2 and Queensland’s Child Protection Act 1999, s 6.)

This legislation recognises the special needs of indigenous children, their families and their communities to receive services that meet their needs and it avoids dislocation of children and young people from their communities.

The Keep Them Safe report and new legislation Children Legislation Amendment (Wood Inquiry Recommendation) Act 2009 recognises the importance of ensuring that services are appropriately delivered to diverse populations and are available and accessible to Aboriginal families, to families from culturally and linguistically diverse communities and geographically isolated families. Service delivery is to be respectful and culturally appropriate and aims to reduce the over-representation of Aboriginal children, young people and families in the child protection and juvenile justice systems.

Aboriginal people are over-represented in the child protection system and as a result of policies, practices and actions of previous government agencies there is often mistrust of welfare agencies in Aboriginal communities. Therefore, consultation, respectful relationships and cultural sensitivity are required to work effectively with Aboriginal people.
Out-of-home care

The NSW *Children and Young Persons (Care and Protection) Act 1998* introduced the term 'out-of-home care', which refers to “any residential care and control of a child or young person in any place other than the usual home, by any person other than a parent or relative for any period over 28 days (or 14 days if subject of a Court order)” (DoCS: about the Children and Young Persons (Care and Protection) Act 1998). This does not include the daily care and control of a child given by a licensed provider of children’s services.

A child may be removed from their home under the *Children and Young Persons (Care and Protection) Act* and a court hearing is then heard shortly after the removal to approve temporary custody by Community Services. Sometimes a Court Order is necessary to remove the child. A caseworker must be able to demonstrate that they have tried all other ways of protecting and supporting a family before a child or young person can be removed, unless the immediate safety of that child or young person is threatened.

(Adapted from material at the NSW Community Services website, [http://www.community.nsw.gov.au](http://www.community.nsw.gov.au) and the NSW Interagency Guidelines for Child Protection Intervention 2006.)

If the Children’s Court finds that a child or young person is in need of care and protection it will make an order allocating parental responsibility. Sometimes the Court may decide to allocate the care responsibilities to one party, and certain parental responsibilities to the parent/s. This would allow the parent to retain some responsibility and involvement in their child’s life, even if they are unable to care for that child or young person on a day-to-day basis.

The Court may decide to allocate sole parental responsibility to the Minister. The Minister is then responsible for finding an appropriate carer and making the decisions involved with parental responsibility. Currently, authorised carers can apply for sole parental responsibility for children and young people who have been continuously in their care for more than 2 years (however, this is only granted if the birth parents and the child, if aged over 12 years, consent).

‘Out-of-home’ care can be:
• kinship or relative care
• foster care
• group homes.

Parents may now also participate in Parent Responsibility Contracts. These contracts are written agreements registered with the Children’s Court and contain provisions aimed at improving the parenting skills of primary caregivers and encouraging them to accept greater responsibility for their child or young person. The contracts stress the importance of a caregiver changing their behaviours and seeking treatment such as counselling, courses or regular drug testing (they do not allocate parental responsibility for a child or allocate placement in out-of-home care). Parent responsibility contracts may be used as evidence of an attempt to resolve a matter concerning a child or young person’s need for care and protection. Breach of contract (failure to comply with the contract) can result in a care plan for a child that provides for placement in out-of-home care as it may then be presumed that they are in need of care and protection.

The Office of the Children’s Guardian was established in 1998 as an independent organisation responsible for improving out-of-home care for children and young people in NSW. In April 2006 this Office was merged with the Commission for Children and Young People to form the Office for Children. However, the role of the Office for Children – Children’s Guardian remains the same:

• promoting the best interests and rights of children and young people in out of home care
• reviewing the case plans of children and young people in out of home care
• exercising parental responsibility where parental responsibility has been allocated to the Minister of Community Services
• accrediting Designated Agencies to provide out-of-home care to children and monitoring these Agencies.

The Children Legislation Amendment (Wood Inquiry Recommendation) Act 2009 identifies and clarifies three types of out of home care (OOHC) – Statutory OOHC, Supported OOHC and
Voluntary OOHC. The legislation strengthens the framework for the provision of out of home care.

Statutory OOHC (new s135A) is defined as OOHC that is provided for more than 14 days via a Children’s Court Order (where a parent no longer has parental responsibility).

Supported OOHC (new s135B) is OOHC that is a result of Community Services forming an opinion that a child or young person is in need of care and protection and is arranged, provided or supported by Community Services. The placement has been agreed to by family members but is assisted by Community Services because alternative approaches are being taken to address their needs. This support could include a range of things such as provision of services, arranging parenting courses or providing financial assistance.

Voluntary OOHC (new s135C) is arranged by a parent and cannot continue for more than three months in a 12 month period unless supervised by a designated agency and not for more than 180 days in a 12 month period unless a plan has been made in accordance with guidelines issued by the Children’s Guardian. This new section allows children in private arrangements made by their families without the knowledge, involvement or support of Community Services to continue with as little state interference as possible. The only involvement by Community Services would be as a safety net to stop children in voluntary arrangements being forgotten.

The Wood Inquiry Recommendations found that the number of children in out of home care has increased by 58% since 2002, with over 14,000 children and young people in care in NSW, putting pressure on carers. As a consequence funding has been increased in the reform agenda for out of home care provision. Also, all children entering out of home care are to have individual education plans and comprehensive health and development assessments with the aim of improving educational outcomes for these children and providing health services that meet their needs (Keep Them Safe 2008).

The Wood Inquiry found that Aboriginal children and young people are more than ten times more likely than other children to be placed in out of home care and more likely to be placed in relative or kinship care. Those in kinship care do however have lower numbers of placements and are less likely to have multiple placements.
The Government is supporting the gradual transfer of out of home care to the non-government sector as recommended in the Wood Inquiry. Capacity will need to be built in the NGO sector to meet workforce development and infrastructure needs.
Legislation regarding the physical punishment of children

Physical punishment is physical force used to cause a child pain but not injury for the purpose of correcting or controlling that child’s behaviour. Physical punishment is a form of coercion. Many people disagree with the use of physical punishment while others still see it as morally acceptable. Others claim that under various cultural or religious beliefs it is a moral duty to use corporal punishment to appropriately raise children.

We are not allowed to physically punish adults and so why do we allow it for children? It is very easy for physical abuse to occur when physical punishment is considered the norm. Research tells us that many abusive situations start out as attempts to punish a child. People who have been punished as children or who use physical punishment as parents have strong convictions about this issue and may use this to justify their actions. Physical punishment is undesirable and could breach the child’s human rights.

It is now widely acknowledged that corporal punishment breaches a child’s right to respect for their human dignity and physical and mental integrity. Legal and social acceptance of the physical punishment of children is not compatible to the Rights of the Child. A recommendation to prohibit all violence against children, including the use of corporal punishment in the family, schools, alternative care, and penal systems had been submitted to the United Nations General Assembly (Commission for Children and Young People, Exchange, Issue 29, 2007).

Physical punishment can cause physical injuries and abuse, and anti-social or aggressive behaviour. Children are powerless and vulnerable and physical punishment exposes them to the risk of serious injury. Adults have the role of raising children in a manner that respects their rights and provides an environment that will allow them to develop as useful members of our society.

Children need to learn skills that will effectively allow them to function in society – communication and problem solving skills, social rules of behaviour and relationship development. Different styles of parenting may be used to help children gain

Children are not objects and physical punishment is not a parental right. It is a negative discipline technique. More positive techniques include the use of explanations, offering alternatives and choices, setting clear rules and limits, praising good behaviour, using routines, role-modelling appropriate behaviour, providing distractions, removal of a child from a situation or withdrawal of privileges.

Advice on parenting and dealing with challenging behaviour can be found on the Community Services website at: http://www.community.nsw.gov.au or on the National Childcare Accreditation Council (NCAC) website under factsheets: http://www.ncac.gov.au/families/families_factsheets.asp

Health workers can also contact their local Physical Abuse and Neglect of Children (PANOC) Coordinator.

**What is the law on the physical punishment of children?**

In NSW, physical punishment of children is now covered under the Crimes Act 1900 – Sect 61 AA Defence of Lawful Correction since the Crimes Amendment (Child Protection – Physical Mistreatment) Act 2001 was repealed. The aim of this legislation is to reduce the harm caused to children through excessive physical punishment. It sets a limit on the ‘force’ parents (or someone acting for the parent) can use to physically punish their children and clarifies the legal defence of ‘lawful correction’.

Force refers to the amount of effort put into hurting a child to discipline them. A parent must take into account the child’s age, health, maturity or other characteristics when using physical force to punish that child. Under this section of the Crimes Act it is not considered reasonable for a parent to:

- use force above a child’s shoulders (any part of the head or neck), or

- use force in such a way that it could harm the child more than briefly below their shoulders – unless the
force could reasonably be considered ‘trivial’ in all the circumstances.

Parents/carers are responsible for disciplining their children, but causing injury to children or young people for any reason is against the law.

The Crimes Act for each State and Territory sets out what behaviour is deemed to be criminal. In terms of children and young people this may be:

- killing or threatening to kill the child or young person
- causing serious injury intentionally, recklessly or negligently
- threatening to inflict serious injury
- incest and other sexual offences
- child abduction and child stealing.

If these behaviours have occurred, police will be involved. This may result in the offender being removed from the home situation or being imprisoned. In domestic violence situations it may also result in the issue of an Apprehended Violence Order or an Intervention Order. This can protect the child or young person by making it illegal for the offender to come near the family home or the child’s school. This is most effective where the non-violent parent or carer is prepared to support the child. As a last resort the child or young person may be placed in ‘out of home care’.

You can read about more changes to laws that effect children by going to the Commission for Children and Young People site at:

Learning activities

Legislation revision

- What does the Convention on the Rights of the Child tell us about the protection of children?

- Go to the Internet site for UNICEF http://www.unicef.org/crc and summarise the key Rights of the Child.

- What do you think is meant by the phrase ‘best interests of the child’?

- What Federal legislation affects how we protect children?

- What areas of protection does this legislation help us with?

- What State/Territory Acts and Regulations direct our child protection procedures?

- What is the main area and/or direction provided, eg reporting or other responsibilities?

- What do you think the implications would be for your service if you had a child in care where one of their parents was participating in a Parent Responsibility Contract?

Physical punishment revision

- If you are from a State or Territory other than New South Wales what does your State or Territory legislation say about the physical punishment of children?

- What UN Rights of the Child might be breached by the use of corporal punishment on children?
Chapter Three: Professional practice in child-related employment

The role of the worker

Your role as someone who works with children and young people includes responsibilities to protect them from abuse by being aware of your duty of care to provide a safe environment and to work within your job description. If you work in a State or Territory that does not have mandatory reporting, you will have a responsibility to report suspicions of abuse under ‘duty of care’.

Duty of care

Duty of care is perhaps the most important legal obligation that you have as a person working with children and young people. It protects workers from litigation, or being sued, where they have fulfilled their legal and care requirements to the best of their abilities.

The law says:

Everybody has a duty of care (or a responsibility) to avoid acts and omissions which can be reasonably foreseen to be likely to injure other people.

Duty of care is a requirement that a person acts towards others and the public with the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would use. If a person’s actions do not meet this standard of care, the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence.

Let’s examine this principle more closely.
Acts and omissions

Duty of care says that we have to avoid acts that are likely to injure other people.

Can you think of an act (an action) of a worker in your agency that is likely to cause injury to the children or young people in their care?

Duty of care also says that we have to avoid omissions (things that have not been done) that are likely to injure other people. Think of an omission by an agency worker that is likely to cause injury to the children or young people in their care.

Did you find it easier to think of omissions rather than actions that are likely to cause injury to children or young people? An example would be not cleaning up after a spill. Now suggest some basic ways that you would exercise duty of care to ensure the wellbeing and safety of children or young people whilst in your care, such as cleaning up that spill before someone slips over.

It is likely that maintaining supervision and ensuring a safe and healthy environment were on your list as these are some of the most basic ways that we practice our duty of care.

Reasonable care

Now let’s look at the words ‘reasonably foreseen’. This suggests that the law does not expect perfect care. The standard of care expected of you is the standard that a reasonable person or a reasonable worker with children and young people would provide.

A ‘reasonable worker with children and young people’ or agency acts in accordance with:

- relevant organisation policies, procedures and regulations
- reasonable and lawful instructions
- their skills, training, duties and job role/description, and
- commonsense.

In determining the degree of care you must consider the circumstances, as the degree of care can vary across situations. You must, for example, consider the age and ability level of
the child or young person. With pre-schoolers and school-aged children we would tend to accept occasional situations of bruising on the shins, as children are active but often inattentive to their environment. However with babies, any bruising is suspect. Young people are much more competent with controlling their bodies but do take more risks.

It is also important to think about the nature of care being provided and what you would consider to be reasonable behaviour from staff in a particular agency.

Regulations and standards are in place to ensure a reasonable level of care is provided, but these set the minimum standards. Regulations and standards vary from State to State and across different service types. For example, in NSW there are minimal mandated regulations relating to out of school hours care and these exist in several other States and Territories.

Where regulations are not applicable, either due to the type of service or the particular situation, a ‘general principle’ of what is reasonable will apply. This means that workers need to consider other standards when determining what is reasonable and careful behaviour – standards such as the Convention on the Rights of the Child, codes of ethics, quality assurance indicators, as well as agency policies and procedures.

For a worker with children and young people, ‘reasonable and careful behaviour’ is behaviour that protects their rights and is in the best interests of the child or young person.

All those who work with children and young people must exercise a duty of care to protect those children and young people and keep them safe.

Failure to provide safe and responsible care to others can result in a legal charge of negligence against your agency, or if the worker acts against lawful instructions or agency policy and procedures, then the worker may be held personally responsible. To avoid breaching duty of care agencies have the responsibility of developing policies and standard procedures or practices that will provide clear guidelines for workers to follow. As well, agencies should provide job descriptions that outline the particular roles and responsibilities of staff members so that they are aware of what they are expected to do and what their limitations are.
Fulfilling your duty of care means thinking ahead

You need to consider what your legal obligations and professional responsibilities suggest you do in any particular situation.

This means you need to:

- Plan what you want and hope will occur
- Prepare according to this plan
- Predict what may go wrong or differently to your plan, and
- Prepare for these eventualities (within reason).

In any situation, ask yourself the following:

- What do I think are reasonable steps to take?
- What do my co-workers, management and the community feel is reasonable?
- What do relevant experts (if any) feel is reasonable?
- What does the law say I should do?

Laws are very firm indicators of the standard of care that a court would require.

Parental responsibility and duty of care

Remember that you as a worker in a designated agency never have parental responsibility. You do have a duty of care to ensure the well being and safety of children whilst they are in your care. This means making decisions and acting in the best interests of the child whilst they are in your care.

The exception to this would be primary caregivers in out-of-home care (s38A of the Children and Young Persons (Care and Protection) Act 1998.
All children have the right to be safe and therefore your responsibility is to make sure that you only release them into the care of an authorised person. Parents enter into a contract with your agency when they enrol their children and the agency then takes responsibility for that child as part of the contract. This contract states who can and cannot pick up a child from the service. The enrolment form is the binding contract between the service and the parent.

**Who has access to children while they are in your care?**

State government regulations require services to keep copies of any parenting orders and other court orders relating to whom the child lives with, spends time with or communicates with. These orders set down the conditions that you need to be aware of in relation to access to children and young people while they are in your care.

Court orders may restrict a parent’s right to:

- collect his or her child from a child care service or visit that child in protective care
- have any contact with the child
- get any information about their child.

In situations of separation, divorce and other alternative care arrangements where there are no court orders there are various and conflicting legal opinions. Usually both parents should be considered to have equal rights to collect their children from a service unless the Family Court has ordered otherwise.

Preventing one parent from collecting their child from a child care service, a Sport and Recreation activity or a school at the request of the other parent, when there has been no court order, is legally risky. If a parent makes such a request then the position of the service needs to be carefully explained. Workers need to be aware of whom the child is presently living with and whom the centre is dealing with. If difficult situations arise you can stall for time while you contact the parent with whom the child lives.

It all sounds rather confusing. In any difficult situation, however, you need to apply commonsense, ‘the best interest of the child’ principle, and consult the regulations and centre guidelines. Services should have clear policies and procedures...
to be followed by all staff. Section 85 of the NSW Children’s Services Regulation 2004 indicates that centres must have a policy that deals with access as part of their licensing requirement. Section 76 deals with information and access to be denied to certain persons. The service must have a clear indication on the enrolment form of who can collect the child. Legal orders need to be included on the enrolment form.

If a parent who has legally been denied the right to have communication with their child through a court order arrives to collect that child:

- Be polite, firm and clear and remember that your primary duty is to the children and young people in your care.

- Clarify the legal position with the unauthorised person. For example, say: “I’m sorry but I’m not legally able to allow the child to communicate with you without the permission of the parent/person with whom the child lives.”

- Ask the person politely to leave.

- If they refuse and/or become abusive, ask again that they leave and explain that it may be necessary to call the police to remove them if they are making a scene, upsetting other children or harassing staff. It may be necessary to point out that they can be charged with trespass.

- If they still do not leave, call the police.

The focus of the worker should always be on the care and protection of the child or young person. However if violence is offered in such a situation, the focus should be on the occupational health and safety aspects of the situation. Remove yourself, other staff, children and young people from the vicinity of the person exhibiting potentially violent behaviour and, if you have no other option, allow them to take the child or young person in question. Make sure you take down car registration details, a description of the person, and call the police immediately. The aim at that point is to minimise risk. Remember, we must take reasonable care as part of our duty of care.
Injury

Finally we will consider the last part of the principle of duty of care: injury to other people. This seems pretty straightforward, but who are these ‘other people’? Obviously as a person working with children and young people you have a duty of care to those you are caring for, but your duty of care also extends to other people who visit your workplace such as visitors, parents and other staff. For example, if a visitor to your agency cuts themselves on some broken glass you have swept into the hallway away from the children or young people and briefly forgotten about, this could be considered to be a breach of duty of care to that person.

Furthermore, injury does not just mean a physical injury like a cut finger, a broken arm or a bumped head. There are four types of injury or damage that can be associated with breach of duty of care:

- physical
- psychological
- emotional, and
- financial

Although all of this may sound worrying, it is important to realise that a good understanding of your legal obligations will help you make the right decisions and act appropriately.

Listed below are some comments from workers in response to questions about duty of care. What assumptions do these speakers make?

- As workers we are responsible for injuries.
- Duty of care is about playing the parent role, doing what the children’s parents would do in that situation.
- I wasn’t there when it happened so I’m not responsible.
- Management is paying you a wage so you are responsible for whatever happens.
- Your duty of care extends to anything that happens on your agency’s property in the hours that you are open.
You may not yet feel certain about all your answers, so return to them later as we explore more information about your legal obligations.

**Negligence**

Negligence is when a court says that a duty of care existed and someone has neglected or breached that duty of care and, as a result, someone else has suffered harm or damage.

You must act in the best interests of the child or young person and take all reasonable steps to ensure the safety of that child or young person. When a child or young person is injured while in the care of a service, legal actions seeking compensation may be taken against the service or the carer or both, alleging the negligence. This is proved by establishing that the standard of care provided was not that of a reasonable person in the circumstances.

More information and legal advice on negligence can be obtained from solicitors or your local community legal centre.

Breaches of associated legislation like the *Occupational Health and Safety Act 2000* or the *Occupational Health and Safety Regulations 2001* may also result in fines for the employer and/or the employee.

**Employers and employees**

Employers are vicariously liable for negligent acts or omissions by their employees in the course of employment if that act was authorised. Employers may be held responsible, particularly if the employer was found to offer insufficient training, inadequate orientation to the job, or gave an unlawful or unreasonable instruction.

However, if an employee acts against the instructions of their employer, legal guidelines or agency policy, the employee might be held personally responsible.
Quality assurance or improvement and accreditation

Many professions or agencies are now involved in processes of quality assurance or improvement and accreditation. This may be for certification purposes, e.g. to meet a Benchmarking Standard or for funding purposes.

In the child care industry, the Quality Improvement and Accreditation System (QIAS) for long day care centres have been operating throughout Australia since 1994. It is administered by the National Childcare Accreditation Council (NCAC) and enforced through the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). A similar system has been implemented for Family Day Care schemes, called the Family Day Care Quality Assurance (FDCQA) and for Out of School Hours Care (OSHCQA).

On 7th December 2009 the Australian Government, in partnerships with state and territory governments, agreed to improvements through a National Quality Framework. This framework covers long day care, preschools, family day care and outside school hours care. This framework was implemented from 1 July 2010, with staff to child ratios and qualification changes being implemented progressively from January 1, 2012. The framework includes a National Quality Standard, improved staff-to-child ratios and qualification requirements, a new quality rating system and a new national body to ensure care is of high quality.

A legal framework will support the introduction of the National Quality Framework from January 1, 2012 and it will replace current licensing and regulation processes in each state and territory. The legal framework incorporates an Act, Regulations and Schedules to support the National Quality Standard and the new ratings system.

The National Quality Standard comprises guiding principles, quality areas, standards and elements. There are seven quality areas:

- Educational program and practice
- Children’s health and safety
- Physical environment
- Staffing arrangements, including staff-to-child ratios and qualifications
- Relationships with children
- Collaborative partnerships with families and communities
- Leadership and service management.

Each individual quality area contains a number of standards – 23 standards with between 2 and 6 standards for each quality area. Each standard will have elements. The standards, regulations and schedules will be the enforceable components of the National Quality Standard. Penalties will apply for non-compliance.

Guiding Principles that apply to the Quality areas include:

- The rights of the child are paramount
- Children are successful, competent and capable learners
- Equity, inclusion and diversity
- Valuing Australia’s Aboriginal and Torres Strait Islander cultures
- The role of parents and families is respected and supported
- High expectations for children, educators and service providers.

**Quality Area 2: Children’s health and safety**

2.3 states that “Each child is protected”. The elements under this standard include:

- 2.3.1 Children are adequately supervised at all times.
- 2.3.2 Reasonable steps are taken to identify and manage risks, and every reasonable precaution is taken to protect children from harm and hazards.
- 2.3.3 Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practices and implemented.
2.3.4 Action is taken to respond to every child at risk of abuse and / or neglect.

Regulations and schedules will include statements in relation to collection of children, recording attendance, excursions, as an example.

Other Quality Areas (QA) that relate to child protection and wellbeing include:

**Quality Area 4: Staffing arrangements**

- 4.1.2 Educators, coordinators and staff demonstrate the awareness, attitudes, knowledge and skills required to provide an environment where diversity and difference are acknowledged, valued and respected.
- Educators, coordinators and staff are respectful and ethical.

**Quality Area 5: Relationships with children**

- 5.1 Respectful and equitable relationships are developed and maintained with each child.
- 5.3.1 Behaviour guidance strategies preserve the dignity and rights of the child at all times.
- Regulations and Schedules will include:
  - The use of physical force and restraint; physical, verbal or emotional punishment and practices that demean, humiliate, frighten or threaten a child are prohibited.

**Quality Area 6: Collaborative partnerships with families and communities**

- 6.2 Families are supported in their parenting role and their values and beliefs about child rearing are respected.
- 6.2.2 Information is available to families about community services and resources to support parenting and family wellbeing.
- 6.3 The service collaborates with other organisations and service providers to enhance children’s learning and wellbeing.
- 6.3.1 Links with relevant community and support agencies are established and maintained.
Quality Area 7: Leadership and service management

- 7.5 Grievances and complaints are managed effectively.

- 7.5.2 The authority/ies responsible for administering the standard is/are notified of complaints which allege a breach of legislation or a serious incident.

- Regulations and schedules will include:

  The holder of an approval to operate including managing bodies, any authorised supervisor/nominee engaged to be a manager (on and off-site) is fit and proper.

  The holder of an approval to operate ensures that recording and management of relevant information related to children and families is administered effectively including updating, storage, maintenance of confidentiality, access for families and the authority/ies responsible for the National Quality Standard.

  Records to be kept will include amongst others: Code of conduct, Behaviour Guidance policy, Dealing with illness, emergency care and infectious diseases, Anaphylaxis management policy, Arrangements for the delivery and collection of children, Manager/person responsible on duty, Participation of Students and Volunteers, Staffing, and Custody arrangements/court orders.

Adapted from National Quality Framework for Early Childhood Education and Care, at

This new National Framework incorporates current regulations, our Code of Ethics, International Rights of the Child, QIAS, Duty of Care, maintaining knowledge and skills, supporting and safeguarding the rights of children and young people and focuses on supporting children and families. Children’s rights and needs are paramount and respect is shown for children, families and cultural background. Guidance is clear for ethical decision making as values and standards for us all to encompass are made clear.
QIAS quality systems

Currently, quality systems are linked to Commonwealth Child Care Benefit payments received by services on behalf of the parents of children in their care. To be eligible for Child Care Benefit approval services must register for and satisfactorily participate in child care Quality Assurance.

These systems are based on a philosophy of continual improvement. Child care services that participate go through a quality assurance check every few years in order to ensure they are maintaining a high standard of care. They are also required to participate in Spot Check visits. Unlike regulations, which we will discuss next, quality assurance systems set out ‘best practice’ standards. Regulations set out ‘minimal standards’ that must be met if a service is to be licensed to operate at all. The new Ratings System under the National Quality Framework will incorporate both standards.

The Quality Process uses a system of ‘self study’ where services compare and rate themselves against the quality indicators detailed under a variety of principles. A validator then visits the service and completes an independent rating using the same principles and indicators. A board of external moderators compares the service’s self-rating with the validator rating and makes the final decision about accreditation.

Other quality management systems may have been developed to conform to the requirements or Standards such as International Organization for Standardization (ISO) Benchmarking, the Australian Quality Training Framework (AQTF), Educational Services for Overseas Students (ESOS), agency relevant policies, other statutory regulations, government policies or directions. Are you aware of the quality assurance scheme covering your agency?

What are the similarities with your accreditation system? Does it involve a process of continuous improvement? Are you involved in a self-study process? Is your quality assurance graded (high, satisfactory or unsatisfactory)? For how long is accreditation given? Compare to the National Quality Framework Rating system at:

It is interesting to note that the NCAC’s logo was ‘Putting Children First’. This logo compares directly to Article 3 in the Convention on the Rights of the Child. Did you note that the
first Guiding Principle for the National Quality Framework was “The rights of the child are paramount”?

Accreditation principles clearly spell out what is unacceptable in terms of quality and provide a useful guide to child care workers about what is satisfactory as well as high quality in exercising ‘duty of care’.

The Quality Assurance system (QIAS) is based on safeguarding the rights and safety of children. The system has been developed to ensure high quality care for children by providing standards for services to meet in their day to day operation. Some of the Quality Areas in relation to child protection under QIAS include:

- Respect for children
- Protective care and safety.
State regulations and codes

Each agency is bound by different sets of legal obligations that are set down by Federal, State or Territory legislation. While these regulations will differ from one State or Territory to another, there are common understandings informed by research and practice. This means that the common threads of practice in addressing child protection issues in an agency will be similar from one State or Territory to another. However, it is crucial for each worker to know the specific legislation and structures they are working with.

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<tr>
<th>Federal or national regulations and standards</th>
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<tr>
<td>Quality Improvement and Accreditation System (QIAS) until 1 July, 2010.</td>
<td>• To be eligible for Child Care Benefit approval, Family Day Care (FDC), Centre based Long Day Care (LDC) and Outside School Hours Care (OSHC) services must register for and satisfactorily participate in child care QA</td>
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<tr>
<td>QIAS consisted of 7 Quality Areas and 33 Principles against which services were rated.</td>
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<tr>
<td>National Quality Framework</td>
<td>• Implemented from 1 July 2010, with staffing and ratio changes being progressively implemented from 1 January 2012.</td>
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<td>• Covers preschools, long day care, outside school hours care and family day care.</td>
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<td>• Replaces current licensing and regulation processes from 2012.</td>
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<td>• Six Guiding Principles</td>
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<td>• Seven Quality Areas in the National Quality Standard</td>
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<td></td>
<td>• 23 Standards with 2 – 6 standards for each Quality Area.</td>
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<td>• Rating System</td>
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<td>• Standards, regulations and schedules will be legally enforceable.</td>
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Family Day Care Quality Assurance until 1 July, 2010.

Out of School Hours Care Quality Assurance (OSHCQA) until 1 July, 2010.

- Applies nationally to family day care schemes.
- Consists of six Quality Areas and 30 Principles against which schemes are rated.
- Consists of eight Quality Areas and 30 Principles.

National Standards for Outside School Hours Care

- National standards 1995,( but not enacted in NSW) for before and after school care and vacation care programs instigated by the National Out of School Hours Services Association.

### State (or Territory) regulations, standards or codes

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<th>Regulation</th>
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<td>For example the Voluntary Code of Practice for Out of School Hours Services in New South Wales, 1993</td>
<td>A set of voluntary guidelines which detail management practices and standards of care required for a quality service.</td>
</tr>
<tr>
<td>NSW Children’s Services Regulation 2004</td>
<td>A set of minimum standards required for licensing of child care services in NSW.</td>
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</table>
| Children and Young Persons (Care and Protection) Amendment (Out of School Hours Care Services) Regulation 2007 | Establishes a system of registration of out of school hours care services. 
- Development of operational requirements is proposed for the second stage of regulation. |

Other States and Territories have legislation relating to service types. Look now at your relevant regulations or standards relating to the agency or service type you are working in or are learning about. Links can be found in the Resources section of this book.

Some of the areas that might be covered by your standards or regulations include:

- staff and child numbers or ratios
- staff duties and supervision
- arrival, departure and parental access
- child protection requirements of staff, and
• policies required to be held by the service.

Accepted standards are prescribed by State coordinating bodies, interagency agreements and guidelines, protocols defined in legislation, and by your organisational procedures and policies.

Legislative obligations and requirements also determine the Policies and practices/procedures of an organisation or agency in relation to children who have been abused or who are at risk of harm. Policies and practices/procedures are:

• detailed statements and explanations of actions to be taken in particular situations

• usually specific to and developed by individual services or agencies

• informed by legal obligations and ethical considerations, and

• monitored and enforced through agency management procedures.
Agency policies and practices

These days as a result of accreditation, regulatory requirements and best practice standards, most agencies dealing with children and young people are required to have written policies and procedures. Policies reflect the philosophy of the service and usually outline a set of general guidelines to be followed in particular situations. They may also include a philosophy statement as well as step-by-step procedures that relate to how things should be done in practice.

Developing a child protection policy focuses attention on developing and maintaining child safe environments and the implementation of child protective practices. Effective policies reflect the centre’s values in relation to protecting children’s rights. The policy will also assist in establishing a uniform code of conduct, procedures used for dealing with child protection matters, as well as procedures for identifying, documenting, reporting and managing concerns or incidents. Clear policies assist agencies or services to meet their legal obligations and licensing requirements.

Even in agencies and situations where policies aren’t written down, there are usually standard practices for dealing with certain situations. For example, in an agency that has no written policy about confidentiality staff will still know not to give out personal details of children or young people and families to unauthorised people. From a legal point of view, such ‘unwritten’ standard practices and procedures are still considered to be policies and can be taken into account when a breach of duty of care is considered.

The service-specific policies of any workplace are an important source of information about your legal obligations and should have some effect in deciding duty of care.

A bad policy, however, will not protect you. Service-specific polices should reflect and draw on all the more formal legal obligations that have been examined so far in this topic.

Many agencies have multiple policies. The Children’s Services Regulation 2004 in NSW requires services to develop policies that promote the health, safety and well-being of children attending the service and must ensure that copies are made available at the service for the inspection of parents (S214 of NSW Children and Young Persons (Care and Protection) Act 1998). Some of the policies that services must have include child
protection, ethical conduct, access and confidentiality of records, excursions, illness, accident and emergency situations, water safety and sun protection (Part 7, S85). A list of the required policies under the National Quality Framework can be found at: http://www.deewr.gov.au/EarlyChildhood/Policy_Agenda/Quality/Documents/NQSStandardChildEdu.pdf

The requirements for Child Protection and Wellbeing may be incorporated in ‘Safety and Health Policies and Procedures’.

**Writing your child protection policy**

The policies that are developed by agencies are developed in consultation with staff, families and recognised community, child protection and care authorities. The policies provide the framework for good practice and safe environments for children, young people and adults.


The NSW Ombudsman suggests including separate sections focusing on your responsibilities in relation to:

- Procedures to follow when an allegation or conviction of reportable conduct is made

- Procedures to follow when implementing the Working with Children Check guidelines and

- Procedures to follow when responding to a child or young person when you have reasonable grounds for concern that they are at risk of harm.

Your child protection policy should reflect the service’s philosophy and include the values, ethics or code of conduct of service stakeholders as well as appropriate State legislation and licensing requirements, such as access to children and appropriate supervision. The policy should establish the procedures for identifying, documenting, reporting and managing incidents and allegations within the service, selecting and recruiting staff in child-related employment.

Other issues that should be covered include defining appropriate practice, confidentiality, Exchanging Information with Prescribed Bodies, support and counselling for stakeholders, procedural fairness, protective behaviours, and dealing with complaints, accusations, grievances and non-compliance or disciplinary procedures. It should also demonstrate a commitment to maintaining knowledge and skills through ongoing professional development.

If the Ombudsman were to audit your service they would need to examine your child protection policy. Use the self assessment checklist indicated above to see whether your policy is adequate.

Changes in 2010 to the sharing or exchange of information needed to be included in policy statements about confidentiality. The Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 amends the Children and Young Persons (Care and Protection) Act 1998 with new provisions in Chapter 16A to authorise ‘prescribed body’ agencies to share information to assist with service delivery for the safety, welfare and wellbeing of a child or young person. An agency requesting information under the new legislation must not use or disclose the information for any purpose that is not associated with the safety, welfare or wellbeing of the child or young person.

Under Keep Them Safe reforms the criminal penalty for failing to report has been abolished but the obligation has not changed. Agencies employing mandatory reporters are expected to have adequate systems in place to ensure compliance with the terms of the legislation and should include disciplinary consequences for failing to report children at risk of significant harm.

Policies and procedures should be reviewed in a systematic way to ensure that they address ongoing changes in legislation, follow current recommended practices, local needs, and meet your legal and regulatory requirements. It is vital that all stakeholders are informed of changes and that the revised
policy is implemented. Good verbal and written communication is vital in this process.
Acting within a job description

Earlier in this topic we said that a reasonable worker with children and young people will act according to their skills, training, duties and job description.

Let’s now look more closely at some of the specific responsibilities you may have in your job and which will help you understand more about your duty of care to children and young people.

All workers in agencies that deal with children and young people should have a job description that outlines their role and responsibilities within the workplace. Your role and responsibilities will vary according to the position you hold, your level of training and the type of service in which you work. Untrained workers are unlikely to carry the same responsibility as those with training.

It is important that workers have a copy of their job description that can guide them in determining their role and level of responsibility and assist them in making decisions and taking actions on a day-to-day basis.

Examine your job description and answer the following questions:

- What do you consider to be the main parts of your role?
- What is your level of responsibility?

You may find that your responsibility covers such areas as maintaining records, treating people with respect, or taking emergency or first aid action in line with service policies and procedures. It may include ensuring that children and young people are adequately supervised, that you take part in meetings, conferences and training courses where appropriate, and that you share responsibilities in ensuring a safe working environment. You may be asked to work in line with your agency policies and guidelines.

You have probably noticed that your job description only broadly outlines your role and duties as a worker; that it does not spell out the specific duties.

The main thing to remember is that a job description will help you determine your level of responsibility in relation to duty of
care. If you act outside the guidelines set down by your job description and this leads to injury to a child or young person, colleague, parent or visitor, you may be considered negligent for breaching duty of care. As a worker in an agency that deals with children and/or young people you will have a wide range of duties and responsibilities to perform regardless of those given in your job description. The most important is to ensure that you provide for the safety, welfare and wellbeing of those in your care while you also safeguard their rights.

**Consistent performance of duties**

Consider the following scenario:

You are an untrained assistant in your agency. You have noticed that one of the children in your care had some bruises on his upper arm. You ask the father when he collects his child how they occurred, and are told that he fell from a chair.

Have you acted within your job description?

If you have been empowered to only share positive information with parents, and to work within the agency policy and guidelines, it is unlikely that you are allowed to make such an approach and would therefore be acting outside your job description. Through acting without consultation you may have alerted a possibly abusive family to the fact that their child is being checked, and reduced the chances of him being returned to the service, certainly with bruises. You should have taken your concerns to your supervisor to discuss.

At all times we should consider what is in the best interests of the child. We can do this by having a good understanding of legislative requirements, regulations, policies and procedures within our service and discussing issues with appropriate staff such as our immediate supervisor. As professionals we also need to maintain our knowledge and skills.
Maintaining knowledge and skills

Another aspect of a worker’s responsibilities is their responsibility to maintain knowledge and skills. As you can see from our discussion so far, there are many regulations and guidelines relating to agencies that deal with children and young people. When you are first employed, management does have some responsibility to provide you with information about your role and agency policies and procedures. However you also have some responsibility to keep yourself well informed.

You should read any information given to you or provided at your workplace. Many agencies subscribe to various magazines and journals or have staff resource libraries to help staff stay up-to-date with their knowledge and skills. Look at the list of journals given in the Resources section of this book for some appropriate professional reading that can help you to maintain your currency, skills and knowledge.

Even as an untrained worker or a person in training, you have some responsibility to use existing knowledge and the skills you may have and to identify areas where you need to develop that knowledge and those skills.

Think about the knowledge and skills you already have that will assist you to be a worker in your agency who can perform the duties as described in your job description and within your relevant legislative and ethical guidelines.

Perhaps you studied aspects of your work at school (e.g. in legal studies). You might know a bit about children and young people and legal responsibilities to them from training a sports team, leading a group such as Cubs or Brownies, or babysitting for family and friends. You might be able to draw from your life knowledge as a parent or from having younger brothers, sisters or cousins.

Now identify five things about guidelines for the protection of children you would like to know more about.

You have just completed a very simple ‘self-evaluation’ or ‘self-reflection’ exercise that is an important skill when it comes to maintaining knowledge and skills. It is important to be able to identify your own areas of strength and areas that you need to work on or improve. You can then use this as a basis for planning your professional development.
No-one knows everything there is to know about caring for children or young people. This would be an unrealistic goal. Government regulations and ideas about best practice change over time. The best approach is to be flexible, and aware that there is always something new to learn or another way of doing things that may be better. Maintaining knowledge and skills in order to ensure we are supporting the interests and rights of the child or young person is an ongoing process for all those involved in working with children or young people. One important way that we can do this is by being aware of any existing legislation or changes to legislation in regard to the care and protection of children and young people. All staff should complete some sort of update training in child protection annually and your employer should ensure that this occurs.

As society has changed, so too have our values and attitudes towards children, young people, and their protection. Current thinking about protection of children and young people is also constantly changing and the challenge is for modern societies to protect and nurture children and young people, to foster their rights and to work towards a society that is sensitive to the needs of children and young people.
Each worker in child-related employment has a set of legally based obligations which determine how he or she works in the area of child protection. If you work in children’s services these are usually contained within the regulations attached to the State Act relating to children’s care and protection. Where a service is not regulated under an Act, it may be contained within your service standards. For example, if you work in or are learning about Out of School Hours Care, you should also refer to the National Standards for Outside School Hours Care (1995) or your Accreditation document.

If you are working in a field that requires you to be registered, your registering body will be able to provide you with these standards. Your agency policies and procedures will also refer to relevant State legislation.

Before starting this section you should download these regulations or standards from the relevant website (see ‘General Resources’).

The Children’s Services Regulation 2004 was made under the Children and Young Person’s (Care and Protection) Act 1998. Some of the Child Protection specific sections include:

- Part 6 Div 2 75-76 Access to Children and Information and Access to be denied to certain persons
- Part 7 Div 1 85 Policies to be made available
- Part 7 Div 2 98 Confidentiality guidelines
- Part 8 118 Probity Checks.

Other child health and safety related sections include:

- Part 4 Div 1 51 Employment of staff
- Part 4 Div 1 53 Staff to child ratios
- Part 6 Div 1 65 Interactions with children
- Part 6 Div 1 66 Supervision of children
- Part 6 Div 1 67 Child Health
- Part 6 Div 4 80 Illness, Accident and Emergency treatment.

Some recent changes to the Children’s Services Regulation 2004 have included requiring services to install safety glass in areas accessible to children; and a change in the maximum
group size for children from 25 to 20. Since January 2008 all centre based children’s services now have to comply with a requirement to have a room or area that is used only for sleeping children under two years of age. Also, two primary care staff must now check that children are not left in the centre at the end of the day. These changes have been put in place to protect the safety and wellbeing of children in care.

Ensuring children’s health, safety and wellbeing

The health, safety and wellbeing of staff, children and young people is paramount in providing an effective quality care program. We have a legal and moral obligation to ensure this occurs. Health and safety policies are an important way of communicating information and procedures to ensure a safe and healthy work environment. This includes having and practising evacuation and fire drill procedures, health and hygiene practices such as cleaning and hand washing, managing and preventing infectious diseases, exclusion of those who are sick, safe administration of medications, sun protection, child protection, safe manual handling, following OH&S legislation, managing traffic, transport and excursions.

Carers can reduce accidents to children by supervising them adequately (eg maintain staff : child ratios); have an understanding of how accidents happen; educate children and staff; foresee dangerous situations (risk assessment, scanning the environment, and taking safety precautions such as sun protection or removal of hazards); and by providing a safe environment that meets regulatory requirements (the minimum requirement). Staff can also implement safety checklists in the indoor and outdoor environment to ensure a safe environment.

All staff members have a Duty of Care to provide for the safety of children and young people in their care at all times. This means that the agency needs to show that it has developed and followed clearly established policies and procedures that ensure their health and safety. These policies and procedures also help to protect services against claims for liability for negligence.

Another way that a safe environment can be provided for children and young people is by ensuring that those people caring for them have been screened to identify those who are legally prohibited from working in child-related employment.
Working with Children legislation

All people who look after children and young people have a responsibility to provide a safe environment for them. There is no single national framework for setting out requirements for obtaining Working with Children or Probit checks but most state and territories have now included legislation to cover this. The National Quality Framework will also require that every adult who works with children understands and meets their obligations under the relevant state Child Protection legislation.

In 2000, legislation was introduced in NSW that applied to all people working with children and young people:

- *Commission for Children and Young People Act 1998* (which established the NSW Commission for Children and Young People)

- *Child Protection (Prohibited Employment) Act 1998* (which prohibited people convicted of certain serious offences from working in child-related areas). This Act has since been repealed and incorporated within the above act at Section 33B.

These laws made up the Working with Children Check. The goal was to create workplaces where children are safe and protected. Similar legislation has now been introduced in other States to screen those seeking work in child-related employment. Working with Children Checks is done in NSW, Northern Territory, Victoria and Western Australia. Queensland has a Blue Card system that applies to child-related occupations and volunteering. In the ACT, Tasmania and South Australia individual employers may require police checks at their discretion.

The current legislation referring to background checking in child related employment is the *Commission for Children and Young People Act 1998*. Among a number of changes, the Act has extended the offences which are to be checked as part of background checking procedures for employees in child related employment.

The NSW Commission for Children and Young People (CCYP) was established to listen to children and young people and to promote their safety and well being. One of the organisation’s major functions is to facilitate screening to
determine the suitability of people for child-related employment.

**Working with Children Checks**

The Act requires mandatory background checks (also known as probity checks) for:

- Preferred applicants for paid child-related employment.
- Anyone seeking to provide foster care to children.
- Anyone employed as a minister, priest, mufti, rabbi or other religious leaders or spiritual officials of a religion entering into child-related employment.

Child-related employment is defined under the CCYP 1998 legislation as being of the following kind that primarily involves direct contact with children where that contact is not directly supervised by a person having the capacity to direct the person in the course of the employment.

- Performance of work under a contract of employment, or
- Performance of work as a self-employed person or as a subcontractor, or
- Performance of work as a volunteer for an organisation, or
- Undertaking practical training as part of an educational or vocational course, or
- Performance of work as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of a religion or other member of a religious organisation, or
- Performance of the duties of an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

Students on work placement must be supervised at all times and are supernumerary – they are not primary child carers and therefore not required to have a Working with Children Check at this time. They are however required to complete a Volunteer / Student Declaration form. Those who mentor disadvantaged children or who provide intimate personal care to disabled children should complete the Applicant Declaration and Consent form used for applicants for paid work in child-related employment.
Child-related employment is any employment that primarily involves direct contact with children that is not directly supervised, such as:

- providing child protection services
- pre-schools, kindergartens and child care centres, including management, bookkeepers and cooks
- schools and other educational institutions
- residential care
- detention centres and refuges
- hospital wards
- clubs, associations, cultural, sporting and recreational groups, and
- any religious organisation
- entertainment venues
- babysitters for commercial agencies
- fostering
- taxi services for children with disabilities
- private tuition
- child health services
- counselling
- school buses
- overnight camps for children
- and employment prescribed by regulations.

As part of the reforms to the child protection system set out in the *Keeping them Safe* Report amendments to the *Commission for Children and Young People Act 1998* have necessitated Working with Children Checks to additional categories of persons:

- people who provide, manage or control prescribed children’s services
- authorised supervisors of prescribed children’s services
- Child Wellbeing Unit assessment officers
- principal officers of a section 139 designated agency (a Public service department or service that provides out-of-home care)
- principal officer of an accredited adoption service provider
- contractors and self-employed persons whose work involves direct unsupervised contact with children
- high risk volunteers, particularly those who mentor children who are disadvantaged or who provide personal care to children with a disability.
Changes to the ‘Working with Children’ checks took place in March 2009 for those working in children’s services across New South Wales. The changes are the result of new guidelines from the Commission for Children and Young People and the other authorities responsible for doing criminal record checks. There are new ‘Working with Children Check’ consent forms, with separate forms for licensees and another for Authorised Supervisors.

Community Services now use a ‘100 point’ identity check to verify the identity of people being screened for children’s services licensing. The new consent forms for Community Services can be accessed from their website at: http://www.community.nsw.gov.au/for_agencies_that_work_with_us/childrens_services/licensing_forms/new_service_forms.html

A person seeking work that entails unsupervised or direct access to children must complete a NSW Working with Children Check – Applicant Declaration and Consent form. Forms can be found on the Commission for Children and Young People website at http://kids.nsw.gov.au/.

All preferred applicants for child-related employment must be asked to complete Applicant Declaration and Consent form. This form asks applicants to declare that they are not a Prohibited Person, and to give permission for the Working with Children Check to be completed.

A Prohibited Person includes a registrable person under the Child Protection (Offenders Registration) Act 2000. Declarations must be stored in a secure location and kept for 2 years after that person ceases employment with the current employer. The Commission for Children and Young People may request Declarations for auditing purposes.

Examples of child related employment in education include:

- school based and TAFE positions
- non school based teaching service positions
- National Art School positions
- administrative office positions, where the office is co-located within a school.

In the NSW Health system Criminal Record Checks are completed on:

- All new staff and visiting practitioners
- All current employees and visiting practitioners
Students undertaking placements

- Visiting RTO assessors

- Volunteers

- Persons engaged in any other capacity.

The Working with Children Check is to help employers select suitable employees and approved screening agencies provide an assessment of risk results only to employers. The check is not transferable between employers. Only commercial agencies can request a Working with Children Check. The Checks are not currently available for volunteers or students on placements, but they are required to complete a Volunteer/Student Declaration. If an employer requires a Working with Children Check from a volunteer then the person can sign a form for the employer but cannot get one done themselves.

**Certificate for Self Employed People in Child-Related Employment**

From 1 May 2010 self employed people who work with children, such as music and dance tutors, sports coaches and nannies, will need a certificate that says they are not banned from working with children in New South Wales. The certificate shows the person’s name, certificate number, date of issue and expiry. The certificate is security coded, watermarked and the words Original and Certificate are printed in heat sensitive ink.

When a self employed person is engaged to work with children the person who engages them, eg a parent should check their certificate. This can be verified on the Commission for Children and Young People website. This is different to the Prohibited Employment Declaration. The certificate is done through appointment at a police station, a ‘100 point’ identity check and payment of a fee. The form and procedure is downloaded from the Commission for Children and Young People website.

**Approved screening agencies for the Working with Children Check**

There are approved screening agencies that undertake the Working with Children Check on behalf of all employers in New South Wales. Employers should register with the agency that represents the industry in which they operate. This is usually an agency that provides funding or licensing to the
Examples of approved screening agencies include the following:

- NSW Commission for Children and Young People
- NSW Department of Education and Training
- NSW Department of Health
- NSW Department of Arts, Sport and Recreation
- Catholic Commission for Employment Relations.


Resources for Child Safe, Child Friendly workplaces for employers can be found at:


An employer in a child-related workplace must do the following in regard to the Working with Children Check:

- register with an approved screening agency
- identify child-related positions in the organisation
- ask each preferred applicant to declare if they are a ‘prohibited person’ before offering paid or unpaid ‘child-related’ employment
- check the preferred applicant’s background before offering them ‘child-related’ employment
- include information about the Working with Children Check in all advertisements or information packs for ‘child-related’ employment positions
- notify the Commission for Children and Young People if an applicant is rejected because of issues raised in the checking process
- ensure the privacy and confidentiality of any information obtained through the checking process.
All employers, not just those in child-related workplaces, must:

- notify the Commission for Children and Young People of any relevant disciplinary proceedings that have been completed against an employee since July 3 1995

- notify the Commission of any wrongly notified relevant employment proceedings

- keep records of investigations and findings leading to relevant employment proceeding notifications for future reference

- provide, upon request, appropriate information to screening agencies relating to employees who have been subject to completed disciplinary proceedings.

Employers must not:

- employ or continue to employ a ‘prohibited person’ in a position that primarily involves direct unsupervised contact with children

- employ a person in a child-related position without asking that person if he or she is a ‘prohibited person’

- employ a person in a paid position primarily working with children, foster carers or ministers of religion without first checking their background

- Inappropriately obtain or tell another person about information obtained during the checking process.


Screening procedures are there to protect children and young people. It is a legal obligation and does not indicate distrust by the employer. It offers parents and carers reassurance and demonstrates the integrity of the service being offered. Workers are ensured that confidentiality is maintained.

**The screening process**

The screening process incorporates:

- An identity check – license or passport
• a relevant national relevant criminal record check for charges and / or convictions (including spent convictions)

• a check of relevant Apprehended Violence Orders (AVO) taken out by a Police Officer or other Public official for the protection of a child/ren

• any child protection prohibition orders notified to the Commission for Children and Young People

• a review of relevant employment proceedings the applicant may have had in previous employment which involved child abuse, sexual misconduct and acts of violence which involved children, were directed at children or took place in the presence of children

• any other relevant probity checks relating to the previous employment or other activities of the person, estimates of risk relating to that employment, or disclosures of those checks.

(A relevant AVO is made under a court order under Part 15A of the Crimes Act 1900; or is an external protection order registered in NSW.)

Checks are conducted in the Health system for the following convictions:

• sexual offences

• serious offences involving threats or injury to others

• other serious offences but only those directly relevant to the duties of the person.

A serious offence is defined as:

• an offence committed in NSW and punishable by penal servitude or imprisonment for 12 months or more

• an offence committed outside NSW that would have been punishable by penal servitude or imprisonment for 12 months or more if it had been committed in NSW.

Criminal Record Check for services outside NSW Health:
certain facilities such as Department of Ageing, Disability and Home Care (DADHC) and community care services, e.g. youth refuges generally apply the requirements described as per NSW Health policy directive and requires students to undertake a criminal record check prior to work placement.

If any relevant records are found during the background check, then the Commission for Children and Young People will undertake an assessment of risk of employing the applicant in a particular position. This assessment takes into account the following risks:

- your personal record
- risks reflecting the position you have sought
- the employers level of organisational risk management.

The assessment of risk report is then provided to the employer or their employer-related body, who then makes the decisions as to whether to employ the person, unless the applicant is a ‘prohibited person’. Details of relevant records will not be released to current or prospective employers.

As part of the Working with Children Check, applicants for child-related employment are also asked to state whether they are a prohibited person and to sign a declaration that they are not a prohibited person. Sometimes you will see the Working with Children check referred to as a "probity check". This applies not only to applicants for paid employment, foster carers or religious leaders, but includes self-employed people, volunteers and students on vocational or educational placements. Under the Commission for Children and Young People Act 1998, it is an offence for a prohibited person to apply for, undertake or remain in, child-related employment. Penalties are imposed for non-compliance.

The Commission for Children and Young People Act 1998 s. 33B defines a ‘prohibited person’ as a person who is convicted of the following offences, whether in NSW or elsewhere:

A prohibited person is someone who is a Registrable person as defined in the Child Protection (Offenders Registration) Act 2000 or has been convicted of one of the following offences:

- murder of a child
- serious sex offence, including carnal knowledge
• child-related personal violence offence (an offence committed by an adult involving intentionally wounding or causing grievous bodily harm to a child); or of attempting, conspiring or incitement to commit such an offence

• indecency offences punishable by imprisonment of 12 months or more;

• kidnapping (unless the offender is or has been the child's parent or carer)

• offences connected with child prostitution

• possession, distribution or publication of child pornography or

• attempt, conspiracy or incitement to commit the above offences.

This list summarises detailed provisions set out in section 33B of the Commission for Children and Young People Act 1998.


Under the Child Protection (Offenders Registration) Act 2000, a person who has been found guilty of certain offences against children is known as a "registrable person". That person automatically becomes a "prohibited person" under the Commission for Children and Young People Act 1998. Some prohibited persons can apply for a review of their prohibited status but this does not include somebody who has been convicted of certain sex offences involving a child, of murdering a child or of offences involving the production of child pornography. Conditional orders can result from an appeal that are subject to specified conditions and the person should supply a copy of the order to confirm that the conditions meet the requirements of the position.

Certain Apprehended Violence Orders (AVOs) taken out by police or other public officials to protect children are now also considered when determining the suitability of people for employment in child-related employment.

In the past, all applicants seeking an exemption from being prohibited from working with children were heard by the Industrial Relations Commission or the Administrative Decisions Tribunal. Under a legislative amendment, the
Commission for Children and Young People can now also grant exemptions.

Forms for employers are available on the Commission for Children and Young People website for:

- NSW Working with Children Check – Applicant Declaration and Consent
- NSW Working with Children Check – Volunteer/Student Declaration
- Adult Household Member of a Carer Consent for an adult living in a household that provides family day care, foster carer, or other home based care
- Employer – Check an Applicant
- Employer – Register as Child-Related Employer
- Employer – Update registration details
- Employer – notify Related Employment Proceedings
- Review of Status Application form – for review of prohibited status
- Employer – consent to Related Employment Proceedings Release
- Relevant employment proceedings notification and summary
- Relevant employment proceedings advisory letter

Most of these forms are now available on line for completing and then print out or a hard copy can be printed out and the form completed manually.
NSW Ombudsman’s Office

The following information has been adapted from the NSW Ombudsman website, http://www.ombo.nsw.gov.au/guideorganisations/guidewrkc hildprotiss.html last accessed 20/01/10, and the Commission for Children and Young People website:

**Reportable Conduct**

A reportable conviction is defined under s25A of the *Ombudsman Act 1974* and involves the following kinds of behaviour that involve reportable conduct:

- any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child; or

- any child pornography offence or misconduct involving child pornography; or

- any child-related personal violence offence; or

- an offence of filming for indecent purposes committed against, with, or in the presence of, a child under section 21G or 21H of the *Summary Offences Act 1988*; or

- any assault, ill-treatment or neglect of a child; or

- any behaviour that causes psychological harm to a child, and in any case whether or not the child consents.

This list summarises detailed provisions set out in section 33 of the *Commission for Children and Young People Act 1998*.

Reportable conduct does not involve:

- Conduct that is reasonable for the purposes of discipline, management or care of children, having regard to their age, maturity, and health or other characteristics of the child and to any relevant codes of conduct or professional standards.

- The use of physical force that in all circumstances is trivial or negligible, but only if the matter is to be investigated and recorded under workplace employment procedures.
Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

Conduct of a class or kind exempt agreement changes some of the relevant employment proceeding reporting arrangements for that employer. It also means that the Ombudsman will not hold records regarding these employees unless further, or more serious, allegations are made. However, agencies are still required to investigate and document these allegations so that the Ombudsman can effectively scrutinise the agency’s systems. Class or kind agreements recognise the individual conditions, complaint processes and professionalism that employers provide.

Examples of conduct that would not be considered reportable conduct include touching a child in order to attract their attention, patting a child to sleep, to guide or comfort a distressed child, a teacher raising their voice to attract attention or restore order in a classroom, or behaviour that is established to be accidental. Other examples include providing medical care to a child who is hurt, using reasonable physical force to disarm a child who is trying to hurt themselves, not acting in response to a situation where an employee’s own safety is at risk, or appropriate contact in situations or activities such as sport, drama or dance.

The Ombudsman recognises that employees who work in a nurturing role with children will involve circumstances where it is appropriate to have some physical contact with children and these would not be regarded as reportable conduct. To be excluded the actions must have been reasonable for the purposes of discipline, management and care of children. The requirement that regard must be had to ‘any relevant codes of conduct or professional standards’ highlights the importance of policies and procedures that outline what is acceptable and professional conduct, especially in regard to how children are disciplined. ‘Reasonable’ conduct is acceptable behaviour under an agency’s code of conduct.

Conduct outside work can be reportable, if the employer has the capacity to investigate it and make a finding.

Physical assault is only reportable where it includes all of the following elements:

1. it is an act committed on or towards a child; and
2. it involves either the application of force to a child or an act that causes a child to think that immediate force will be used on them; and

3. it is either hostile or reckless (a reckless act is one where a person would reasonably foresee the likelihood of inflicting injury or fear and ignores the risk); and

4. a child fears that he or she will be harmed as a result of the act, though the harm does not need to actually happen.

Not all application of force is the source of real or feared harm, particularly where the force is gentle. Physical contact which is part of a work relationship is not automatically assault even if there is anger involved.

**Ill-treatment**

Ill-treatment of a child occurs where correction or discipline administered is extreme and excessive for the situation. For example, locking a child in a cupboard as punishment for talking, or tying a child to a chair because they keep getting out of their seat, are excessive and inappropriate forms of discipline. Any discipline that breaches community standards, or that may affect the long-term well-being of the child, is likely to be classified as ill-treatment.

Supplying prohibited drugs to a child is also another example of ill-treatment.

**Acts of Violence**

For an act of violence to be reportable, it must be an act or series of related acts that involves violent conduct; is committed in the course of employment; committed in the presence of a child; and results in injury, either physical or emotional, to the child. An act of violence is not necessarily committed on, or directed at, a child and can include violence to property as well as to people. A reportable act of violence does not include acts which are trivial or negligible, such as throwing a book in anger.

**Behaviour that causes psychological harm**

There are three elements in a finding of behaviour that causes psychological harm. There must be:
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- inappropriate behaviour by the offender;
- significant emotional harm or trauma to a child; and
- a causal link between the behaviour and the harm.

Psychological harm is typically characterised by a consistent or repetitive pattern of behaviour by the employee. Isolated or minor incidents generally do not result in significant psychological harm or trauma. Examples could include extended and ongoing actions that degrade or belittle a child, extended denial of opportunities to participate and develop, or extended restriction of freedom to move.

**Sexual offences**

Sexual offences include sexual assault, the involvement of children in sexual acts or acts of indecency and any sexual threat imposed on a child. Sexual assault refers to sexual intercourse by a person with a child.

Sexual misconduct describes a range of behaviours or a pattern of behaviour aimed at the involvement of children in sexual acts – these are also described as ‘grooming’ behaviours.

**Inappropriate professional conduct**

Behaviours which may demonstrate inappropriate professional conduct or misconduct but would not be regarded as reportable conduct do not need to be reported to the Ombudsman. The particular agency would follow its usual disciplinary procedures and a record be kept of the misconduct. Examples of inappropriate conduct include:

- yelling at a child or group of children
- telling inappropriate jokes to children
- making rude gestures at children
- making inappropriate references to a child
- or discussing personal family issues with a child.

Different matters are required to be told to the Ombudsman and Community Services (CS). Reports to CS need to be made where a person has ‘reasonable grounds to suspect’ that a child or young person has been or is at risk of significant harm. However, the Ombudsman has to be
notified of any ‘reportable allegation’ or ‘reportable conviction’ that is made against a person employed or engaged by an agency whether or not there is any supporting evidence that the reportable conduct has taken place. This is an additional responsibility placed on agencies. Even though CS, the Police Force or a Joint Investigation Response Team may be investigating an allegation against an employee of an agency, the agency is still required to notify the Ombudsman of any such allegation within 30 days.

Role of the Ombudsman

The role of the Ombudsman includes monitoring the investigation of, and in some cases investigating, allegations of reportable conduct of a child (‘child’ is a person under the age of 18 under the Ombudsman Act) made against employees (which includes volunteers) in government and non-government agencies, such as children and young people’s services, schools and public authorities. The Ombudsman assesses the child protection procedures in relation to the Act and the investigative practices of agencies in relation to employees. Feedback can be provided to agencies in an effort to improve practices in the agency.

Note: The Ombudsman Amendment (Child Protection and Community Services) Act 1998 is specific to NSW and now incorporated within the Ombudsman Act 1974.

Which agencies have to notify the Ombudsman?

There are three designated types of agencies that must notify or report.

1. Designated government agencies

These include the following:

- Department of Human Services (Community Services, Corrective Services, Juvenile Justice; Disability, Ageing and Home Care)
- Department of Education and Training
- NSW Sport and Recreation
- Department of Health
- Area Health Services
2. Designated non-government agencies

These include the following:

- non-government schools
- child care centres, or residential child care centres that are regulated
- agencies providing residential care
- designated agencies under the *Children and Young Persons (Care and Protection) Act 1998*
- affiliated health corporations or organisations within the meaning of the *Health Services Act 1997*, eg certain private hospitals, the Red Cross Service, the Royal Flying Doctor Service, and
- any other body prescribed by a regulation for the purposes of this definition.

3. Other public authorities

All public authorities, such as local councils, police and other government services, are covered by the Act. Where a public authority, such as a local council, runs a child care centre under the *Children and Young Persons (Care and Protection) Act*, the child care centre is a designated agency in its own right. This is because Community Services licenses the service, not because it is a service provided by the public authority.

Does the agency for which you work have responsibilities to report allegations of ‘reportable conduct’ to the Ombudsman? If you are not sure, discuss this with your facilitator or check the Ombudsman’s website – see Resources section.

For public authorities, only allegations arising in the course of the work of the agency are to be reported to the Ombudsman. For designated agencies, it does not matter how or where the alleged reportable conduct is said to have taken place.

Allegations against employees of designated agencies need to be notified to the Ombudsman, whether the abuse is alleged...
to have taken place in the course of the person’s employment or in any other situation, including in the home or in a community or recreational setting. This applies to such employees as health workers, teachers, welfare workers, prison officers, and sport and recreation leaders.

As designated agencies, council-run child care centres have different reporting requirements than do the rest of the non-designated agency public authorities. Allegations or convictions of reportable conduct of a child or young person against employees of a child care centre must be reported to the Ombudsman whether the incident occurred during or outside work hours.

Why do you think that the reporting criterion for the Ombudsman demands a higher standard of behaviour from employees than from members of the general community?

Just as allegations of reportable conduct of a child or young person against employees must be notified to the Ombudsman, the Act also requires that any reportable convictions against employees of designated agencies and public authorities be notified to the Ombudsman. This conviction does not have to be related to the person’s work. A conviction refers to an offence involving reportable conduct and includes a finding by a court that the charge was proven, even if the charge does not proceed to a conviction.

A conviction can become ‘spent’ after completing a crime-free period (usually 10 years in courts other than the Children’s Court). All convictions are capable of being spent except for those involving prison sentences of more than six months, convictions for sexual offences, and convictions against incorporated bodies. Generally if a conviction is spent, a person is not required to disclose this information, except when applying for positions as judges, police officers, prison officers, teachers, teachers’ aides, or providers of child care services.

Proven charges, where a court has found a matter proven but no conviction is recorded is still regarded as having a reportable conduct conviction and needs to be notified to the Ombudsman.

Who makes the report?

The Head of the Agency is responsible for making a report, regardless of whether or not the child has been harmed or not
and regardless of whether the alleged behaviour is thought to have occurred. The head of the agency is usually someone who has the overall responsibility for the day-to-day administration and management of an organisation (e.g., the Director General of Health). In a child care centre it will be the licensee or equivalent (Authorised Supervisor, Centre Director or Coordinator). In an agency providing substitute residential care it will be the Executive Director.

Who is regarded as an employee?

An employee is anyone employed by an agency who receives a group certificate for taxation purposes (even if they are not required to work with children or young people in that position), and anyone engaged by the agency to provide services to children and young people, such as contractors, sub-contractors, foster carers, volunteers, work experience students (for example TAFE or tertiary students), and clergy members.

What responsibilities does the Head of Agency have?

The Ombudsman Act places certain responsibilities on the Head of Agency and includes:

- Setting up systems to provide a safe environment for children
- Ensuring systems are in place for recording and responding to allegations in relation to child protection (e.g., memoranda, policies, procedures, codes of conduct or forms)
- Notifying the Ombudsman of reportable allegations or convictions made against an employee of the agency within 30 days of becoming aware of the allegation or conviction
- Providing information to the Ombudsman as required about the systems mentioned above
- Making arrangements within the agency that require employees to inform the Head of Agency of any reportable allegation or conviction as soon as possible
- Notifying the Ombudsman of whether the agency plans to take disciplinary or other action in relation to an allegation
- Notifying the Ombudsman of any written submissions that an employee who is the subject of an allegation wishes to have considered in deciding what relevant employment or other proceedings should be taken

- Providing the Ombudsman with documentation as requested to assist the Ombudsman in monitoring of an investigation conducted by or on behalf of the agency

- At the conclusion of the investigation provide the Ombudsman with a report, copies of all statements and any other documents on which the report is based, as well as advise about the action that has been taken with respect to the employee who had the allegation of reportable conduct or conviction

- The Ombudsman may also require additional information to determine that the investigation was properly investigated and whether the action taken was appropriate

- If the Ombudsman notifies the agency that they intend to investigate then the Head of Agency must defer the investigation

- Comply with any other obligations imposed under the Ombudsman Act.

**What are the initial actions that an agency must take once an allegation has been made?**

The initial response should be to clarify the allegation, the identity of the person making the allegation and of the employee against whom the allegation is made. A determination needs to be made as to whether the allegation is reportable conduct or exempt from notification. The risks to children in the agency’s care should be assessed and any necessary interim action taken to ensure the safety and wellbeing of the children during the investigation process. Confidentiality and procedural fairness must be ensured. Support needs of both the child and the employee who is subject of the allegation must be addressed. People to consult for advice are identified (e.g. Community Services, the Ombudsman, or other peak body or agency) or who might provide relevant information, such as witnesses to the alleged incident.

The words used by the person making the allegation must be recorded verbatim (word for word). An assessment must be
made as to whether a report needs to be made to Community Services or the police and then the report must be made promptly. Part A of the Ombudsman’s notification form (available on the website) must be completed and sent to the Ombudsman’s office within 30 days. All documentation collected in relation to the investigation must be kept in a safe and secure place.

An initial risk assessment to determine the employee’s current duties while the investigation is being carried out must also be made. For example no action, increasing supervision, restricting current duties, transferring to alternate duties, suspending with pay or without pay, not re-employing them, or it is not relevant as the matter is finalised.

An investigation plan is then made that ensures the key witnesses are identified and evidence collection procedures are in place. The steps of the investigation must be documented and records kept. The parents or carers of the child involved should be informed and their permission sought to interview the child. Minutes of all meetings should be kept, including details of all questions asked and responses, communication with all stakeholders. Have records verified, signed and dated. Your records should form a chronological history of the investigation.

**What does the Ombudsman do about a report or notification?**

The Ombudsman may monitor the progress of the investigation by a designated agency head, or a representative of the Ombudsman may be present as an observer during interviews and may confer with the persons conducting the investigation about the conduct and progress of the investigation. The Ombudsman’s office may also request specific documentation from the head of the agency during the investigation. The role of the Ombudsman is to ensure that if an allegation is levelled against an employee the investigation is carried out correctly and appropriate action is taken following the investigation. At the end of the investigation, the results and actions taken are to be reported to the Ombudsman. Additional information may be requested to determine whether the investigation was properly investigated and appropriate action taken. The Ombudsman can also conduct a direct investigation into the handling of or response to any allegation or conviction against an employee of a designated agency.
Why does the Ombudsman audit some agencies?

As part of their role of scrutinising agencies, the Ombudsman may randomly select an agency to audit. Agencies may also be selected if there are concerns that they are not reporting reportable allegations and convictions or complying with the Ombudsman Act 1974. When a decision to audit has been made the agency will be advised and a visit proposed. The agency’s policies and procedures will be examined and analysed (child protection policy, critical incidents reporting policy, behaviour management policy, code of conduct, induction policy for staff and discipline or dismissal policy for staff). Staff will be interviewed and feedback given to the agency regarding good practices and areas for improvement.

What if Community Services or NSW Police decide to investigate?

Two pathways may be followed: either a concurrent investigation or an agency only investigation. Where there is a concurrent investigation (Community Services or NSW Police are also investigating) the agency should assess the risk posed by the employee and liaise and coordinate with Community Services (CS) or NSW Police regarding roles and responsibilities. Advice should be sought before taking any action that might jeopardize the investigation or safety of any witnesses. When CS have been involved you may be entitled to request information under section 248 of the Children and Young Persons (Care and Protection) Act 1998 that relates to the safety, welfare and wellbeing of a particular child if that information is likely to assist you to decide the risk posed to the children by the employee and any other information that may be relevant to the investigation. You will need to complete an Information Request Form. When the police have been involved requests should be made to the Police unit investigating the matter, which is either the Local Area Command or the Child Protection and Sex Crimes Squad.

An agency-only investigation occurs where CS or NSW Police decide not to investigate a matter. The Head of Agency, or a nominated delegate, will be expected to conduct a risk assessment, gather the evidence, and make a finding based on the evidence gathered during the investigation.

Planning the investigation

The Head of Agency, or delegate, must keep a record of the planning process. Any actual or potential conflicts of interest
The types of information that might be gathered would include:

- Direct evidence (from witnesses, the child or the employee)

- Physical evidence such as rosters, emails, objects or by inspecting locations to check positions and make drawings or diagrams of where the alleged incident occurred

- Evidence from people with specialist knowledge, eg medical practitioners

During the investigation process the Head of Agency must ensure that:

- all people are reminded of the importance of confidentiality

- The child’s parents or carers are advised that an allegation has been made and their permission is sought to interview the child

- Relevant people are interviewed including witnesses and the child if appropriate

- All interviews must be adequately recorded, including details of the questions and responses. Records should be verified, signed and dated by all involved.

- The initial assessment of risk should be reviewed and further action taken to address any concerns if warranted

- Any other allegations that emerge during the course of the investigation also need to be documented.

- The reasons for all decisions should be documented, including reasons for decisions not to take action. All documents are to be placed in a confidential file.
Employee response to an allegation

When all the relevant information has been gathered the allegation should be put to the employee, giving them an opportunity to respond. They should be advised that they do not have to immediately respond as they are entitled to seek advice and their response should be given in a recorded or written form. Any support person is there only as an observer and may not interrupt the interview and should be advised to keep details confidential. The employee’s rights and responsibilities should be clearly explained.

Making a finding

Once all information has been gathered then a recommendation should be made based on the outcome of the investigation. The finding should inform the agency’s final risk assessment and any action taken to mitigate ongoing risks. Once all the evidence is gathered that either supports or refutes the allegation a recommendation may be made about the outcome of the investigation. When the allegation is likely to result in a serious outcome for the employee, such as dismissal, it is necessary to have enough evidence to be reasonably satisfied that the allegation was sustained and correct employment procedures must be followed.

The finding may be that the allegation is sustained (the conduct did occur), not sustained (insufficient evidence), false (reportable conduct did not occur), vexatious (made without substance and with the intent to be malicious or cause distress to the person against whom the allegation was made), misconceived (the allegation was based on a misunderstanding of what actually occurred and was not reportable conduct or an act of violence) or it was not reportable conduct (for example the use of force that was trivial or negligible, was reasonable in the circumstances or was accidental).

When there has been a finding that reportable conduct has occurred, employers are required to notify the Commission for Children and Young People (CCYP) of all completed relevant employment proceedings or where there is some evidence that reportable conduct occurred but was not sustained.

When a relevant employment proceeding is reported to the CCYP, the findings need to be classified as either Category One or Category Two. Category One will trigger an estimate of risk if the person has a Working with Children background check but not if they are Category Two. Category One will be based on findings of reportable conduct, if an act of violence
took place, or there was some evidence but it was not conclusive and the Head of Agency believes that the findings should be considered in an estimate of risk. Category Two findings are also inconclusive and will only be considered where there are other relevant records.

What if an allegation is trivial, minor or obviously untrue?

Any allegation against an employee needs to be notified, regardless of your opinion of the seriousness or accuracy of the allegation and whether or not supporting information is provided. This is necessary for a number of reasons.

- A minor allegation may, upon investigation, reveal more serious misconduct or a pattern of behaviour that warrants further scrutiny or a management response.

- Where the allegation is incorrect or without foundation but made in good faith, a transparent investigation will provide reassurance that the finding was the correct one, and help avoid subsequent doubt or criticism of the finding.

- Where the allegation is false or malicious, a transparent investigation will provide that same reassurance and may uncover sufficient information to warrant action being taken against the complainant.

- At the conclusion of the investigation conducted by either the employer or the Ombudsman, a finding of sustained or not sustained should be made and the employee advised of this finding.

What happens if the allegation is false or malicious?

The same process is to be used with all allegations, even if an early opinion has been formed about the truth or otherwise of the allegation. The reasons for this include the following:

- The allegation may actually have some substance.

- The timing of an allegation may cause suspicion if it appears to have been made to effect some unrelated change or action. There may, however, be a good reason for this.
A member of staff who has a malicious allegation made against them needs to be afforded an adequate opportunity to respond and have the matter properly investigated. This ensures that the matter is dealt with, and is seen to be dealt with, properly and cannot be raised again, unless new information comes to light.

The agency needs to be seen to be dealing with matters fairly and impartially. This ensures that the investigation process is transparent and consistent.

A transparent investigation process will assist the agency to justify its actions if there are complaints of bias from the person making the allegation or other parties.

It is in the employee’s interest to have the fact recorded that an allegation was found to be malicious or false. This will assist in the assessment of any similar complaint made by the person about that employee or any other employee at any future time.

What are the rights of the employee against whom allegations are made?

Employees who have had allegations made against them are entitled to:

- the right of appeal
- The right of access to their union – if an allegation is made the person involved should contact their union representative before making any statements. Advice can be provided on the most appropriate response and urgent legal advice can be sought if necessary
- the right to have a support person present,
- the right to be kept informed of progress (as appropriate without compromising the investigation)
- the right to protection from harassment, victimisation or threats
- the right to complain to the Ombudsman’s office.

A support person can provide support and assistance to the child, young person or staff member. They cannot, however, answer on behalf of that person.
How do you notify the Commission for Children and Young People of a relevant employment proceeding?

To notify the Commission for Children and Young People of a relevant employment proceeding, you must:

Complete the Relevant Employment Proceedings Notification Form found on the Commission for Children and Young People website and then submit the form to the Commission. Notification should be made within one month of completing a relevant employment proceeding.

The Head of Agency should also complete the Relevant Employment Proceedings Summary and keep it with agency records. This form records the information which will be required by an Approved Screening Agency when undertaking an estimate of risk.

The employee must also be notified that a report has been made to the Commission of a relevant employment proceeding involving them. This is to be done on the Relevant Employment Proceedings Employee Notification Letter which can be found on the Commission website. Under the Freedom of Information Act 1989 where an employee requests access to documents employers are obliged to show them all related documentation.

Withdrawing a relevant employment proceeding notification

If a notification has been made to the CCYP about a relevant employment proceeding by a Head of Agency or employer and later decides that it is not a relevant employment proceeding a request must be written to the Commission that the notification be removed.

Review of categories of relevant employment proceedings

The Commission can reclassify categories in such circumstances as a request by employers where sufficient evidence exists, where further notifications are made or where an Approved Screening Agency has required the review during an estimate of risk. To review or change the categories a written submission to the Commission will be considered in regard to the circumstances surrounding the conduct, the nature and seriousness of the employee’s behaviour and of the disciplinary action that has been taken.
Protected disclosure

Protected disclosure under the Protected Disclosures Act 1994 means that protection is provided for public sector officials to disclose corrupt conduct (including abuse of children and young people), maladministration and serious waste in the public sector. This legislation makes it a criminal offence to take detrimental action in reprisal against a person who makes a protected disclosure.
### Summary of employment and child protection legislation in NSW

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<tr>
<td><strong>What is covered?</strong></td>
<td></td>
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<tr>
<td>Persons with convictions for serious sexual offences are prohibited from working in child-related employment. This may be paid or unpaid and involves direct and unsupervised contact with children and young people. Prohibited employees cannot apply for or remain in child-related employment.</td>
<td>Government, some non-government, and public authorities must report allegations of reportable conduct by an employee to the Ombudsman within 30 days. Requires the Ombudsman to scrutinise systems, monitor investigations and to investigate complaints about agency inappropriate handling of investigations</td>
<td>Makes background checking mandatory for the screening of preferred applicants for specified child-related employment. The applicant’s background is checked for Relevant criminal records, relevant AVOs and relevant employment proceedings. The CCYP must also be informed of completed disciplinary proceedings or allegations of reportable conduct by an employee.</td>
</tr>
<tr>
<td><strong>Roles and responsibilities of employers and employees</strong></td>
<td>Employees must tell the head of the agency of any reportable allegations or convictions involving the employee inside or outside of their employment. Employers must</td>
<td>Prospective employees must agree to employment screening and provide appropriate information and referees to employment screening agencies.</td>
</tr>
<tr>
<td>Inform the employer if you are a prohibited person and not remain in child related employment if you are a prohibited person. If you are an employer you must ask</td>
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Prospective employees if they are prohibited persons, establish that existing workers are not prohibited persons and not employ a person who is a prohibited person. Employees will be required to sign a declaration stating that they are not prohibited persons.

Report these allegations to the Ombudsman within 30 days. Agencies must conduct investigations into allegations or convictions and take action as required.

Conduct employment screening by an approved screening agency. Notify the CCYP of relevant employment proceedings and of applicants not offered employment as a result assessment by an approved screening agency.

Protecting yourself from allegations of misconduct

Most of the recommendations that follow relate to best practice and workers acting in a professional manner. Remember that we have a duty of care to maintain the health, safety and well being of the children and young people in our care. We also have a code of ethics that we follow as professionals. You may like to go back and have another look at this now.

Professional boundaries

Maintaining professional boundaries is important in protecting yourself from allegations of abuse or misconduct. Your working relationship with your clients should follow some simple principles:

- Ensure the emotional, psychological and physical safety of children and their families.
- Interactions should be respectful and professional and cannot be misinterpreted as anything other than a professional interest.
- Being transparent in the way that we undertake our work and in what we can or cannot offer families (see Work within our job description, Chapter 3).
- Being consistent in the performance of our duties and commitments. When we are reliable, trustworthy and predictable children and young people know what to expect (see Chapter 3).

- Focus on the needs of children and young people – put their needs first.

- Be aware of our own values and attitudes (see Chapter 4).

Some suggestions to help you avoid being accused of child abuse or inappropriate conduct include the following.

- Remember that any close physical contact should be initiated by children, not adults. Avoid touching a child or young person unless it is absolutely necessary, as this could be misconstrued as unwarranted or inappropriate touching by the child or young person.

- Never use physical punishment of any kind. Do not use inappropriate locations (e.g. storerooms or cupboards) or social isolation as punishment.

- Beware of the power of speech and avoid the use of mockery. Do not ridicule or belittle children or young people. Avoid making comments or jokes that involve sex, race, religion or reference to a child or young person’s physical appearance.

- Criticism should be just and relevant. Avoid scapegoating particular children or groups of children or young people. Avoid making excessive or unreasonable demands or using any form of verbal abuse. Provide feedback in a constructive manner.

- Develop a non-confrontational behaviour management style. Respond to provocative behaviour in a calm manner to help diffuse difficult situations. Seek help from your supervisor when needed.

- Avoid putting yourself in situations that could provide opportunities for allegations of improper conduct, such as carrying students in your own car if you are a teacher or favouring a particular child or young person. Development of ‘special’ relationships could be viewed as ‘grooming’ behaviours.
- Maintaining appropriate boundaries – avoid establishing personal relationships outside the employment relationship; be aware of professional boundaries when facilitating on-line learning so that it does not become a social rather than educational activity. Avoid inappropriate personal correspondence, including electronic communication such as mobile phones or on-line social networking tools.

- Be alert to cues from children and young people about how comfortable they are in your proximity and respect their individual needs for personal space.

- Explain any physical contact in practical demonstrations before the activity – what it involves and what you will do – to avoid misinterpretation.

- Be aware of cultural norms that may influence how your behaviour is interpreted towards children and young people.

- Always follow policies and procedures as directed.

- Avoid the use of physical restraint. Report and document any use of physical restraint or violence involving children or young people. This provides important information if an allegation is made about the related conduct of a staff member.

- Actively supervise children and young people in all learning situations. Clearly instruct and supervise them when operating equipment.

If you follow these simple guidelines you can minimise or eliminate allegations being made against you. You should also be aware of actions by other staff which may indicate areas of concern. These could include staff who single out one particular child, who isolate children or use caregiving practices that are inappropriate such as force-feeding or locking children away; touching children inappropriately; spending time with children out of sight of other staff or when a child is wary of certain adults or seem frightened of them. Staff who do things that are not part of their job description may also create suspicions of concern. Refer back to your service policy for guidance on what to do if you are concerned.
Other employment related legislation

Employees of different State or Territory governments also have legislation that defines their employment as public servants. Some examples of associated legislation include the following:

- *Anti-Discrimination Act 1977* (No 48)
- *Children and Young Persons (Care and Protection) Regulations 2000*
- *Commonwealth Privacy Act 1988 – Privacy Amendments (Private Sector) Act 2000*
- *Health Records and Information Privacy Act 2002* (No 71)
- *Health Services Act 1997*
- *Occupational Health and Safety Act 2000* (No 40)
- *Occupational Health and Safety Regulations 2001*
- *Privacy and Personal Information Protection Act 1998*
- *Privacy and Personal Information Protection Act 1998*
- *Workers Compensation Act 1987*
- *Workers Compensation Legislation Amendment Act 2000* (No 87)
- *Workers Compensation Regulation 2003*
- *Workplace Injury Management and Workers Compensation Act 1998* (No 86)
- *Teaching Service Act 1980 and the Teaching Service Regulation 2007*
- *State Records Act 1998*
- *Privacy and Personal Information Protection Act 1998*

As you have now seen, working in child-related employment carries many legislated roles and responsibilities.
Learning activities

1. Working with Children
   
a. Amy was convicted of possession of an illegal substance when she was 18. She received a suspended sentence and has had no further convictions. She is now applying for a job working as an untrained assistant in a child care centre and has been asked to fill in a Prohibited Employment Declaration and Consent for a Working with Children Check.

   - Is Amy a prohibited person?
   - Will her past history be revealed to the child care centre?
   - Is Amy a risk to the service?

b. Geoff has been working in a long day care service for the last three years. Today one of the other workers thought that they saw him touching a baby inappropriately while changing the baby’s nappy. What are the correct procedures to be followed in this case?

2. Policies and procedures

   Access your organisation/agency’s (workplace or fieldwork placement) policy and procedures on child protection requirements of staff. Briefly outline the steps your organisation/agency requires you in your current position to take when you have child protection concerns in relation to a client.

3. Parental responsibility and access

   Think about how you could best respond in the following situations. Remember to think about what the regulations governing your agency say, as well as family law.

   Write a response for each situation.

   - James, aged 5, lives with his father, Daniel. Daniel is separated from his wife, Susan. There is no court order about residence or contact as James’ parents
have made their own arrangements. One day Susan unexpectedly rings the child care centre asking to speak to James.

- Heather, aged 10, has told you all about her Aunty Maureen who is currently down from Queensland and staying with her family. Maureen arrives one afternoon to collect Heather from after-school care. Heather rushes to meet her. You have no written or verbal authority from Heather’s parents to allow Aunty Maureen to collect Heather from the centre.

- A car pulls up outside the centre’s fence one day while the children are playing outside. A woman gets out and calls one of the children, Aimee (aged 4), over to the fence and starts talking to her. It turns out to be Aimee’s mum who is not legally allowed contact with her daughter.

4. What workers say about duty of care

What things do you think are true, not true, or partly true? What assumptions do these speakers make?

*As workers we are responsible for injuries.*

This is not true. It assumes that you will be held responsible for all injuries. You do have responsibility to treat injuries, give first aid and comfort the child or young person; however you can’t be held responsible for injuries unless they occur as a result of acts or omissions by you. You need to act reasonably at all times and ensure that you provide a safe environment for those in your care. Being reasonable means ensuring that you are meeting the minimum requirements prescribed in your regulations or code of conduct or ethics.

*Duty of care is about playing the parent role, doing what the children’s parents would do in that situation.*

This is not true. It assumes you have the same responsibilities as parents. A worker in a children’s service never has parental responsibility for children or young people in his or her care.

*I wasn’t there when it happened so I’m not responsible.*

This is not true. It assumes that lack of direct involvement releases the worker from responsibility. You may, however, be held responsible if an injury resulted from an omission by you, for example forgetting to pass on an instruction to another worker.
Management is paying you a wage so you are responsible for whatever happens.

This is not true. It assumes that management has no responsibility. Employers may be held responsible for the negligent acts of their employees, particularly if the employer was found to offer insufficient training, inadequate orientation to the job, or gave an unlawful or unreasonable instruction. This is called Vicarious Liability.

Your duty of care extends to anything that happens on your service’s property in the hours that you are open.

This is partially true. Your duty of care extends to family members, colleagues and visitors to the service. However it also extends to excursions and outings off the premises; and to ‘out of hours’ situations if an injury occurs out of hours but resulted from an act or omission by you while you were on duty, for example you left a rake lying across the footpath and the out of hours cleaner tripped and fell.
Chapter Four: Ethical practice in child related employment

Ethical work practices are essential in child-related employment. This means being aware of our own beliefs and values concerning children, young people, and risk of harm, and how these may impact on our work with children, young people, and their families. Working with vulnerable children and young people means workers must have knowledge of the relevant Codes of Ethics for their profession, and also of agency policies and procedures to follow when ethical dilemmas arise. Ethical work practice is also a key element in preventing systems abuse of children and young people who have experienced harm or risk of harm.

Ethical frameworks provide us with guidance with decisions which involve stakeholders who have competing interests and needs.

**Ethical decision making**

Lawrence Kohlberg studied the moral reasoning of children and young people and developed a staged theory of moral development. Moral reasoning is applied to understandings of right and wrong and is used to make judgements. However, sometimes adults make poor decisions even though they know the difference between right and wrong. When working with children and young people we should act in an ethical manner that promotes and protects the rights and safety of children and young people who are dependent on adults. Sometimes, however, we are faced by ethical dilemmas that may challenge us.

Ethical dilemmas have been defined as “situations that involve conflict between core values and difficult, even painful, choices that result in less than satisfactory outcomes” (Fleet and Clyde, 1993, in Rodd 2006). Often there is ‘competition’ between choices that we can make in a particular situation. It is our core personal and professional values that effect how we will respond when faced with an ethical dilemma.
Ethical behaviour follows accepted principles of right and wrong. Ethical behaviour is informed by consideration of the rights of stakeholders, rules or principles of behaviour (values), a sense of fairness (treating people equally), acting in the common good, and by trying to do the most good with the least amount of harm.

Sometimes unethical behaviour occurs intentionally through the inappropriate use of work resources, the mishandling of confidential information or by encouraging the unethical behaviour of others. Unintentional ethical behaviour might come from poorly constructed policies or unrealistic goals of employers and employees.

Unethical behaviour can also be seen in misuse of the organisation’s property or resources (by leaving early, taking excessively long breaks or intentionally wasting resources; and sabotaging, stealing or damaging equipment). It can be seen in the use of biased behaviours (by using favouritism, blaming others for mistakes or spreading rumours) or personal interactions (sexual harassment, verbal abuse or threatening others). All of these unethical behaviours are to be discouraged in the workplace. What we do need is a set of principles to guide our ethical decision making.

Our code of ethics is helpful in guiding us in situations and incidents that occur in our daily lives and can help us in making decisions that put the interests of children and young people first. Your Code of Ethics is built around professional values and attitudes and is a basis for ethical decision making.
**Principles of ethical decision making**

- Actions taken should be in both you and your organisation’s long term interest
- Your actions should be honest, open and truthful
- You should not take actions that are not kind or do not build a sense of community; a sense of everyone working together for a common goal
- You should not take actions that violate the law; legislation sets a model of minimum standards for us to follow, eg. Regulations
- Have an awareness of your Duty of Care obligations and your Code of Conduct or Ethics
- Actions taken should be for the greater good of our society
- Actions should not infringe on the rights of others or harm the disadvantaged or vulnerable
- Understand your legal and ethical obligations and develop skills in applying these guidelines and standards.
What are the practical steps to ethical decision making?

- In recruitment look for people who are ethical in nature by designing interview questions requiring ethical responses
- Work within our responsibilities outlined in job descriptions and regulations
- Display fair, prompt and consistent performance of our duties with all children
- Display careful and reasonable behaviour at all times
- Demonstrate knowledge and skills required for working responsibly
- Respond positively to feedback from our supervisors and incorporate that feedback into our practices
- Following our Codes of Ethics
- Knowing and following your service’s policies and procedures
- Undertake training in ethical conduct and behaviour to develop an awareness of ethical behaviour
- Developing an ethical climate that respects the rights of others
- Role modelling ethical behaviour
- Deal with unethical behaviour in a fair and consistent manner
- Use critical reflection to gain insights that support, inform and enrich our decision-making
- Ask yourself questions like: What assumptions am I making? Would I be happy for my actions to be open to public scrutiny (eg. Community Services or NCAC spot checks)? Would I want this to happen to someone in my family or to myself? Would I be happy if my family knew what I was doing? What will this do to the character of my organisation or to me? What would happen if everybody did this? Are my actions consistent with the philosophy of my service and myself? Remember that the right decision for one person should be right for everybody in the same situation.
- Maintain a child focus – putting children and their rights and interests first
- Be able to explain your decisions and actions taken to those to whom you are accountable
- Examine your personal values, attitudes and values, especially in how this may affect your response to disclosures of abuse.
Personal beliefs, attitudes and values

We all bring our own beliefs, values and attitudes to our chosen area of work. We all hold many attitudes that affect the way we behave towards children and young people and what we think is acceptable and unacceptable of children and young people. Our personal values are our personal ethics. Our values have been developed by our experiences. Our own experience of families and being parented, our class, culture and religious beliefs, and the beliefs about issues such as:

- family roles
- parental responsibilities
- punishment and discipline, and
- privacy

will influence whether we view and respond to a particular situation involving a child or person as abusive.

When working with children and young people, it is important that we are aware of our particular beliefs, attitudes and values in relation to parenting, the rights of children and young people and what we consider to be ‘child abuse’ or harm, and how those values influence our responses to children at risk. We may be working with people (colleagues, clients, parents, children and young people) who have different beliefs and values, some of which conflict with our beliefs and values. In these situations it is essential that we do not become judgemental, or respond to a situation solely on the basis of what we think is ‘right’ or ‘wrong’: rather, our response needs to be based on professional standards.

(The impact of personal beliefs, values and attitudes on our responses to indicators or disclosures of harm to children and young people is explored further in Chapter Eight).
Ethical practice in child related employment

Ethical practice in child related employment means working in a way that safeguards the rights and interests of children and young people. It involves a range of skills and behaviours, such as:

- Having a competent level of knowledge and skills for your role
- An awareness of your professional limitations
- Setting clear role boundaries
- Non-discriminatory practice
- Openness and honesty with clients
- Treating children, young people and families with respect, even during difficult situations
- Being consistent in the performance of your duties: for example, avoiding favouritism or bias towards particular children or young people
- Not ignoring indicators of harm to children or young people
- Being accountable for your decisions and actions
- Working within a legal framework, and
- Following agency policies and procedures.
Seeking professional advice when needed

As previously discussed, by knowing your position or job description, roles and responsibilities, agency policies and practices, codes of conduct or ethics, and knowing your legal obligations you will have a framework to guide your behaviours and ability to make ethical decisions. Accreditation principles are also another tool which may be helpful to you when making ethical decisions in challenging situations. The Quality Assurance system defines the characteristics of quality childcare and provides a benchmark against which current practices can be compared and judged (your professional standard).

You should also be aware of the lines of communication within your agency and seek advice from your direct supervisor when you are unsure. In the child protection system you can also seek advice from a Child Wellbeing Unit (CWU) if you work for NSW Health, NSW Police, Department of Education and Training or Human Services. If you do not have a CWU you should contact the Community Services Helpline if you believe that you have reasonable grounds for concern that a child or young person is at risk of significant harm.
Codes of ethics or conduct

Ethical practice and obligations in child related employment are defined by legislation (codes of practice, licensing, accreditation and registration to professional bodies), duty of care requirements, agency policies and procedures and professional values contained in the relevant Codes of Ethics. Most professional organisations have established codes because their workers are working in positions of trust and authority.

Ethics can be described as a code of conduct which guides the way we behave towards each other so that we act appropriately and morally. A special trust is implied when working with children or young people and their families. This is an important and powerful relationship and has the potential to be easily violated. Workers often face situations that involve a conflict of their responsibilities and professional values – so called ‘ethical dilemmas’.

Your Code of Conduct outlines your agencies or industry’s values and may include such values as respect, integrity, honesty, inclusivity or social and cultural inclusivity. Your code of ethics/conduct also provides workers with a framework for guiding their behaviour within your profession, to do what is best for children and young people (your professional boundaries). It aims at setting out the obligations and responsibilities of those workers. It also states the responsibility agency workers have to their colleagues, their employer, families, the community and their profession.

The code of ethics guides what we do and also gives us a benchmark from which to measure improvement. An agency’s code of ethics/conduct should clarify the conduct that is reasonable for the purposes of the discipline, management and care of children and young people and clarify what will happen if an employee breaches the code. Its acceptance ensures that the safety and rights of children and young people are being considered within the workplace.

A code of ethics/conduct is only useful if it is implemented in the workplace. Although this code is voluntary, many agency workers throughout Australia adhere to their code. Some regulations may make provision for prescribing a code of conduct for authorised carers. The Ombudsman Act 1974 requires Heads of Agencies to ensure that systems are in place for recording and responding to allegations of reportable
conduct. Our codes of conduct should tell us for the purposes of child protection what behaviours are regarded as reportable conduct and which should be reported.

Are you aware of the code of ethics or conduct by which you work?

Is it:

- The Early Childhood Australia’s Code of Ethics

- Code of Conduct and Ethics – Community Services

- Australian Institute for Welfare and Community Workers Code of Ethics

- Code of Conduct and Ethics – Community Services

- NSW Psychologists Registration Board Code of Conduct

- The NSW Department of Juvenile Justice Code of Conduct

- AASW Code of Ethics (Social Work)
  [http://svc037.bne242p.server-web.com/about/ethics.htm](http://svc037.bne242p.server-web.com/about/ethics.htm)

- NSW Department of Education and Training Code

- NSW Department of Health Code of Conduct

- The Australian Nursing and Midwifery Council Code of Ethics and Code of Conduct for Nurses in Australia
Read through your code of ethics/conduct and imagine that you are currently working in your agency. Think of examples of child protection strategies, policies or practices that you feel directly relate to your code. These may be in relation to children and young people, to families, colleagues, the community and society, or to you as a professional. Can you see the direct link between your code of ethics and the International Rights of the Child? The wording may indicate that we as carers are to put the interests of the child first, respect their rights and create safe and healthy environments for children and young people.

Many codes of ethics or conduct also refer to other legislation that is relevant to you as a professional. Examples could include the following:

- **Police Integrity Commission Act 1996**
- **Health Services Act 1997**
- **Children (Detention Centres) Act 1987** and its Regulations
- **Children (Criminal Proceedings) Act 1987** and its Regulations
- **Children and Community Services Act 2004**
- **Children (Community Service Orders) Act 1987** and its Regulations
- **Young Offenders Act 1997**
- **Ombudsman Act 1974**
- **Protected Disclosures Act 1994**
- **Independent Commission Against Corruption Act 1988**
- **Freedom of Information Act 1989**

Your code of ethics and/or conduct asks you to recognise these Acts and Regulations and to make yourself familiar with areas that apply to your job as you carry out your roles and responsibilities. You may be required to comply with a code of
conduct that is also to be read in conjunction with your professional standards.

You can also get help with developing a Code of Conduct at the following website for the Commission for Children and Young People:

Ethical practice - maintaining confidentiality

Children, young people, their families and staff all have a right to privacy. Most agencies keep a great deal of sensitive information about children, their families and the staff employed at the agency. All workers need to be aware of the need to keep such personal information private and confidential. Those working in agencies such as children’s services in New South Wales must comply with the Privacy Amendment (Private Sector) Act 2000 which came into effect in December 2001 and Part 7, S98 of the Children’s Services Regulation 2004.

There are few exceptions to the general rule of confidentiality. These include:

- making records available to the police if they have a warrant to inspect documents
- making information available in the case of suspected or confirmed abuse of children or young people
- responding to a summons or subpoena
- responding to a request under freedom of information legislation, and
- making developmental records available for licensing and accreditation procedures.

Although it seems like commonsense to say that confidentiality should be maintained, it is very easy to make a mistake or to let sensitive information slip. Simply leaving developmental records lying around unattended in accessible places can lead to a breach of confidentiality. Displaying surnames of children and young people or staff in a public manner could also be considered a breach of confidentiality.

Consider the following scenario:

A man rings up the agency and asks if James Brown is well today. You respond that James Brown does not attend on Tuesdays. You have just confirmed to James Brown’s estranged father that James attends your agency. James’ father’s investigative work has paid off. He has rung every agency in the area asking the same question. He has been
tracking his family down since his wife left him and the court denied him contact with his son.

As this situation demonstrates, it is very easy to let personal or sensitive information slip if you are not on your guard. You should avoid gossiping about children, young people and their families as this can lead to an inadvertent breach of confidentiality and is unethical conduct.

Agencies should have policies relating to confidentiality that outline the particular circumstances under which personal information should be given out, what type of information is confidential, who has access to personal information about children, young people, families and staff, and who can authorise the giving out of such information. An essential element of quality centre management is ensuring that clear and consistent procedures for the maintenance and confidential management of records are implemented.

Look at each of the following regulations or guidelines and summarise what they say about confidentiality:

- your code of ethics
- any State regulations or voluntary codes relevant to your agency, and
- your formal quality assurance guidelines.

The Exchange of Information

The Children Legislation Amendment (Wood Inquiry Recommendation) Act 2009 proposed changes to ways in which information can be exchanged that relates to the safety, welfare and wellbeing of children and young people. The rules are contained in a new Chapter 16A of the Children and Young Person (Care and Protection) Act 1998. This chapter will allow agencies, both government and non government ‘prescribed bodies’, to provide and receive information that would assist with decision-making, assessment, investigation or service delivery for a child or young person but it must relate to their safety, welfare or wellbeing and be in writing.

Agencies covered by this new chapter, known as ‘prescribed bodies’ will include:

- NSW Police
- Government departments and public authorities
- Schools and TAFEs
- Public health organisations and private hospitals
Private fostering and adoption agencies
Residential child care centres and child care services
Any other organisation whose duties include direct responsibility or direct supervision of healthcare, welfare, education, children’s services, residential services or law enforcement to children
Designated agencies – Public service departments or organisations that arrange the provision of out of home care.

The following are prescribed bodies for the purposes of Section 248 of the *Children and Young Person (Care and Protection) Act 1998* but not for Chapter 16A:

- the Family Court of Australia
- Centrelink
- the Commonwealth Department of Immigration and Multicultural and Aboriginal Affairs

These new rules will operate in addition to the existing rules of information exchange between Community Services and other government agencies and NGOs contained in Section 248. So there will be two schemes for the exchange of information, Chapter 16A and Section 248.

Consent is not necessary for the exchange of information under Chapter 16A. However it is important that organisations providing a service to a child, young person or their parents inform them early on that information about them may be provided, or is being provided, to other organisations. This may be included in your Child Protection policy, Enrolment policy or Confidentiality policy.

An agency is not required to disclose information it believes would prejudice a criminal investigation, a coronial inquest, endanger a person’s life, or not be in the public interest. Agencies must have procedures about how this should occur.

Agencies requesting information should identify the subject of the request and provide additional identifying information to ensure the correct child is identified; explain how the request meets the criteria under the Act, why the information is needed and the timeframe for receiving the information.

The template for the letter of request to Community Services can be found at:

Further templates for Requesting information under Chapter 16A can be found on the Keep Them Safe website at:


The legal framework for interagency exchange of information was established under the Children and Young Persons (Care and Protection) Act 1998. When the request to exchange information is in relation to the safety, welfare and wellbeing of a child or young person it takes precedence over the protection of confidentiality or an individual’s privacy.

Section 29 of the Act protects the identity of a person making a report to the Community Services Helpline. In the course of sharing information with another agency under Chapter 16A and/or Section 248, you must not disclose the identity of a person who has made a report or be able to deduce the reporter’s identity from the information provided.

Where a client feels that there has been a misuse of Chapter 16A, or believes that their privacy has been breached, they should complain directly to the organisation concerned. If still not satisfied they can complain to the NSW Ombudsman.

**Confidentiality, relevant employment proceedings and Working with Children Checks**

Employers must keep relevant employment proceedings confidential. Any information obtained should only be provided to people who are authorised to see such information and then, only if they actually need to.

All information regarding the Working with Children Check must also remain confidential and provided only to people authorised to see. It is an offence to disclose information obtained as part of the check except in specified circumstances.

All NSW Public Sector agencies are required to treat personal information in accordance with the guidelines set down in the Privacy and Personal Information Protection Act 1998. Non-government organisations should follow the Information Protection Principles in the Privacy and Personal Information Protection Act 1998. These principles relate to manner and purpose of collection of information, asking individuals to provide information, storage and security, accessing records, altering records, checking accuracy, the limits on use of personal information and limits on disclosure of information.
Breaching confidentiality

It is an offence to disclose personal information obtained unless it is made in good faith for the purposes intended, made with the consent of the person, ordered by a court, or made with another lawful excuse, such as for law enforcement purposes. The exception to this is in relation to an Exchange of Information under Chapter 16A or Section 248 of the Children and Young Persons (Care and Protection) Act 1998 which requires that any information shared must be for the purposes of the safety, welfare or wellbeing of a child or young person.

Ethical practice – parental instructions

It is important to be aware that parents may not call all the shots when it comes to how you fulfil your duty of care. Your duty is to the safety of each child or young person, balanced against other considerations. Your duty is not necessarily to look after a child or young person exactly as their parents would like you to – although you must take into account any reasonable instruction or relevant information that parents give you, for example medical instructions.

The granting of parental permission, no matter what the situation, does not override or relieve you of your legal and ethical responsibilities.

Consider the following scenarios and try to think how a ‘reasonable worker’ with children or young people might respond to these situations.

- When you speak to Mr J about some difficulties you are having with Sarah’s behaviour towards other children, he says: “Just yell at her then she’ll stop being a bully”, (Sarah is aged 4).

- Cassie’s mother asks you to give Cassie a double dose of Paracetamol with her lunch to ensure she sleeps because she was extremely restless and “out of sorts” the night before, (Cassie is aged 2).

- Jenny’s mother tells you that it is okay for Jenny to walk several blocks home by herself this evening after coming to a counselling session, (Jenny is aged 9).

It is important in these situations to be honest with parents – don’t pretend to comply with the parents’ instructions when you have no intention of doing so. This would be unethical behaviour.
Ethical dilemmas and ethical decision making

Professional Codes of Ethics provide workers with a range of core ethical principles to guide practice and help them manage their decision making. However, people working with children and young people often face situations that involve a conflict between their responsibilities and their professional values – such conflicts are called ‘ethical dilemmas’. Decision making where there is an ethical dilemma is not always clear cut. Sometimes it may simply be a matter of ‘following the rules’, but at other times there is no clear ‘right’ or ‘wrong’, and it may be difficult to decide what is ‘the best interests’ of a child or young person in a particular situation.

Examples of ethical dilemmas can include:

- Telling a child, young person or a parent/carer that you are a Mandatory Reporter may deter the child, young person or parent/carer from raising current harm or risk of harm: however, is it ethical to only disclose your Mandatory Reporting obligations after a disclosure of harm has been made?

- A child or young person has made allegations of physical/sexual abuse against them by one of your colleagues. The child or young person has made allegations against two other workers in other services in the past, which were not substantiated. Your colleague is well respected in the agency.

- As a worker in the community services industry you have a commitment to empowering families from disadvantaged groups, including culturally and linguistically diverse (CALD) communities. However, you have concerns about the level of physical discipline of children and young people sanctioned by members of a particular CALD community, who feel children and young people must be severely punished in order to stop any further wrongdoing.

Strategies for resolving ethical dilemmas include:

- Being reflective and not rushing your decision

- Referring back to your legal obligations, your professional Code of Ethics and your agency’s Code of Conduct and relevant policies and procedures to guide your decision making
• Considering the possible consequences of all your options

• Consulting with your supervisor/coordinator

• Consulting with your agency’s management committee or head office if your concerns involve your co-ordinator or supervisor

• Discussing the issues possible solutions with colleagues (keeping client confidentiality requirements in mind)

• Contacting a worker from a specialist service (such as Community Services or PANOC) to discuss concerns.
Abuse within systems

Child abuse is not wholly the consequence of behaviour by individual caregivers. It has also been perpetuated throughout history by institutions and political forces. Paradoxically, victims of institutional abuse in western society are usually the children who have already been abused by others and the abusive institutions are usually the ones specifically set up to take responsibility for their care and protection. Examples of this include:

- children abused whilst in the legal system
- children abused whilst in the care of the church and the State, and
- children abused when fostered to a ‘safe’ family or placed in a new school.

Systems abuse can also occur as the result of the lack of suitable policies, practices or procedures within a system. Systems abuse occurs when a child is further traumatized by the systems they encounter or which have been appointed to make decisions about them.

Systems abuse can take a number of different forms, ranging from a failure to provide appropriate services through to direct harm or abuse within an institution. In its simplest but probably least recognised form, it may arise when the needs of children and young people are simply not considered. Essential services may not be provided, or they may be inadequate, inappropriate or inaccessible.

Three types of abuse have been identified which can operate in societal systems: institutional abuse, program abuse and system abuse. Institutional abuse is defined by any system, program, policy, procedure or interaction that is detrimental to the child’s welfare or well-being or violates their basic rights. Program abuse is when programs operate below accepted standards or rely upon harsh techniques to modify behaviour (Gil 1982, in James 1994). Systems abuse occurs when the entire system is stretched beyond its limits and fails to consider the child’s needs, provide appropriate services or coordinate existing services (Cashmore et al 1994 in James, 2000).
Why does systems abuse occur?

Systems abuse may be the result of any one (or more) of the following:

- lack of resources
- gaps between policy and practice
- lack of coordination and consistency
- lack of specialised skills
- lack of support for staff
- lack of information, and
- lack of a voice for children and young people.

Where does systems abuse occur?

Systems abuse can occur in any of the following:

- the legal system – children involved with the legal system, as victims or offenders
- the education and child care system – children in out-of-home care, including schools, pre-schools, day care centres, family day care and out-of-school care
- the welfare system – children in contact with welfare services as a result of reporting risk of harm or harm, and the health system – children involved with health services.

How can systems abuse be prevented?

Legal obligations set out what we are required to do to ensure that we act in the best interests of the child and their family. Each state has child protection legislation which sets out the framework for how we care for children appropriately. Regulations and standards also give us further direction. When working with children we should maintain a child-focused practice. This means that we are acting in the best interests of the child. We need to advocate for appropriate practice, maintain appropriate boundaries when working with children and young people, provide appropriate supervision of staff and children, recognise indicators of harm and respond
appropriately, and respond to the unethical behaviours of others by reporting to the appropriate person as per agency policies and procedures.

The NCAC Quality Assurance system addressed Protective Care and Safety. The principles in this area included:

- Staff act to protect each child
- Staff supervise children at all times

It is a requirement of the Accreditation process that services address these principles. Duty of care, shared responsibility for ensuring children’s health and safety, and having clear policies and procedures relating to child protection and safety are key to this area of quality care. Principles of quality assurance and other legislation that govern how we work in child-related employment help us to protect and care for children and young people.

Access the National Quality Framework and locate the equivalent Principle/s.

**Supervising other staff to promote children’s rights**

Those in child-related employment need to be aware of the children and environment at all times. An important part of this role is the active supervision of children in areas that they can access and maintaining child-staff ratios at all times.

Workers need to assess the level of supervision required, taking into account the age and developmental level of the children, the difficulty of activities, and the potential for accidents to occur.

Staff should have the skills to assess risk potential based on the knowledge of the children in their care. New and relief staff should be given the necessary information and support to supervise each child effectively. Positioning staff for effective supervision should take account of the number of children and staff, the experience, knowledge and skill of the staff involved, activities, characteristics and group size of the children, spaces, settings and potential for accidents to occur.

Supervision plans should take into account rest and sleep times, safe sleeping practices, safe bottle warming and feeding practices, and equipment fitted with restraints is adequately supervised. Knowing who is authorised to collect and access
children is also vital. Students, visitors and volunteers at the centre / service must be supervised at all times. Planning needs to take into account regulatory requirements and should be evaluated regularly.

As a qualified worker in child related employment, you have a responsibility to promote children’s rights and would be expected to supervise other staff, and perhaps even students and volunteers. You should always act as an advocate for children’s rights and ensure that those you are supervising meet legislative requirements. You need to make sure that they too are promoting the rights of children as outline in the UN Convention on the Rights of the Child. This means actively intervening to protect children and young people and supporting their welfare and wellbeing.

Being an advocate means taking personal responsibility for promoting the rights of children and young people with colleagues, parents, other adults and the wider community.

As a qualified caregiver, your job description contains such words as:

- Implement
- Ensure
- Be responsible for.

This will be for many aspects of children’s care, including the safeguarding and promoting of their rights. This implies a high level of responsibility, not only for the individual qualified worker’s actions, but also for ensuring that other staff are supported and supervised in promoting children’s rights.

To do this you could:

- Make sure that all workers are aware of children’s rights and their responsibility to protect them
- Provide staff with relevant information about the Rights of the Child, Equal Opportunity Legislation, service Regulations, accreditation principles, Code of Ethics and service policies that relate to children’s rights
- Encourage staff to always work in ways that respect children’s rights
- Offer staff development in this area if necessary
• Model appropriate ways of working.

In the following case study Stephen is demonstrating use of a number of strategies to ensure that his staff promote children’s rights.

Stephen, the qualified worker in a long day care centre, was very conscious of his own behaviour towards children and constantly worked in ways to promote their rights. At a recent staff meeting he talked to the whole staff about the importance of this. In the course of his talk he referred staff to the United Nations Declaration of the Rights of the Child, to the Equal Opportunity Legislation and to the state children’s service regulations. He particularly stressed the legal implications of not following legislative requirements.

Stephen followed up by displaying a poster of the United Nations Declaration in the foyer for staff and parents to see. As the centre was going through the accreditation process at the time, he also displayed the accreditation principles relevant to children’s rights, and the Early Childhood Australian Code of Ethics.

As well as modelling appropriate work practices and behaviours with children, he also closely observed the staff’s work practices. When he noticed that Kelly, a new unqualified worker, was yelling at children, he talked to her about the need to be respectful when interacting with children and encouraged her to be mindful of the children’s rights. He also referred her to the centre’s policy and procedures on how to positively guide children’s behaviour. He continued to monitor the situation by observing Kelly and encouraged her as she changed her behaviour appropriately in response to his feedback.

**Child safe organisations**

We can also help to protect children by establishing child safe organisations. We can do this by welcoming and respecting children and their families, respecting and supporting staff through adequate training and education, identifying potential risks and working to prevent or reduce them, encouraging parental participation, and by valuing children. We can do this by asking for their ideas and views and by listening to them, empowering children and young people, creating clear boundaries, understanding abuse, and developing our child protection policies.
A new approach to supporting children, young people and their families

Proposed changes under the Child Legislation Amendment (Wood Inquiry Recommendations) Act 2009 address many of the issues experienced within an overburdened child protection system. The collaborative approach encourages families and communities, government and non-government agencies to work together to support children, young people and their families. More support will be made available for prevention and early intervention, support for Aboriginal children and families, disabled children and young people, families from linguistically diverse backgrounds, an expansion of services to include Child Wellbeing Units, Family Referral Services, enhanced acute care services, out of home care, and changes to the child protection system and services.

Children, young people and their families who do not meet the new threshold for risk of ‘significant’ harm can be referred to an appropriate service for support without the need for statutory intervention. The Keep Them Safe approach to child wellbeing aims to ensure that when the State intervenes in people’s lives, that it is warranted, less adversarial and in the best interests of children. This approach is a whole of community approach where responsibility is shared.
Learning activities

1. Case Studies

As discussed in this chapter, the beliefs, values and attitudes regarding ‘child abuse and neglect’ we have acquired as members of a particular family, community and culture will influence how we as workers respond to a possible risk of harm to a child. You might want to read the following case studies and think about how you would rate them.

Rating scale
1. This child is safe.
2. This child is at risk of harm.
3. This child is experiencing harm.
4. This child is experiencing serious or significant harm.

Case study 1

Josh is a 15-year-old boy who lives with his mother and two older siblings. Josh’s mother has an alcohol and Valium dependency, and takes little notice of what Josh does. His older siblings are rarely home. Josh spends a lot of his time roaming the streets. Recently he has become part of a group of boys who meet at the home of a local older man who allows them to drink alcohol and watch pornographic movies.

Case study 2

Barry and Fiona run a successful equipment hire business. They work very long hours and have been able to provide a luxurious physical environment for their 6-year-old daughter Bonny. As the office is in the front of the house, they have a strict routine for Bonny. When she gets home from school she must independently do her homework, have her bath and heat her meal in the microwave. She must then go to her room where she can watch TV. She is not allowed to have friends over to play or to disturb her parents at all at night. Her only contact with her mother is at breakfast time while her father is making his early morning calls. She rarely sees her father.

Case study 3

Don and his brother Steve have always fought a lot. The mess and the rows infuriate their mother. She used to smack them and send them to different corners of the house, but now they are 11 and 13 she finds she has no authority over them unless she uses the cord from the electric jug instead of her hand. This leaves bruises and occasionally breaks the skin. She feels terrible when she sees the marks but she feels that she has no choice.
Case study 4

You are doing your shopping in the local supermarket when you see a well dressed adult trying to deal with a young child who wants one of the sweets at the checkout. The adult is reasoning with the child, saying that they are going to have dinner when they get home. The child, who looks about 2 years of age, begins screaming “I want!” and throws herself down on the floor, kicking and continuing to scream. After several attempts to make the child stand up and stop screaming, the adult hits her several times on the bottom and legs with their hand.

Case study 5

Maria is a 14 year old girl who has come into the local youth refuge saying she has run away from home because she can no longer stand her parents’ behaviour. She says both her parents work long hours during the week, but spend the weekend drinking ‘to relax’. Maria says she does most of the housework, and looks after her young siblings as her parents are either working or drunk. Maria says this weekend she asked to go to a party with her friends, but her parents refused, as she was needed at home.

How have your beliefs, values and attitudes affected your rating of each case?

Now think about how the experiences and values of the people listed below could influence their views about these case studies.

1. A teacher in a private school in a well-to-do area.
2. A child care worker who has lived and worked for over 20 years in a disadvantaged area.
3. A youth worker in a refuge.

The point of the activity is not to find the ‘right’ answer, or criticise people’s perceptions, but to start you thinking about what the terms ‘abuse’ or ‘harm’ mean to you, and what values, assumptions and experiences have influenced your views and the views of other people.

2. Values and attitudes

What values or attitudes have you acquired that may make it difficult or easy for you to accept a change to legislation that would prohibit all physical punishment of children?
3. Code of ethics

Name one code of ethics that guides our decisions in the protection of children.

What specific guidelines does it offer?

Imagine you are currently working in your particular agency. Think of examples of child protection strategies, policies or practices that you feel directly relate to your code of ethics.

Under the five headings below, list the examples you can identify.

- In relation to children and young people
- In relation to families
- In relation to colleagues
- In relation to the community and society
- In relation to myself as a professional.

4. Confidentiality

You are a student at an adult learning institution. You have been on work placement for the last two weeks and have found the work and children really satisfying. You meet with your friends for lunch at a local café on the weekend and your friends ask you if you have seen any child abuse cases since you have been there. You respond by telling them about a particular case that really upsets you. Sitting at the next table is a neighbour of the family being discussed and they overhear your discussion. The next Monday your supervisor receives a complaint from the family.

What should you have done initially when your friends asked you about your placement? Under what circumstances would it be appropriate to breach confidentiality?

While on work placement you will need to observe and take photos of 2 focus children for your portfolio. What is the correct procedure to follow to ensure that you do not breach rules of confidentiality?

5. Ethical Dilemmas

Working with children and young people who may be, or are, at risk of harm can raise a wide range of ethical dilemmas. Think about the following scenarios and how you might respond to each of them, and then think about how you might resolve the dilemmas.
- A child or young person from a small Culturally and Linguistically Diverse (CALD) community who is experiencing serious harm but pleads with you not to tell anyone, because they will be rejected by their community if Community Services are involved, which will mean losing contact with their siblings and friends, and their cultural identity.

- Two parents whose children were removed from their care 3 years ago because of neglect due to the parent’s heavy drug use have just had the children restored to their care, with a number of conditions including abstinence from drug use. The children are delighted to be back home with their parents, but the youngest lets slip that there was a party at home at the weekend, and both parents had a couple of drinks and smoked a bit of pot (marijuana).

- You are a youth worker who is approached by an 18 year old client who has been told to leave a refuge because of numerous breaches of the rules. The client has a mild intellectual disability, and is not ‘street smart’. She has been vulnerable to sexual exploitation and abuse by acquaintances in the past. It is Friday night, and after several hours of ringing around you have not been able to find accommodation for her in the local area, and the client refuses to go to a refuge on the other side of town. She has no money to pay for a motel, but suggests you lend her the money and she will pay you back.

6. **Supervising staff to protect children’s rights**

You see Angela, a junior assistant, shouting at a child and pulling him roughly into the bathroom to wash his hands. What do you do, as room leader? Consider the example of Stephen in this chapter.
Chapter Five: Dynamics of risk of harm

Factors that contribute to risk of harm

Harm can happen to any child or young person in any family. It has long lasting and damaging effects. Sometimes children and young people are being hurt because:

- their families don’t have adequate support
- their carers are experiencing a lot of stress, for example unemployment, homelessness, poverty, illness, isolation or loneliness, or
- their parents may not have experienced any models of non-abusive families.

Although there are connections between a person’s childhood experiences and the way that person eventually treats their own children, it is not a simple cause-effect relationship. Some people who were abused as children do abuse their own children, but other factors (such as social isolation, stress, or unemployment) may be major contributing factors in the abuse.

A person who was abused as a child may become especially sensitive to how abuse affects a child and therefore take particular care to provide a safe and loving environment for their own children.

It is also important to remember that poverty itself does not cause harm, and most poor people do not abuse their children. However, factors associated with poverty and social inequality (such as stress, a sense of powerlessness and a lack of resources) do increase the likelihood of harm to children and young people.

Today it is generally accepted that to understand harm or risk of harm to children and young people, we need to consider a
number of different factors individually, as well as how these individual factors interrelate. We need to focus not only on the characteristics of the parents/carer and the child or young person but also on their interactional patterns, interactions with the environment, and the influence of the immediate and broader social situation.

Incidents of harm are the result of a number of interrelated factors. Some families experience a range of life stresses and never abuse or neglect their children, while other families experiencing similar levels of stress do. Much research has attempted to discover the cause of abuse. This research has contributed to community understanding of the problem, but no single factor can satisfactorily explain this complex issue. Abuse dynamics must be viewed holistically to fully appreciate the child or young person’s experience.

**General risk factors**

Research and practical experience have identified a number of interrelated factors which contribute to the possibility of a child or young person being physically and/or emotionally harmed, or having their basic physical and psychological needs neglected by their parents or carers.

Such factors can arise from particular cultural beliefs about parenting and discipline and the rights of adults in relation to children and young people. Other factors are linked to the situation of a particular family, such as poverty and social disadvantage. As well, there may be factors in individual children and young people (such as disability or prematurity) and their carers (such as poor parenting skills) that can increase the risk of harm to the child or young person. These must be recognised as risk factors, not as actual predictors of abuse.

These factors include:

- a 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 the extended family
- abuse or neglect of a sibling
- a family history of conflict and domestic violence, including injury to children or young people
- physical or mental health issues for the parent or caregiver affecting their ability to care for the child or young person
- the parent or caregiver’s abuse of alcohol or other drugs affecting their ability to care for the child or young person
- a developmental disability of the parent or caregiver affecting their ability to care for the child or young person
- insecure attachment between child and parent
- significant problems the parent or caregiver is experiencing in managing the child or young person’s behaviour
- the parent or caregiver having unrealistic expectations of age-appropriate behaviour in the child or young person
- lack of appropriate community / support services or networks
- domestic violence.

Risk factors can vary according to:

- Age - very young children are most vulnerable to neglect or physical abuse by a caregiver. Older children are more vulnerable to sexual abuse, by both family and non-family members.
- Gender - girls are far more likely to be victims of sexual abuse than boys, and boys are more likely to be physically abused than girls. Boys are more likely to be sexually abused by extra-familial abusers, while girls are more at risk from intra-familial sexual abuse.
- Previous maltreatment - children who have experienced maltreatment in the past have an increased vulnerability to further abuse.
- Disability - children with disabilities have been identified as being particularly vulnerable to organisational maltreatment.

Risk factors can also be a result of the school environment. The child may experience failure, negative peer group influences, bullying, or a poor attachment to school. Protective factors in the school environment include having a positive school environment, a sense of belonging or bonding, and opportunities are provided for success and recognition is given for achievement.

**Specific risk factors**

Specific socio-cultural, family and child-related risk factors may be associated with each of the categories of harm.

**Physical harm**

Physical harm to a child or young person may be the result of:

- parental stress
- limited parenting skills, poor parenting models
- parental perception of children or young people as property
- parental use of punitive discipline
- adult misuse of power in the family
- linking violence to ideas about ‘masculinity’
- family conflict and violence
- the child or young person not meeting the parent’s needs or expectations
- cultural perspectives which endorse the use of punitive discipline, or
- societal denial of the impact of physical harm on children and young people.

**Domestic violence**

Specific risk factors for significant harm from domestic violence identified in Child Wellbeing and Child Protection NSW Interagency Guidelines (2010) include:
- Apprehended violence order (AVO) or family law contact orders prohibiting contact due to violence

- Recent / imminent divorce or separation

- Stalking the parent or carer (following; aggressive phone, email, text, mail contact; watching)

- Extremely controlling behaviour (persistent isolation from family and friends; complete control of all money; repeatedly denying access to ceremonies, land, family, religious observance; forcing people to do things against their beliefs; repeatedly locking the victim in or outside the house)

- Forced sexual assault of a parent/carer

- Aggressor has significant mental health issues or severe alcohol or drug abuse that have resulted in violent or aggressive behaviour

- One or a combination of other risk factors.

Risk factors that violence is likely in the near future include:

- Adult victim is in a constant state of fear;

- Adult victim fears for the child/young person’s safety;

- Recent or prolonged unemployment is causing stress or family friction;

- Severe financial stress;

- Mental health concerns;

- Abuse of alcohol or other drugs;

- A history of prior AVO or family law contact orders;

- Weapons in the home;

- Victim is pregnant;

- Cruel treatment of animals/family pets by aggressor;

- Conflict over visitation/custody issues;
• A child/young person in the home is not a biological child of aggressor.

**Psychological harm**

Psychological harm to a child or young person may be the result of:

• unrealistic expectations by the carers of the child or young person
• lack of empathy for the child or young person
• early separation of the child or young person from his or her carers
• failure to bond and lack of attachment to the child or young person by his or her carer
• the carer having mental health problems
• the carer having drug and/or alcohol problems
• the abuse of power relationships by the adult carer
• high levels of criticism
• domination or excessive, inappropriate or inconsistent discipline
• the child or young person being the butt of degrading or derisive statements
• ongoing scapegoating, or
• ongoing social isolation.

**Failure to meet basic needs**

Failure to meet a child or young person’s physical and psychological needs may be due to:

• social inequalities and disadvantage
• social changes: breakdown in neighbourhoods
• loss of contact with the extended family and a support network
• inadequate community support
- poverty
- the child or young person being hard to care for because of an illness or disability
- the failure to bond or form an attachment to the child or young person by the carer
- mental health problems
- alcohol and other drug problems, or
- limited parenting skills
Child sexual abuse

Normal sexual exploration during childhood is an information gathering process where children explore each other’s bodies and gender roles and behaviours. They are of similar age, size and developmental status and they participate voluntarily. There may be some embarrassment if they are seen, but this does not result in deep feelings of guilt, shame, fear or anxiety. The sexual behaviours are limited in type and frequency and occur in several periods of the child’s life.

Sexual abuse is planned, secretive, manipulative, and characterised by coercion. It is a crime perpetrated in secrecy. The offender uses tricks, bribes, threats or physical force, and sets up the child and protective adults. Offenders manipulate and deceive protective adults. Sexual abuse is an abuse of power by an adult or adolescent, and a betrayal of the child’s trust. There is an unequal power relationship present and the form of abuse progresses over time. It happens any time the offender has the opportunity and it often occurs in the child or young person’s own home.

Most victims are female. Victims can be of any age, from babies to older teenagers. In girls sexual abuse tends to be initiated steadily from infancy through to mid-teens. For boys, the onset is most likely to be between the ages of 4 and 7. One or more children in a family may be assaulted.

Most offenders are males and they are usually known to the child. There is no distinctive psychological profile of an offender: they come from a full range of socio-economic, racial, cultural and religious backgrounds, including professional groups, ministers of religion and teachers. They use their authority and size to control their victims. Paedophiles or child molesters are people who are sexually ‘turned on’ by children. They sometimes also believe that if they are not being violent or forceful towards the child then they are not being abusive. They may even see a child who does not resist as giving consent to the act. However, offenders do know that they are breaking the law.

Myths about sexual abuse are usually designed to shift the blame away from the perpetrator: often the mother, the child, or even illness is used to blame and justify the offender’s behaviour. Some of these myths include ideas that the child or young person ‘wanted it’ or tried to ‘seduce’ the offender; or that if they had not been denied sex by the adult partner it
would not have happened. In the past there was even an attitude that men had the right to ‘break in’ their daughters.

It is important not to make excuses for the offender. Perpetrators are aware of what they are doing and make a choice. They are not sick; it is their behaviour that is the problem. The victim may feel guilty but it is never their fault. The offender is always responsible for the assault.

Perpetrators are deceitful in their effort to sexually assault children and young people. They will set up and prepare the environment, for example isolating their victim, and supportive adults. They will work at gaining the child, young person or their family’s trust and then use tactics that make it very difficult for the victim to tell someone else what happened.

Dynamics of child sexual abuse

The dynamics of child sexual abuse are very different to the dynamics of physical abuse or neglect. While most perpetrators of child sexual abuse are known to the child, they are not limited to parents or caregivers, but represent the broad range of adults and adolescents who have contact with children: relatives, neighbours, family friends, and those in professions which allow them access to children. They have access to the child and often the child trusts them.

Child sexual abuse involves a planned process constructed by the perpetrator. This process involves deliberate identification and targeting of child victims, the ‘grooming’ and desensitisation of the child into the abuse dynamic, and developing deliberate strategies to continue and escalate the types of sexual acts over time.

Factors that increase the risk of a child being targeted include the vulnerability of the child and the vulnerability of the child’s family and social circumstances. Grooming and desensitising strategies include isolating the child from significant supporting adults (including their mothers) and desensitising the child to more progressive and invasive touching. They may win over a child or protective parent’s trust over a period of time and be seen as friendly and supportive in order to gain access to the child.

Offenders may babysit for the carer or take the children on outings. They may also have hobbies or interests that they can share with children and offer them money or gifts to entice the child. The offender may tell the child that their
relationship is ‘special’ and that what they do together should be kept a secret. This can be very confusing for the child if the activity is pleasurable. Vulnerable children respond to affection and attention.

Paedophiles also use on-line chat rooms to access children and build trusting relationships. They often pretend to be other children in order to connect with a child and then organise to meet their new ‘friend’ without others knowing. Offenders also choose places to work at or near where there is easy access to children, such as sporting organisations, leisure centres, schools, youth groups or child care.

Perpetrators also use a range of techniques to silence children they have abused: threats, physical violence (towards the child and/or the mother) and emotional blackmail. Child sexual abuse is a misuse of the power adults have over children.

Those who work with children and young people need to be alert to indicators of ‘grooming’ such as the child having unexplained money or gifts when it is not the child’s birthday or other celebration.

**Risk and protective factors in child abuse**

**Risk factors for sexual abuse**

Specific risk factors linked to the sexual abuse of children and young people include:

- cultural views which see violence linked to success, masculinity and erotica
- parental/carer perceptions of children and young people as property
- family conflict
- the isolation of the family from extended family, friends and neighbours
- frequent changes in adult partners
- the abuse of power relationships by an adult carer
- an unsupported carer
- an abused carer
the isolation of the child or young person from support within the family, and

- a poor relationship between the primary caregiver and the child or young person

- Drug and alcohol problems in the family.

**Protective factors for all forms of abuse**

Risk factors increase the likelihood of abuse and neglect but protective factors reduce the risk. Protective factors in parents or caregivers include:

- realistic perceptions of the child or young person

- realistic expectations of the needs a child or young person might satisfy in the parent or caregiver

- realistic expectations of the child or young person’s ability to cope and achieve

- Empathy with the child or young person. This factor has been identified in numerous studies as being crucial to the well being of children in their families

- the ability to be emotionally positively engaged with the child or young person

- the ability to give priority to the child or young person’s developmental needs, and

- the ability to restrain aggressive behaviour towards the child or young person.

Other protective factors for the child or young person include nurturing and secure relationships with at least one parent and another adult (such as a relative or teacher), positive school or child care environments, positive personal achievements, and strong pro-social peer networks.

If communities are to reduce the incidence of physical and emotional abuse and neglect, there is a need to enhance the known protective factors. These enhancements include:

- income support/supplement

- access to information, advice and support from a wide range of health, education and community services
- child care or respite care
- accessible public transport
- social activity and community involvement
- supportive partners
- supportive extended families
- social support networks outside the family
- good interpersonal skills (parent or child), and
- good health (parent or child).

As well as raising the need for early intervention to prevent harm, risk factors can alert us to the possibility that harm to a child or young person may be actually occurring. It is important that we, as workers in the Community Services industry, are able to identify possible indicators of harm as well as factors that contribute to risk of harm.

We have learnt that risk factors increase the likelihood of a negative outcome and protective factors decrease the probability of a negative outcome for families. Generally, it is the presence of a number of risk factors, rather than a single risk factor that affects outcomes. Research has found that intervention to reduce the impact of risk factors and to enhance protective factors can have an effect even when significant harm is present. That is why services interacting with families should address multiple risk and protective factors.

Interventions should happen as early in a child’s life as possible to reduce the negative impact on their development and to decrease vulnerability to adjustment problems in later life. When responsibility is shared and services and interventions address child, family and community there is a greater influence on outcomes for the child.

**Protective behaviours education**

Protective behaviour education for children was very popular in the 1980s and the 1990s but critics of this approach maintain that it is the responsibility of adults in our society to protect children. When the onus to protect the child is placed...
on the child they may blame themselves when things go wrong or they may become excessively fearful. It is also claimed that this may give adults a reason to withdraw from their responsibilities. However, it has been the position of Protective Behaviours groups that it is important for children to develop personal safety skills from structured personal safety programs. These programs follow common themes of “We all have the right to feel safe all the time” and “nothing is so awful that we can’t talk to someone about it”.

Some of the key ideas in teaching protective behaviours to children are:

- Identifying feelings or ‘Early warning signs’ that serve as indicators that we are at risk or risk is increasing
- Networking – identifying and establishing a group of trusted adults to whom the child can talk or go to if they are not feeling safe.

The NSW Department of Education has also recommended teaching children protective behaviours. Some of their curriculum ideas include:

- Identifying safe and unsafe situations based on feelings and body reactions
- No/Go/Tell – Saying “No” to the person who is making them feel unsafe and going to tell a trusted adult who is identified as part of their support network
- Language using appropriate anatomical terms for all external parts of the body, including the genitals.

Children also need to be aware that they have rights and that they should not accept unacceptable behaviour from adults just because they are children. Children have the right to say ‘no’ to something which they are unsure of or that makes them feel frightened, unsafe or uncomfortable. Adults need to listen to children and encourage them to make decisions and choices that they are comfortable with. Teaching children respect for their own bodies and what is appropriate behaviour will assist them to feel confident in making those decisions. Building self confidence is also an important step in helping children and young people gain self-protective skills.

Whatever approach we take it is important that we remember that child protection is a whole of community responsibility. Napcan is Australia’s leading advocate for the prevention of child abuse and neglect. They believe that “children’s well-being is everyone’s responsibility and that it takes the whole of a healthy community to prevent child abuse and neglect”,
Their program KiDS CAN seeks to build the resilience of children and young people, to develop healthy relationships and to break the cycle of abuse and neglect.
Learning activities

1. Read the following:


Why should we be concerned when children or young people are living in a domestic violence situation?

2. Why do children who have experienced maltreatment in the past have an increased vulnerability to further abuse?

3. Read the following case studies then list the factors you think are preventing the carers from meeting the basic physical and psychological needs of their children.

**The Jones family**

The Jones family has recently moved from Darwin to Sydney. They have moved into a small unit. The family has very little money and does not know anybody in Sydney. The family consists of Maria, who emigrated from the Philippines 11 years ago, her de facto Peter, and Maria's three children, Sam (aged 10), Louisa (aged 6) and Ben (aged 3). Maria has been living with Peter for two years. Peter works long hours and then goes to the pub with his mates. Maria has no family in Australia and is very socially isolated. She has also suffered from depression since the death of her previous partner Bill in a car accident three years ago. She spends a lot of time in bed or watching television. The two older children often arrive at school in grubby clothing, and sometimes steal other children's food at lunch time. Ben, who has an intellectual disability, is frequently left in his cot for very long periods of time.

**Michael**

Michael grew up in a family where his father was a binge drinker and frequently out of work. He was often physically and verbally abusive to his wife and children. The children all left home as soon as possible and Michael has since had no contact with his parents or any member of his family for many years. He is married to Jean, who also grew up in a family
where her father was frequently violent towards his wife. They have two children aged 6 and 2. Michael does not want to be like his father, but if Jean doesn’t have the house tidy when he gets home, or the children make a noise, he ‘loses it’. Mostly he is verbally abusive, but there have been a few occasions where he has punched Jean, and hit his 6-year-old, Sam, around the head. Jean feels Michael really does love her and the children, and would not be violent if she were a better wife and mother.

In the case of both families, what do the family members need to do to reduce the risk of harm in the family?

4. Read the following:

As you read in the text, the dynamics of sexual abuse or harm are different to those of other forms of harm. Read the following scenario and list the risk factors in this case.

**Jenny**

Jenny is a 14-year-old girl. She lives with her mother, Laura. Jenny’s parents divorced when she was 7, and she has had no contact with her father or his family since then. Her mother was sexually abused as a child by her father, and ran away from home at 16. She has had a number of relationships since her divorce, but these don’t last long. Laura and Jenny have always had a poor relationship, and it has become worse since Jenny entered puberty. Jenny presents as sullen and withdrawn, and has no close friends. The only person who has shown Jenny any affection in a long time is her mother’s latest boyfriend Brian. He has shown an interest in her school work, buys her presents and takes her on outings. Recently he has begun touching her on the breasts and vagina, telling her how sexually attractive she is and how good sex would be between them. He has warned Jenny not to tell her mother, as Laura will throw Jenny out of home.

In Jenny’s case, what protective factors might have averted the risk of harm?
Chapter Six: Identifying risk of harm and significant risk of harm

Risk of harm indicators

What first draws our attention to a particular child or young person is often called an ‘instance of concern’ – this is something about the child or young person, or about their family, that concerns us. These concerns are also referred to as risk of harm indicators. Risk of harm indicators are like signals that something might be wrong for that child or young person. Some indicators are sufficient on their own to give reasonable grounds to suspect a child or young person is at risk of significant harm; others need to co-exist with other indicators to be meaningful as grounds to report risk of significant harm.

It is important to be aware that some children who are being harmed may not show any observable indicators.

General indicators of risk of harm

These include:

- a child or young person tells you of their abuse or neglect
- someone tells you that a child or young person is being abused or neglected
- there is a previous history of abuse or neglect to the child or young person, or to a sibling
- the child or young person is displaying unexplained and marked changes in their behaviour
- there is ongoing or sporadic violence between the parents / caregivers
- the parents or caregivers misuse of alcohol or other drugs is affecting their ability to care for the child or young person
• the parents/ caregivers have a deficiency in the functional parenting skills which are required to provide for the safety, welfare and wellbeing of the child or young person

• the parents / caregivers are experiencing significant problems in managing their child’s behaviour or special needs

CHAPTER SIX: IDENTIFYING RISK OF HARM AND SIGNIFICANT RISK OF HARM - CHCCHILD401A-V2

Basic physical or psychological needs not being met (neglect)

‘Neglect’ refers to the failure to provide for a child or young person’s basic physical needs. Neglect can be either:

- Neglect of basic physical needs such as food, clothing and hygiene, physical shelter and safety from harm (which includes the provision of appropriate and adequate supervision and medical treatment); and / or

- Neglect of basic psychological needs such as sufficient or appropriate nurturing, stimulation, comforting and acceptance of the child from caregivers. This also refers to the persistent ignoring of a child’s signals of distress, pleas for help, attention, reassurance, and encouragement. In young people it may include disinterest in all aspects of the young person’s life by the caregiver.

In relation to physical neglect, the focus for concern is not only on the lack of food, clothing, etc but also on whether the failure to provide for basic physical needs has impaired or could risk impairing the child or young person’s welfare, health and development. The concern with psychological neglect is the extent to which it has impaired, or could risk impairing, the child’s ongoing emotional, cognitive and physical development because appropriate emotional attachments with the primary caregiver and others have not developed.

In children

In children, indicators that these needs are not being met can include:

Physical indicators of neglect:

- Low weight for age and/or non-organic failure to thrive
- delay in developmental milestones
- poor primary health care e.g., serious nappy rash, significant dental decay
- loss of ‘skin bloom’, and poor hair texture
• poor standards of hygiene leading to social isolation, such as the child being unwashed or ‘smelly.’

Social/Psychological indicators of neglect:
• scavenging or stealing food
• child not adequately supervised for their age
• extended stays at school, public places, others’ homes
• habitual absence from school
• being focused on basic survival
• extreme and indiscriminate seeking of 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, eg rocking, sucking.

In young people

In young people, these needs can include:

Physical indicators of neglect:
• poor standards of hygiene and self care.

Social/psychological indicators of neglect:
• staying at the homes of friends and acquaintances for prolonged periods, rather than at home, and
• inability to access self-care resources such as food and washing facilities
• poor school attendance.

In parents or caregivers

In parents or caregivers, indicators can include:
• may have poor standards of hygiene and self-care
• failure to provide adequate food, shelter, clothing or safe and hygienic home conditions

• leaving the child or young person without appropriate supervision

• leaving the child or young person alone for long periods (abandonment)

• the inability to respond appropriately to a child or young person’s emotional needs and provide psychological nurturing (low warmth parenting)

• depriving or withholding physical contact or stimulation for prolonged periods

• having limited understanding of the child’s needs, or unrealistic expectations of the child

• treating one child or young person differently, or scapegoating him or her, and

• the absence of social support from relatives, other adults or social networks.

**Necessary medical care**

Risk of harm can include a parent or caregiver being unable or unwilling, or failing to arrange, necessary medical attention for a child or young person and can be grounds for concerns of risk of harm. This can include withholding or failing to provide essential medication for a child. The focus is on whether the failure to arrange medical attention is likely to result in risk of harm to the child or young person. For example, treatment of severe burns can be quite critical. Age can also be a factor: for babies and very young children, the risk of harm in not receiving medical attention can be quite high. Religious or cultural beliefs are not grounds for refusing to arrange necessary medical attention for a child.

Indicators of failure to provide necessary medical care include:

**In children and young people**

In children and young people, this might include:

• untreated injuries
symptoms of illness or poor health where the child or young person is likely to suffer harm without treatment, and

- a failure to thrive.

**In parents or caregivers**

In parents or caregivers, this might include:

- comments or behaviour indicating that he or she is either unable or unwilling to arrange necessary medical care for a child or young person.


Now that we can identify indicators of harm let us examine how to identify indicators of significant harm for Neglect. This can be identified by examining the guidelines in the 2010 Child Wellbeing and Child Protection NSW Interagency Guidelines.
# Child Wellbeing and Child Protection NSW

## Interagency Guidelines for significant harm - neglect

Neglect has been categorized into groupings that correspond with Decision Trees in the Mandatory Reporter Guidance tool to help you identify significant harm.

<table>
<thead>
<tr>
<th>Neglect Concerns</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supervision</strong></td>
<td>A child or young person has been or is going to be alone.</td>
</tr>
<tr>
<td></td>
<td>A parent or carer is not paying enough attention to protect the child or young person.</td>
</tr>
<tr>
<td><strong>Shelter/Environment</strong></td>
<td>A child or young person or family is homeless.</td>
</tr>
<tr>
<td></td>
<td>A child or young person is living in a dangerous environment.</td>
</tr>
<tr>
<td><strong>Food</strong></td>
<td>A child or young person is not receiving appropriate nutrition.</td>
</tr>
<tr>
<td><strong>Medical Care</strong></td>
<td>A child or young person has an untreated/inappropriately treated medical condition.</td>
</tr>
<tr>
<td>- Medical Professionals</td>
<td>A child or young person has an untreated/inappropriately treated medical condition.</td>
</tr>
<tr>
<td>- non Medical Professionals</td>
<td>A child or young person has an untreated/inappropriately treated medical condition.</td>
</tr>
<tr>
<td><strong>Mental Health Care</strong></td>
<td>A child or young person has an untreated/inappropriately treated mental health condition.</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td>A child or young person of compulsory school age is not enrolled.</td>
</tr>
<tr>
<td>- Not Enrolled</td>
<td>A child or young person of compulsory school age is habitually absent.</td>
</tr>
<tr>
<td>- Habitual Absence</td>
<td>A child or young person of compulsory school age is habitually absent.</td>
</tr>
</tbody>
</table>

## Supervision

- Child is alone in a car in temperatures that create danger
- Child is found alone on street and cannot provide directions to their residence.
- The child or young person or another person has told you that they are currently alone or will be alone at some point over the next three days and, based on the child or young person’s age
or developmental level, length of time expected to be alone, and circumstances, the child or young person will be in danger.

See the Mandatory Reporter Guide for suitable timeframes that children can be alone according to their age. If the child is alone for periods longer than that indicated they may be in danger.

**Shelter / Environment**

- The child or young person, or family has no residence, or is about to lose their residence and they are living or will have to live on the street and therefore cannot protect the child or young person from danger from violent or sexual crime or current harsh weather; family has no food, or the child or young person needs medicine or medical devices that require refrigeration or electricity.

- The child or young person or family is staying in temporary shelter or housing that exposes them to danger from violent or sexual crime (e.g. Exposed electrical wiring, dangerous objects in reach such as unlocked guns, knives, drugs, alcohol, matches or chemicals); the house has been condemned by authorities, significant amounts of animal faeces litter the premises; biohazards are present; or the child needs medical devices or refrigerated medication but has no access to electricity.

- The family or young person have not attempted to engage in secure and safe housing in reasonable time and effort despite a service provider offering those services; or the family may have refused to accept the referral or followed through and remain in danger.

- A child, young person or household member may have become ill or injured due to environmental conditions.

- Hygiene may be significantly compromised by the presence of human or animal urine or faeces, insect or rodent infestation, lacking of bathing facilities, or ability to wash clothing.

- Fire hazards may exist due to substantial quantities of debris that may fuel a fire and be close to a source of ignition. The child or young person may have no way to exit their sleeping space in the case of fire.
- Sleeping arrangements that create serious danger such as inappropriate bedding, sleeping with adults who are affected by substance abuse or other reasons for deep sleep.

**Food**

- A child or young person has been diagnosed with a condition caused or exacerbated by inadequate or poor diet. This includes inadequate nutrition such as rickets, scurvy, anaemia; too much food, which may have resulted in morbid obesity; hyponatraemia (an abnormally low concentration of sodium in the blood); repeated episodes of ketoacidosis or prolonged escalation of blood sugar due to improper meal planning in a child with Type I diabetes.

- A child under age 5 is failing to keep pace with expected growth and there is no known organic cause (non organic failure to thrive). Based on standard growth charts, a child who has not reached their fifth birthday is currently at a percentile for weight that is below their birth percentile and there are no known organic causes. This includes diagnosed non-organic failure to thrive, or any other growth failure that is not explained by known disease.

- A parent or carer has refused evaluation and/or is refusing to follow a treatment plan where a physician has explained their concerns to family and advised them, about appropriate nutrition, consequences of improper nutrition, the child or young person’s current status and what steps are needed to return the child or young person to health. The parent or carer has either refused to engage in this conversation, refused to make the changes needed to return the child or young person to health or verbally agrees to make changes but does not do so.

- The parent or carer may not be able to follow the plan due to cognitive impairment, mental illness, drug and alcohol abuse or similar reason.

- The parent or carer has demonstrated actions that may be potentially criminal or suitable for a JIRT action, for example the child is diagnosed with malnutrition and /or dehydration and the parent or carer has deliberately withheld food or fluids. This may occur as a form of punishment or discipline.
**Medical care**

- The child or young person requires medical care for an acute condition for which parents or carers are not providing the recommended medical treatment.

- The child or young person has an illness or injury that, if untreated, is likely to result in death, disfigurement, loss of bodily function, or prolonged significant pain and suffering, and the parents or carers are providing no care, insufficient care, a lack of timely care, or inappropriate care and the medical professional has explained the concerns to the family, discussed the options, including any religious or ideological grounds for refusal, and the consequences of inaction.

- No care. Parents or carers may or may not be providing home care, but the child or young person’s condition requires immediate professional medical care. An indicator that home care is inadequate would be that the child or young person’s condition is worsening.

- Insufficient care. Parents or carers have sought medical evaluation and care and a physician or other qualified medical professional has prescribed a treatment plan, but the parents or carers are not following the plan to the extent that the child or young person’s recovery is compromised.

- Inappropriate care. Parents or carers may have sought medical evaluation and care, but are adding or substituting alternative treatments that are having or are likely to have a significant and imminent adverse effect on the child or young person’s health. Inappropriate health-seeking behaviours may involve unnecessary, invasive medical procedures.

**Mental health care**

- The child or young person is suicidal. They may have recently attempted suicide or have a plan for suicide, or written a suicide note.

- The child or young person may be making comments about suicidal ideas and have behavioural changes (such as giving away possessions, not participating in favourite activities, or running away) or experienced significant loss or trauma.

- The child or young person may have a history of suicide attempts, a friend or family member who has committed or
attempted suicide, or have a mental health diagnosis or a current substance abuse problem.

**Education**

- Not enrolled
- Habitually absent

- The child or young person is of compulsory school age (6 years to current leaving age (17 years)) AND is not enrolled at a government school, or registered non-government school including distance education/correspondence school, or registered for home schooling.

- A child or young person of compulsory school age is enrolled and is habitually absent. Habitually absent is a minimum of 30 days absence within the past 100 school days. Exemptions may be provided by education authorities for family holidays, sickness and some employment, including in the entertainment industry.

- Lack of attendance may be due to lack of awareness of educational requirements by families from culturally and linguistically diverse backgrounds. Aboriginal students may have different attendance patterns due to cultural responsibilities, mobility, extended family responsibilities and the general impact of contact with welfare, criminal justice and health systems.

- Consideration needs to be given to earlier action being taken for younger children, children or young people with a cognitive disability or learning difficulties because of the increased level of impact.

- Other contextual factors may also impact the level of risk such as physical neglect, neglect or lack of supervision. Failure to receive an education may result in significant harm when it is combined with these other risk circumstances that may not, on their own, be present to a significant extent.

- Contact has been made with the parents or carers, the issue of attendance discussed, and information and appropriate assistance to encourage regular attendance of the child or young person has been provided. All steps and processes outlined in policy and procedures for following up non attendance have been followed to no avail; or there have been extensive and repeated attempts to contact the parent or carer.
over time; or the case has been escalated within the education system and within the systems of agency partners; or a statutory child protection authority is needed to make contact.

- Education staff, which may include the CWU, have already attempted to assist the family in overcoming barriers to enrolment and all efforts have failed.

- The parent or carer, child or young person is unwilling to address the non-attendance issues. The parent or carer is aware of the legal requirement and refuses to send the child or young person to school or engage with distance education or home schooling, except in the case of an identified medical condition.

- The parent or carer is unable to enable the child or young person to receive education due to alcohol or drug use, mental health, or domestic, family or community violence. They may not have the cognitive ability to understand or follow through on instructions.

- The child or young person is kept home to care for others and the parent or carer refuses to send the child or young person to school.

- The child or young person refuses to engage with any education options.

- The child or young person has a mental health or other health issue that makes school enrolment or engagement with any education options impossible.

- The child or young person has a significant condition that resulted from neglect that makes school enrolment or engagement with any education options impossible; for example, severe malnutrition or untreated medical condition.

- All reasonable attempts have been made to engage the child or young person with school (e.g. attempts have been made to identify and address issues such as ‘school phobia’).

- All attempts to assist the family to overcome barriers to absence have failed. This may include the parent or carer’s drug or alcohol use, mental health, domestic violence issues or be cognitively delayed. The child or young person may also have a mental health or other health issue that makes school attendance impossible.
• Other concerns or circumstances for significant risk could include the family moving without notice, the presence of domestic violence, drug and alcohol abuse that is negatively affecting ability to parent, unmanaged mental health issues in the parent or carer; child or young person with a disability; the child or young person being significantly withdrawn, depressed, is self-harming or demonstrating violent or destructive behaviours; the lack of a reliable adult outside the family to advocate for the child or young person; or indicators of abuse and / or neglect cannot be confirmed because the child or young person is confined and has limited interactions outside the home.

• Non-attendance is exposing the child or young person to serious risks, such as drug and alcohol abuse, crime, unsafe associations or activities, antisocial activities or violence.

• Family mobility restricting the child or young person’s access to education and other services.

Physical abuse and ill-treatment

Physical abuse and ill-treatment refers to assault, non-accidental injury or physical harm to a child or young person by a parent or other person responsible for the care of the child or young person. While some of the indicators of physical abuse may occur accidentally (e.g. a child has a black eye from being hit in the face with a ball while playing cricket), suspicions may be raised where:

- the child who is injured is under two years of age
- the explanation for the injury given by the child or young person does not match the presentation of the injury or the explanation offered by the parent
- the child or young person presents with multiple injuries that appear to be of different ages
- there is a pattern and/or an unexplained frequency to injuries (e.g. every second weekend).

In children and young people

In children and young people indicators of such abuse can include:

Physical

- bruising of the face, head and neck
- lacerations and welts from excessive discipline or physical restraint
- explanations offered by the child or young person that are not consistent with the injury
- other bruising and marks that may show the shape of the object that caused it, eg a hand print, buckle
- adult bite marks and scratches
- multiple injuries or bruises
- ingestion of poisonous substances, alcohol or other harmful drugs
- ruptured internal organs without a history of major trauma
- dislocations, sprains, twisting
fractures of bones, especially in children under the age of three years

- burns and scalds, and

- head injuries where the child or young person may have indicators of drowsiness, vomiting, fits or retinal haemorrhages suggesting the possibility that the child or young person has been shaken.

Social/psychological indicators of physical harm

- wearing of clothing inappropriate to weather conditions in order to conceal injuries

- fears adults

- aggression towards other children and lack of empathy.

In young people

Young people might also display:

- frequent visits to health or other services with unexplained or suspicious injuries, swallowing of non-food substances or internal complaints

- aggressive or violent behaviour towards others, particularly younger children

- explosive tempers that are out of proportion to precipitating events, and

- anxiety – being constantly on guard around adults and cowering at sudden movements.

In parents or caregivers

Parents or caregivers might:

- directly admit that they fear they may injure the child or young person

- have a family history of violence which includes previous harm to children and young people

- have a history of their own maltreatment as a child or young person
• present the child or young person repeatedly to health or other services with injuries, ingestions or minor complaints

• leave a marked delay between injury of a child or young person and presentation for medical assistance

• offer a history of the injury which is inconsistent with the physical findings, or

• offer a history of the injury which is vague, bizarre or variable

• Use excessive discipline.

**Female genital mutilation**

Female genital mutilation (also called female circumcision) refers to the partial or full removal of female genitalia. Female genital mutilation is both a child protection issue and a criminal offence (under s.45 of the NSW *Crimes Act 1900*) in NSW. It is illegal (with very limited exceptions such as sexual reassignment surgery) to perform the procedure, assist someone else to do it, or send a woman, girl or female baby who is normally resident in NSW elsewhere (including overseas) to have the procedure performed. Cultural reasons are not acceptable grounds for performing the procedure.

General indicators of female genital mutilation might include:

• 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

• crouching or physical withdrawal in response to sharp movement

• anxiety about forthcoming school holidays or a trip to a country which practises female genital mutilation

• older siblings worried about their sisters visiting their country of origin, and

• long periods of sickness.
Child Wellbeing and Child Protection NSW
Interagency Guidelines for significant harm – physical abuse

Physical Abuse – Current Injury
Injuries causing significant risk of harm or harm will require medical assessment and/or treatment; or there are fractures, head, neck or back injury, abdominal trauma, burns, lacerations requiring sutures, female genital mutilation. The explanation may be suspicious, inconsistent or injuries are of various ages.

You might see an injury – bruise, cut, burn, genital mutilation; or

You may suspect that a child or young person has an injury even if you cannot see it.

For example, the child might tell you that they have an injury but you are unable to see it because it is covered; they may be acting as if they have injuries to joints, bones or muscles; or have internal injuries (pain, vomiting, pallor, losing consciousness; or have head injuries (losing consciousness, blurred vision or stopped breathing); or have experienced genital mutilation (difficulty toileting, difficulty with menstruation, reluctance to be involved in sport or other activities)

and

The injury is current. Include injuries that are present at this time, including any bruises regardless of colour.

You may observe one of the following indicators of significant harm:

Examples of significant injuries:
- Skull or facial injuries – injuries to eyes, teeth, pinna of the ear, or brain, retinal haemorrhages, bruising to the head
- Cervical fractures; neck injuries including bruising, ligature marks, inability to speak normally
- Loss of consciousness
- Disfigured nose or jaw
- Rib or spinal fractures
- Internal organ injuries, including deep bruising
- Bruising to back, sternum, stomach or head
Coughing, vomiting or spitting blood

Burns – all 2nd and 3rd degree burns requiring medical care

Cuts or lacerations requiring sutures (stitching)

Broken bones, sprains, dislocations or ligature marks on arms or legs

Child or young person holding arm or leg in an odd position; or an inability to bear weight on their legs

Genital damage consistent with Female Genital Mutilation

Female genital mutilation is suspected for a girl who:

- Is reluctant to be involved in sport or other physical activities when previously interested
- Has difficulties with toileting or menstruation
- Has long periods of sickness

Serious damage resulting from circumcision of a boy by an unqualified practitioner.

Increased concerns should also be held for children under the age of five years or those with a disability who may be cognitively, emotionally or physically unable to move in a self-protective way.

Further concerns should be held for children or young people who state that they are afraid to go home. This may be due to fear of retribution for disclosure. The child may also appear to be extremely anxious (tearful, shaking or have an upset stomach). In this case the child or young person should remain with the reporter until Community Services is able to respond.

Note: minor injuries are defined as those that only involve mild redness or swelling, minor welts, scratches, or abrasions or brief and minor pain. Non-accidental injury to a child less than one year of age should not be considered minor.

Injuries may be suspicious, inconsistent or be of various ages.

Suspicious injuries include the following:

- A torn fraenulum in an infant (e.g. inside the top lip or under the tongue)
- Bruising to an earlobe on both surfaces
- Bruising to scalp
- Both eyes blackened
- Cuts to the face
- Facial bruising to the soft tissue of the cheek or the neck
- Multiple bruises or fractures on the torso of the body
- Spinal fractures; spiral or oblique fractures of arms and legs; multiple fractures of different ages; corner fractures
- *Bucket handle tears
- On the skin – human bite marks, loop marks, marks in the shape of another object, cigarette or other contact burns in the shape of the object, *stocking pattern burns on hand or foot, marks covering the circumference of a limb or neck; multiple bruising of different colours that is not on common areas for accidental bruising, such as knees, shins or elbows.

* Stocking pattern burns show a relatively consistent line separating the burnt skin from the non-burnt skin, similar to a sock or mitten on the hand or foot.

* Corner and Bucket Handle fractures are due to the forcible tearing away of bone due to trauma to the growth plate of bones in arms and legs. Bucket Handle fractures appear on x-ray as disc or bucket handle shaped.

Spiral fractures are a result of twisting forces and are uncommon in young children.

The Radiology Assistant, Diagnostic Imaging in Child Abuse, http://www.radiologyassistant.nl/en/43c63c41ef792 accessed 20/02/10

Explanation is inconsistent:

The explanation given for the injury suggests that the injury was not caused in the manner reported. For example, the developmental age of the child does not match the explanation of the injury, as in newborn babies rolling off beds, internal injuries where there is no history of significant trauma, broken bones in non-ambulatory children, liquid burns with no splash marks, or burns being deeper than expected given water temperature and time of exposure.
Injuries of various ages:

There are multiple injuries that appear to have been caused at different times, for example prior fractures, scars or burns with no known history, or further fractures or injuries decreasing the likelihood of the injury/s being accidental.

There may be a pattern of multiple injuries.

The pattern of prior injuries may include:

- prior confirmed reports of physical abuse to any child in current household
- prior investigations of an adult for physical abuse
- a medical history showing a pattern of injuries reported to Community Services, or that in combination suggest abuse
- prior injuries where the child denied abuse but were suspicious
- the child demonstrates other signs of abuse such as a deterioration in school performance, becoming withdrawn or using aggressive behaviour
- or there is a pattern of domestic violence in the home including physical and non-physical violence, or violent criminal and non-criminal acts.

Indicators of significant physical harm in a carer or parent that is likely to result in significant physical injury:

- Use of a form of discipline that often results in significant harm- physical force applied to head or neck or another part of the body for more than a short period.
- Acting in a dangerous way toward a child or young person that is likely to result in significant injury, including during a domestic violence incident. Examples include domestic violence where the child might intervene or in close proximity to be injured; the use of weapons; driving under the influence of drugs or alcohol with the children in the care and causing or nearly causing an accident.
- The carer used a disproportionate degree of force relative to the child or young person’s age, physical size, or physical vulnerability (with or without use of an object).
• Parent or carer hit the child or young person in sensitive areas such as eyes, head, chest or abdomen.

• Parent or carer was out of control while disciplining the child or young child or young person e.g. hitting a child repeatedly with a buckle end of a belt.

• Parent or carer exposed child or young person to extreme heat/cold for sufficient duration to result in serious harm e.g. intentionally holding the child in extremely hot water.

• Threatening to kill or cause significant injury to child or young person. This may be based on a reasonable belief that without intervention the child will be injured, such as history of violent behaviour, substance abuse or mental illness; child exhibiting significant fear of the parent or carer and reports their concerns.

• Circumstances suggesting that genital mutilation is planned – for example reports of special operations associated with celebrations, anxiety about forthcoming holidays or trips to a county known to practice Female Genital Mutilation, or siblings concerned for their sisters visit to their country of origin.

This can also include males having a planned circumcision by an unqualified practitioner.

• Parent or carer acting in a dangerous way toward child or young person that is likely to result in significant injury, including domestic violence. Examples include domestic violence where the child might intervene or in close proximity to be injured; the use of weapons; driving under the influence of drugs or alcohol with the children in the care and causing or nearly causing an accident.

Sexual abuse and ill-treatment

Sexual abuse includes any sexual act or sexual threat imposed on a child or young person by an adult, adolescent, or another child. Sexual abuse can include both non-contact forms of harm (such as flashing, exposure to sexually explicit acts or pornographic material) or contact behaviours (such as touching or fondling the child or young person in a sexual manner, oral, anal or vaginal penetration of the child or forcing the child to perform sexual acts on others or themselves).

Recognising sexual abuse can be difficult because clear physical evidence or indicators are often absent.

In children and young people

Your concern would be aroused if you became aware of any of the following in a child or young person:

Physical indicators of sexual ill-treatment or harm:

- injuries such as tears or bruising to the genitalia, anus or perineal region
- bleeding from the vagina or external genitalia or anus
- sexually transmitted diseases
- trauma to the breasts, buttocks, lower abdomen or thighs.

Social/psychological indicators of sexual harm:

- descriptions of sexual acts, e.g. “Daddy hurts my wee-wee.”
- age-inappropriate behaviour and/or persistent sexual behaviour
- sexually offending behaviour
- going to bed fully clothed
- regression in developmental achievements in younger children
- contact with a known or suspected perpetrator of sexual assault
• unexplained accumulation of money and gifts.

In young people

Young people might display the following indicators:

• self-destructive behaviour, drug dependency, suicide attempts, self-mutilation
• persistent running away from home, homelessness
• anorexia, overeating
• adolescent pregnancy
• particularly negative reactions to adults of only one sex
• sexually provocative behaviour
• desexualisation, e.g. wearing baggy clothes to disguise their gender; eating disorders may be a possible indicator in this category
• artwork or creative writing with obsessively sexual themes
• intense anger towards men they believe are homosexual
• being involved in prostitution, or having knowledge about practices and locations which are usually associated with prostitution, or
• alcohol and other drugs abuse
• Children and young people who are being sexually abused may also display some of the general indicators of a child under stress, such as: poor concentration at school, sleeping or bedtime problems, e.g. nightmares or bed wetting, marked changes in behaviour or mood, tantrums, aggressiveness, withdrawal, and complaints of stomach aches and headaches with no physical findings.
In parents, caregivers, siblings, relatives, acquaintances or strangers

The following behaviours by parents, caregivers, siblings, relatives, acquaintances or strangers would alert you to risk of harm:

- exposing the child or young person to prostitution or child pornography, or using a child or young person for pornographic purposes
- intentional exposure of a child or young person to sexual behaviour of others
- previous conviction or suspicion of child sexual abuse
- inappropriate curtailing or jealousy regarding age-appropriate development of independence from the family
- controlling attitude and overly critical of adult partner and children
- defensive against accusations by claiming the child or young person is lying
- coercing a child or young person to engage in sexual behaviour with other children and young people
- denial of an adolescent’s pregnancy by her family, and
- perpetration of spouse abuse or physical abuse of a child of young person.

Non-offending parents or carers might minimise a disclosure or constantly defer to their partner.
Child Wellbeing and Child Protection NSW Interagency Guidelines for significant harm—sexual abuse

<table>
<thead>
<tr>
<th>Child</th>
<th>The reported victim is under age 16.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Young Person</td>
<td>The reported victim is age 16 or 17.</td>
</tr>
<tr>
<td>Problematic Sexual Behaviour</td>
<td>A child/young person has initiated sexual contact with another child/young person.</td>
</tr>
</tbody>
</table>

You learn about sexual contact or sexual abuse of a child or young person. This may be through a clear and unambiguous statement that describes an incident of sexual contact or non-contact behaviours or it could be an explicit drawing or re-enactment with a statement by the child expressing that this has happened to them. It is not necessary that the child provide details of the incident, time or date, location, or identity of the offender.

- A child or young person has medical findings suspicious for sexual abuse.
- A child or young person’s behaviour, including sexually abusive behaviour is concerning.

**Significant harm from sexual abuse**

Sexual abuse is any sexual act or threat to a child or young person that causes them harm, or to be frightened or fearful. It covers a continuum including the following:

- **Contact behaviours:** kissing, touching, fondling in a sexual manner; penetration of the vagina or anus by digital, penile, or any other object; oral sexual contact; or coercing the child or young person to perform such an act on themself or another person.

- **Non-contact behaviours:** flashing/exposing to child, having a child or young person pose or perform in a sexual manner, looking at child’s genitals for sexual gratification, exposure to sexually explicit material or acts (including pornographic material), communication of graphic sexual matters (including by email or SMS).

- **Child prostitution:** engages in sexual acts in exchange for money, goods or other services.
Sexual abuse also includes the following indicators:

- The child or young person makes a clear and unambiguous statement of sexual abuse or you are aware by other means that they have been sexually abused (e.g., observation / witnessing the act informed by a third party, hearing an admission by the offender, or electronic devices such as photos or videos of the act).

- A child may make an indirect statement of sexual abuse such as, “Daddy and I have a secret that I am not allowed to tell,” or “I don’t like how Daddy touches me”.

- Child or young person may be depicted in or pose for pornographic material of any kind.

- For a nonverbal young person, e.g., one having an intellectual/physical disability or cognitive disruptions such as psychosis, includes physical indicators such as pregnancy, sexually transmitted infections, or trauma to genital area without a plausible explanation.

- The child or young person might display behaviour that causes you to have significant concern:
  - In children aged less than five this might include having an obsessive preoccupation with sexual behaviour, re-enacting specific sexual activities, behaviour that involves injury to themselves or others; or behaviour that involves coercion, threats, secrecy, violence, aggression or developmentally inappropriate acts
  - Children aged 6 to 10 years might include sexual penetration, genital kissing, oral copulation, simulating intercourse, or coercion, threats, secrecy, violence, aggression or developmentally inappropriate acts
  - Children aged 11 to 12 years might engage in sexual play with other children or any sexual activity with other children that involves coercion, threats, secrecy, violence, aggression or developmentally inappropriate acts
  - Adolescents aged 13 to 17 years of age may engage in masturbation that causes physical harm or distress to themselves or others; public masturbation; unwanted kissing; voyeurism, stalking, sadism; non-consensual groping or touching of other people’s genitalia; coercive sexual assault or intercourse; coercive oral sex; or behaviour that socially isolates the young person and is destructive of their relationships with peers and family.
• The child may be having significant contact with a known sexual offender (a registered offender, previous conviction for sexual offenses, or is currently being investigated for a sexual offence against children). Significant access includes:

- The person lives in the child’s household
- Is in an intimate relationship with the child’s parent, carer or sibling
- Or has been given responsibility for supervising the child alone and more than momentarily.

It may be appropriate to notify law enforcement if a registered sex offender is attempting to create access to any child.

• The child may experience significant or extended exposure to sexually explicit material such as texting, email, Internet, sex acts on web cam, magazines or DVDs. Significant harm would be suggested where the child is expressing fear, discomfort, or exhibits symptoms of significant harm. This includes an impact that interferes with the child’s normal behaviour and development such as inability to sleep that interferes with their daily lives (can’t stay awake at school); the child or young person is developing an eating disorder and losing weight or eating compulsively; their academic performance is being affected such that they are performing below their potential; or the child or young person is socially isolated or stigmatised as a result of embarrassment and becoming socially withdrawn.

• The child or young person has been exposed to grooming behaviours (as a precursor to sexual abuse). This may include any adult who is trying to manoeuvre to get time alone with a child or young person, buys them gifts, takes them to fun places, or works at building a trusting relationship with the child or young person. In young people this could also include providing drugs or alcohol or making them feel special or loved. Grooming behaviours should be considered when there is no acceptable or appropriate alternative explanation for the behaviour.

• Coercion and intimidation may be present – the child or young person has been forced to participate in prostitution or pornography through threats, bribes, extortion or intimidation and the child or young person does not believe they are free to stop.
The young person might display behaviours that are consistent with sexual abuse. Sometimes these behaviours may not be conclusive of sexual abuse but are causing concern: promiscuous behaviour, sudden changes in mood, secretiveness, suicidal, onset of eating disorders, or self-harming or cutting.

**Problematic sexual behaviour**

A child or young person may also be engaged in sexually abusive behaviour. The child or young person initiating the sexual activity may be more powerful than the other child (two or more years older; taller or heavier to the extent of giving a clear physical advantage; be more mature or emotionally sophisticated and so able to persuade the other child to do things they would not have thought to do themselves unless they were talked into it); or the victim has physical disability to such an extent that they are unable to move in self-protective ways.

One or more of the children or young people has coerced or forced the other(s) to participate by hurting or threatening to hurt them, or by offering gifts, bribes or by creating secrecy. You may have concerns for grooming behaviours but this should be where there are not other acceptable or appropriate alternative explanations for the behaviour.

Concerns would also exist where:

- the victim lives in the same household as the child or young person initiating the problematic behaviour;
- where the parent or carer has learned of the sexually problematic behaviour and has not taken any action to prevent the recurrence of the behaviour,
- to address the underlying issues that contributed to the behaviour or
- to attend to the needs of any victim living in the home.

See the table of Abusive Sexual Behaviour identified in the NSW Mandatory Reporter Guide, p71.

Domestic violence

Domestic violence refers to any abusive behaviour (such as physical or sexual assault, and emotional, social and economic abuse) used by a person to gain and maintain control over their intimate partner. Some people accept violence and abuse as a normal part of relationships. Abuse and violence can be seen every day in the media, providing fewer examples to children and young people of how to value, respect and consider other people. There is never an excuse for bullying, abuse or violence.

Abuse happens for a variety of reasons including:

- Some people having more control or authority over others and thinking that they have more rights
- Lack of skills to deal with stress or how to handle feelings. They may take their anger and frustration out on others
- Belief that their partner is their property
- The abuser has grown up with violence as a way of life and is the way in which to deal with issues or to get what they want
- Sometimes drugs and alcohol play a part.

There is a common pattern to this abuse and violence, called the ‘cycle of violence’, that gets progressively worse over time. It generally starts with a build up of tension, leading to an explosion of violence. This is followed by a stage where the abuser is sorry for their actions and may promise never to do it again. In the last stage, the false honeymoon stage, things seem to be fine until the tensions start to build again and the cycle is repeated unless the offender is stopped and receives help or the victim leaves the situation.

Living with domestic violence can cause physical and emotional harm to children and young people as the result of:

- the child or young person is a direct victim of physical and emotional abuse
- the child or young person is an indirect victim when attempting to protect another person
- the child or young person is a victim of emotional and psychological trauma as the result of living in a climate of fear and intimidation due to domestic violence.
Serious psychological harm occurs where the behaviour of a parent or caregiver significantly impairs the social, emotional, cognitive and intellectual development of a child or young person, and should be assumed in the following circumstances:

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

Other relevant factors include:

- where a parent or caregiver’s level of victimisation is such that they are unable to act protectively towards the child or young person, and
- the presence of other factors, such as use of alcohol or other drugs, mental health issues, or a disability which may increase the likelihood of serious physical or psychological harm, or reduce the capacity of members of the household to act to protect the child or young person.

**In children and young people**

Indicators of a child or young person living with domestic violence can include:

- aggressive or violent behaviour; physically and verbally abusive to siblings, parents and peers
- young people may be sexually abusive
- defiant at school, particularly with female teachers
- constantly fights with peers
- overprotective of mother or of leaving mother alone
- lack of trust in others
- anxiety, phobias and insomnia
- clingy, dependent, sad and secretive
- regressive behaviours
- stealing
- depression
- diminished self esteem
- feelings of worthlessness about life and themselves
- social isolation
- poor concentration, poor academic performance, school absenteeism and problem solving skills
- delayed or problematic language development
- reduced social competence skills, including low levels of empathy
- difficulty in maintaining long-term significant relationships
- self harm and suicide attempts in young people
- extreme risk taking
- pre-term and low birth weight babies; or slow weight gain in infants
- difficulties with sleeping and / or eating
- eating disorders such as anorexia and bulimia
- unexplained physical injuries
- disruptive homelessness or stays away from home for prolonged periods in young people.

In parents or caregivers

Indicators of domestic violence in adult victims can include:

- physical signs of the victim fighting back, such as bruises or facial scratches
• injuries that do not fit the reason given
• bite marks
• unwanted pregnancy or sexually transmitted disease through forced sex / partner’s refusal to allow use of contraceptives
• bruising and other injuries, especially if pregnant
• unexplained miscarriage or stillbirth
• alcohol and drug abuse
• psychosomatic complaints
• anxiety, depression
• suicidal thoughts and attempts
• low self esteem, submissive, withdrawn
• social isolation
• repeat / after hours presentations at emergency departments
• seldom / never makes decisions without referring to partner
• fear of reprisal
• frequent absences from work or studies.

**Indicators in perpetrators**

• may admit to some violence but minimises frequency and severity of violence;
• impresses as overly concerned about suspected victim
• threatens acts of violence
• rough handling of victim, children, pets
• unable to control angry outbursts
• belief of ‘ownership’ of partner and children;
• holds rigidly to stereotypical gender roles
CHAPTER SIX: IDENTIFYING RISK OF HARM AND SIGNIFICANT RISK OF HARM - CHCCHILD401A-V2

- always speaks for partner / children
- describes partner as stupid or incompetent
- jealous and controlling of partner; lacks trust in partner or anyone else
- does not allow partner or child to access service providers alone.

Bullying

Those who work in child-related employment can play an important role in making the environment a child safe-child friendly environment by responding promptly to bullying behaviour. The bully must be confronted and insist that the behaviour is stopped. Not acting sends a message that the behaviour is condoned or appropriate. Children need to be given strategies for dealing with conflict resolution, behaviour and stress management. Children should be encouraged to report bullying and informed that telling is a way to help children to stay safe. Not dealing with bullying can cause serious psychological harm to a child.
Child Wellbeing and Child Protection NSW Interagency Guidelines for significant harm – domestic violence

Domestic violence includes chronic and severe incidents of domestic violence where one of more of the following has occurred:

- Use of a weapon such as a gun, knife, blunt object or flammable liquid.
- Serious injury has occurred to an adult during the incident including but not limited to strangulation, sexual assault, fractures, internal injuries, disfigurement, burns, death, and/or any injury that may require hospitalisation.
- Physical injury to a child or young person including bruising, cuts or burns, or other more severe injuries. The child may not have been the intended victim but was in close proximity to the intended victim (e.g. in a parent or carer’s arms, or tried to intervene).
- An attempt has been made to strangle, suffocate or kill a household member.
- A serious threat to harm a child, young person, adult or self is made (e.g., threat to kill self, sexual assault, kidnap, hold hostage, murder, serious injury or harm). The weapon may have been displayed in a threatening manner implying an intention to use the weapon.
- There is a significant increase in a pattern of violence, such as the number and severity of incidents. This can include repeated episodes of minor injuries which are getting worse and happening more frequently.

Significant harm from domestic violence can also include:

- Where the child or young person demonstrates significant emotional distress including shaking with fear, inconsolable sobbing, cowering or hiding or showing little or no emotion especially where the violence has been longstanding.

The child or young person may demonstrate indicators of stress and emotional disturbance:

- More than the occasional difficulty sleeping or eating
• Displays a startle response
• Losing weight, eating compulsively and becoming obese (and/or bulimic)
• Having episodes of physical complaints for which there is no known cause (such as stomach aches or headaches).

**In younger children**

• Not responding to cuddling
• Not smiling or making sounds
• Losing developmental milestones already achieved such as toilet training, language or other skills
• Being inconsolable
• Head banging
• Bed wetting
• Being upset by loud noises or quick movements
• Being withdrawn, not playful or their play imitates violence between parents or carers
• Unusually extreme separation anxiety or no separation anxiety

**In young people**

• May be involved in violent relationships
• Have difficulty maintaining long term significant relationships
• Self harming and / or suicidal
• Constant worry about violence or dangers
• Desensitisation to violence
• Decline in school performance
• Feelings of worthlessness about life and themselves
• Unable to value others or to show empathy
• Lacks trust in people.
Older children and young people may also have:

- Increased aggressive behaviour
- Loss of interest in previously pleasurable activities
- Extreme insecurity
- Extreme anxiety such as inability to sit still that is not related to Attention Deficit Hyperactivity Disorder (ADHD)
- Lacks interpersonal skills necessary for age-appropriate functioning
- Extreme attention seeking
- Takes extreme risks; is markedly disruptive, bullying or aggressive
- Avoids adults or is obsessively obsequious / submissive to adults
- Highly self critical
- Feelings of hopelessness, misery, despair
- Significant change in child or young person’s personality / behaviour, for example has stopped all social activities, has a new pattern of involvement in fights, failing in school despite a history of good performance, or becoming involved in offences.

Serious psychological harm

Serious psychological harm occurs where there is psychologically abusive behaviour of a parent, caregiver, older child or other person resulting in:

- profound damage to the confidence and self-esteem of a child or young person resulting in serious emotional deprivation or trauma
- serious impairment of a child or young person’s social, emotional, cognitive-intellectual development, and / or disturbance of a child or young person’s behaviour.

Although it is possible for one-off incidents to cause serious harm it is generally the frequency, persistence and duration of the adult’s behaviour that defines the consequences of the harm to the child or young person. Individual child factors can mediate the impact of the harm, such as the age, intelligence, and resilience of the child or young person and the nature of support received from others.

Research on early brain development supports concerns that experiences of emotional harshness and unpredictable adult behaviour creates high levels of the steroid hormone, Cortisol. This hormone reaches the brain to regulate responses to stress. Too great a level of Cortisol can actually destroy brain cells, reducing the density of synapses and blocking a child’s ability to learn positively. Their brain cells also create other connections that can be seen through their behaviour through anxiety and aggression. Babies who have experienced lower levels of stress and warm and consistent nurturing have lower Cortisol levels (Lindon 2005, p88).

Indicators of serious psychological harm in children and young people include the following.

**In children and young people**

- feelings of worthlessness about life and themselves
- the inability to value others
- a lack of trust in people and lowered expectations
- a lack of interpersonal skills necessary for adequate functioning
- extreme attention-seeking behaviour, and
In young people

Young people might also:

- avoid all adults
- be obsessively obsequious or submissive to adults
- have difficulty in maintaining long-term significant relationships, and
- be highly self-critical

*Note:* Children and young people sustain emotional harm from all types of abuse.

In parents or caregivers

The following behaviours by parents or caregivers can cause psychological harm in children and young people:

- constant criticism, belittling, teasing of a child or young person, ignoring or withholding praise and affection
- excessive or unreasonable demands
- inconsistent, inappropriate or unrealistic expectations
- 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, and
- behaviour in situations that can harm a child or young person’s safety, welfare or well being.

It is important that persons who work with children and young people, either directly or indirectly, are able to identify situations where those children and young people may be at risk of harm.
The child or young person may experience or be exposed to:

- Chronic or severe domestic violence – physical altercations that have occurred or are threatened; may include verbal, demeaning, stalking, controlling behaviour or threats of harm; there is a pattern of ongoing incidents; or the violence has resulted in any participant or bystander requiring medical care, or there was the use of a dangerous weapon.

- Severe parental or carer mental health or substance abuse concerns – parent or carer expresses ideas that are out of touch with reality; does not provide even minimal emotional support for the child or young person; the parent or carer threatens or attempts suicide, homicide or harms pets; or their behaviour is extremely erratic.

- Parental or carer behaviours that are persistent, repetitive, and have a negative impact on the child or young person’s development, social needs, self worth or self-esteem – characterised by persistently and consistently criticising, punishing, demeaning and humiliating, scapegoating a child or young person. This requires a pattern of behaviour but a single act may be included if you have had no prior contact with the family and the behaviour is severe.

  Criticism is not balanced by praise, is not constructive or helpful and is personally attacking. There is a pattern in which nearly everything the child does is criticised. There is also a pattern where the child or young person is nearly always being punished and punishment is given for minor or developmentally normal behaviours or emotionally brutal (threats of harm, of abandonment, isolation, etc). Scapegoating behaviours include blaming the child or young person for conditions not their fault or consistently finding fault for incidents caused by others.

- Parental or carer criminal and / or corrupting behaviour – exposing the child or young person to illegal behaviour of the parent or carer.

- Parental or carer behaviours that deliberately expose a child or young person to traumatic events – live or depicted.
• The child or young person may exhibit emotions and / or behaviours that indicate that they are significantly affected. These are the same as those listed on page 192 under Domestic Violence for Stress and Emotional Disturbance or you can use the Table in the Mandatory Reporter Guide, page 75.

• The child or young person may also have been diagnosed by a mental health professional with a DSM-IV Axis 1 condition (clinical disorders, including major mental disorders, and learning disorders).

• The child or young person may be afraid to go home, remain at home or you may be concerned for their safety at home as this may result in the child or young person harming themselves or others or the parent or carer behaving in ways that would place the child or young person in imminent danger of significant harm (i.e. there will be a violent incident).

• You have concerns that if this is raised with the family they may flee, withdraw the child or young person from services, or retaliate against them.

• The family is not willing to engage with services to assist the child or young person – they are unresponsive to the child or young person’s psychological concerns; unwilling to engage in discussion about the changing behaviour or address the symptoms of psychological harm; the parents/carers are physically, cognitively or emotionally unable to take required actions; are reluctant to seek treatment because of cultural or religious considerations or social stigma; or services are not available or the parent/carer does not have access to them.

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Child Wellbeing and Child Protection NSW Interagency Guidelines for significant harm – relinquishing care

The parent or carer is no longer willing to provide shelter, food, or supervision for the child or young person, effective immediately or the child or young person has been in voluntary care more than 3 of the past 12 months.

- The parent or carer has stated that they will not provide shelter, food, or supervision for the child or young person; or have already stopped providing shelter, food, or supervision for the child or young person and have indicated that they do not intend to resume providing shelter, food or supervision.

- There is an AVO preventing the child or young person from living in their home.

- The parent or carer has made arrangements for voluntary care and is unable or unwilling to resume care and meets the following legislative requirements:

  - The child or young person must not remain in voluntary out of home care with a non-designated agency for more than 3 months in any 12 months; and

  - The child or young person must not remain in voluntary out of home care with a designated agency for more than 180 days in any 12 month period unless the agency responsible has prepare a plan that meets the child or young person’s needs in accordance with the Children’s Guardian guidelines.

- Reasonable efforts have been made to discuss options with the parent or carer and these efforts have been rejected.

- There is no alternative care arrangement for the child or young person for the next 72 hours. They may already be on the street or in unsuitable housing, on remand with bail conditions, in a mental health unit and not required to be there, or the child or young person is unable to make a decision regarding their safety due to intellectual disability, a mental health condition, or they are under the influence of alcohol or other drugs at the time of decision.
Child Wellbeing and Child Protection NSW Interagency Guidelines for significant harm – carer concern

Carer concern includes when you do not have information that a child or young person has been injured, neglected or psychologically harmed, however, you may be concerned by substance abuse, mental health or domestic violence by a carer. This substance abuse may impact on their ability to meet the child or young person’s needs, cause significant harm, or the child or young person’s behaviour indicates the impact of the substance abuse.

Carer concern: substance abuse

Substance abuse includes:

- When a child or young person discloses significant substance use by a parent or carer.
- You observe a parent or carer to be significantly impaired by substance use.
- Inappropriate parent or carer substance use is reported to you by a third party.
- A child is born and there is evidence that the child was exposed to alcohol or drugs.

Significant harm: substance abuse

Parent or carer not meeting basic needs or is likely to be unable to do so:

on more than one occasion the carer or parent has not provided food, supervision, adequate housing, safe living conditions or other basic care because they were under the influence of drugs or alcohol or could not provide for the needs as financial resources were spent on drugs or alcohol, or because the parent or carer’s life was so organised around the drug taking that they were inattentive to the child or young person’s needs. The age and developmental status of the child or young person involved must be considered as younger children are more dependent on others to provide for their needs.

Parent or carer is likely to cause significant harm to the child or young person:

on more than one occasion the parent or carer has become violent, out of control and / or passed out whilst under the influence and used the substance in the presence of the child or young person.
The child or young person does not have to be present when the parent or carer lost control or passed out.

Child or young person’s behaviour indicates parent or carer’s substance abuse:

the child or young person is exhibiting signs of emotional disturbance. See signs in Serious Psychological Harm or the table on page 80 of the Mandatory Reporter Guide.

Other concerns would include:

- The child was the subject of a prenatal report related to substance abuse by the mother and has failed to engage with services to reduce the risk, or who has done so minimally but has continue to use drugs

- The parent or carer has refused services or not effectively engaged with services to reduce risk of harm. This may be indicated by the child or young person’s developmental needs not being met, the child or young person isolated by an absence of services, or the capacity of the parent or carer to provide adequate care for the child or young person.

- The child is aged less than 5 years and has a disability or has the cognitive and emotional functioning of a child aged less than 5; the child is aged less than 13.

**Carer concern: mental health**

Mental health concerns include:

- A child or young person discloses significant parent or carer mental health concerns.

- You observe a parent or carer to be significantly impaired by mental health concerns.

- Parent or carer mental health concerns are reported to you by a third party.

**Significant harm: mental health**

The parent or carer’s mental health concerns are impacting or are likely to impact on their ability to meet the needs of the child or young person, it causes significant harm, or the child or young person’s behaviour indicates the impact of the parent or carer’s mental health issues. This may be indicated by:
- Parent or carer is not meeting the child or young person’s basic needs or is unlikely to be able to do so.

On more than one occasion the carer or parent has not provided food, supervision, adequate housing, safe living conditions or other basic care because they were experiencing mental health symptoms. The age and developmental status of the child or young person involved must be considered as younger children are more dependent on others to provide for their needs.

- Parent or Carer’s emotional status inhibits or prevents them from forming a relationship with their infant or newborn. For example postpartum depression and not responding to the infant (refusing to hold the child or responding to infant cues).

- Parent or carer is likely to cause significant harm to the child or young person. On more than one occasion, while experiencing mental health symptoms, the parent or carer became violent and / or out of control, including imminent and serious threats of homicide or suicide. The child did not have to be present during the out of control incident.

- The child or young person’s behaviour indicates the impact of the parent or carer’s mental health concern by exhibiting indicators of emotional disturbance – see page 84 of Mandatory Reporter Guide or those included previously under Significant Psychological Harm.

- The child was the subject of a prenatal report and the parent or carer has failed to engage with services, refused services, or not effectively using services to reduce the risk of harm to the child. This may be evidenced by the child or young person’s developmental needs not being met, the absence of services isolating the child or young person; and the capacity of the parent or carer to provide adequate care for the child or young person.

- There is no other parent or carer who can adequately care for and protect the child or young person.

- The child is aged under 5, or has a disability; or is under age 13 – these children are more vulnerable.
Carer concern: domestic violence

Domestic violence concerns include:

- You are aware of an incident of domestic violence (observed by you or reported to you) that did not result in injury to a child or young person or psychological harm to a child or young person.

- You suspect domestic violence based on observations of extreme power/control dynamics (e.g., extreme isolation) or threats of harm to adults in household.

Significant harm: domestic violence

There has been an incident of domestic violence where one or more of the following occurred:

- Use of a weapon
- Attempt to suffocate, strangle or kill
- Serious injury to an adult
- Physical injury to a child or young person
- Serious threat to a child, young person, adult or self (e.g., threatened to kill themselves, sexual assault, kidnap, hold as hostage, murder or seriously injure)
- There has been a significant increase in the pattern of violence (e.g., repeated episodes of minor injuries that are getting worse or happening more often)

A child or young person may have attempted to intervene, was in a parent or carer’s arms or in close enough proximity to be hurt; was significantly upset by the incident (see indicators of Emotional Disturbance, pg. 89 of Mandatory Reporter Guide); or was the subject of a prenatal report related to domestic violence toward the mother and has not engaged with services to reduce the risk.

You may be aware of the presence of risk factors for domestic violence including:

- AVO or family law contract orders due to violence
- Recent or imminent divorce or separation
- Stalking, extremely controlling behaviour, or sexual assault of a parent or carer
- The aggressor has significant mental health issues (e.g., paranoid or out of touch with reality) or severe drug or alcohol abuse (uses alcohol or drugs to the extent that they become violent or out of control);
- Or a combination of the above.

Other risk factors that further violence is likely in the near future include: the adult victim being in a constant state of fear, fearing for the child’s safety, recent unemployment causing stress or family
friction, severe financial stress; mental health concerns; use of drugs and / or alcohol, the presence of weapons in the house, the victim is pregnant; cruel treatment of animals or family pets; conflicts over custody or visitation issues; or the child not being a biological child of the aggressor.
Child Wellbeing and Child Protection NSW
Interagency Guidelines for significant harm – unborn child

A person who has reasonable grounds to suspect, before the birth of a child, that the child may be at risk of significant harm after his or her birth may make a report to the Director-General – s25, NSW Children and Young Persons (Care and Protection) Act 1998.

Reports relating to unborn children are not mandatory but the benefits of reporting can have benefits for the mother and her unborn child. Reporting assists services to mobilised to assist for their mutual benefit; and to prepare for an appropriate statutory intervention following the birth.

There may have been a previous history of abuse or neglect of siblings, siblings removed or a death in circumstances that were reviewed by the Ombudsman.

Circumstances may exist that suggest the parent or carer will be unable to care for the child after their birth:

- Parent or carer is suicidal (recent attempt, threatening suicide or making plans to).
- There is substance abuse or unmanaged mental health issues (currently using heroin, cocaine, methamphetamines or other illegal drug or alcohol on more than one occasion, resulting in intoxication and unable to provide necessary care); or a history of substance abuse resulting in neglect or abuse of another child or young person.
- Domestic violence – involving serious injury, use of a weapon, or extremely isolating and controlling behaviour.
- Cognitive disability – the carer or parent has a limited ability to understand information necessary for the care of an infant.
- Severe medical condition or physical disability making it extremely difficult to provide care for an infant.
- Homelessness – no safe place to stay with the baby upon its birth, or the planned arrangements are unsuitable for an infant.
- Inadequate preparations for the birth – lack of prenatal care, no prepared food or other necessary items for the infant and the birth is imminent.

Considerations also need to be made where services have been offered to the mother and she has refused the services, not effectively engaged in the services; where the mother would be the only parent or carer available for the baby; or where other adults are either unable or unwilling to provide safety or basic care for the baby.

Effects of abuse and neglect on children and young people

Children and young people may be affected by their experiences of abuse in a number of different ways. No two people are the same, and the type of abuse that one child or young person experiences may be very different from the abuse experienced by another. The beliefs children and young people develop from the actions and stories of abusive carers may also differ from child to child, even if the abusive actions were very similar. All children and young people must be viewed as unique, both in terms of their experiences and their responses to abuse. But many, if not all children and young people, are affected by their abuse in some way.

To what extent does abuse affect a child or young person?

The extent to which the abuse affects a child or young person depends on a number of issues.

- How old was the child or young person when they were first abused? Can that child or young person recall a time when they were not being abused? Or is being abused a more recent frightening experience?

- How many times was the child or young person abused? Was it once or many times over a number of years?

- How much violence or threat of violence was used on the child or young person? Was the child or young person bashed or threatened to be bashed if they didn’t obey? Is their mother a victim of domestic violence also?

- How closely related were the perpetrators to the child or young person? Is there a violation of the child or young person's trust in the parent or carer or relative, or was the perpetrator a stranger to them?

- Was there any adult close to the child or young person who tried to protect them from the abuse? Was the child or young person supported or rejected by the adults close to them?

- Were there any areas of the child or young person’s life where they experienced success and reward?
• How secret was the abuse and how much force or threat of force was used to keep the secret? Was the child or young person believed if and when they attempted to tell? Were there any adults whom the child or young person felt close to and loved by?

Possible long term effects of child abuse and neglect

Although this list is not exhaustive, commonly found effects include the following:

Personal

• Feelings of anxiety, helplessness and fear
• Feelings of shame and guilt
• Development of phobias and insomnia
• Feelings of worthlessness and depression
• Poor self-esteem
• Passivity
• Self-hatred
• Delayed cognitive development
• Poor language development
• Poor academic performance.

Interpersonal

• Over-responsibility for the welfare of others
• Isolation (physical and/or emotional) from others
• Diminished life-coping skills
• Distorted ideas about love, care and nurturing, particularly between parent and child
• Distorted ideas about social and intimate relationships.

There is an increased likelihood in later life that the child or young person will suffer from:

• Poor physical health
- Mental health problems
- Self-destructive behaviours
- Homelessness
- Physically or emotionally abusing their own children
- Delinquency
- Adult crime/violence
- Substance abuse
- Suicide.

**Child abuse and mental health**

Experiencing abuse in childhood has been identified as a significant risk factor for poor mental health, mental health illnesses, poor attachment and general adjustment problems. There is a higher risk of the child or young person developing depressive illnesses, anxiety disorders, phobias and post traumatic stress disorder. They are also at risk of disruptive behaviour disorders, substance abuse, eating disorders and personality disorders. Responseability.org is a valuable website providing Mental Health Information for Educators. It focuses on Children and Young People’s Wellbeing and offers information about indicators to look out for and strategies to promote well-being, as well as links to other support groups. ([http://www.responseability.org](http://www.responseability.org)).

**Long term effects of sexual abuse**

A child or young person who is sexually assaulted may have difficulty trusting people. As a result, developing and maintaining relationships can be difficult as they may not let anyone get emotionally close to them. When a child or young person is being assaulted, they are being rewarded for taking part in behaviour that is beyond their control, understanding and development. The child or young person is not rewarded for being themself. Identifying other people who have never betrayed their trust can help victims to regain trust and build on positive relationships.

Children and young people who have been sexually abused learn that the way to get normal childhood needs such as love, closeness, attention and affection is to ‘trade’ sex. As a result they become
anxious and confused about good and bad relationships. They may have difficulty telling the difference between affection and intimacy from sex, how to relate to other people when they want affection without having sex, telling what sexual behaviour is or is not acceptable for their age, or they may think that they need to become sexual to get people to like them. The child or young person may also think that their needs and feelings are not as important as the person’s they are involved with. This is because when they were assaulted their human rights and choices were taken away, leaving them with a feeling that they did not matter. They had lost control of their lives and ability to make choices.

The victim / survivor may experience feelings of fear (as a result of the assault and coercion), anger (towards the abuser or themselves), sadness (for the invasion of their privacy or lost childhood), isolation (feel different and/or afraid they won’t be believed if they tell), confusion and guilt. It is really important to let them know that they are not at fault and they are not alone.

**Long term effects of domestic violence**

Children and young people who witness *domestic violence* often exhibit the same types of symptoms as other abused or neglected children and young people. Evidence also indicates that observing significant others being maltreated (especially siblings and parents) by someone with whom the child or young person identifies with closely, is more closely related to intergenerational transmission of violence than the child or young person actually being abused themself (Brown, 1983, in Cameron and West 2001). Children and young people may perceive physical violence as the way to resolve problems and therefore repeat this violent behaviour pattern in their adult relationships – ‘violence is the way you get what you want’.

Evidence strongly suggests that indirect victims of domestic violence, children or young people, who are not actually physically assaulted but are exposed to violence in the home, may have an increased likelihood of mental health problems, drug and alcohol abuse, difficulty in holding down jobs and criminal behaviour as a result of their experience.

There is also growing empirical evidence that early exposure to ongoing violence may significantly alter a child or young person’s neural development (Perry, 1997 in Cameron and West 2001). That is, if a child or young person’s sensory, cognitive and affective experiences are significantly below those required for optimal development, such as may occur in an ongoing violent home, the brain may develop in ways that are not useful in the long term.
Specifically, the child or young person may develop a chronic fear response and become extremely sensitive to the presence of cues signalling a threat. These children or young people are ‘hyper vigilant’ – they use up a lot of energy checking their environment for threats or danger. They are often very quiet and alert, but do not have the energy or focus of other children or young people to play or interact. This can obviously interfere with a child or young person’s ability to concentrate on activities or make friends.

Children witnessing or experiencing violence may have rights as victims of crime under the Victims Rights Act 1996 and to claim approved counselling and/or compensation under the Victim Support and Rehabilitation Act 1996 (Domestic Violence Interagency Guidelines 2003).

Other forms of abuse are more likely when there is domestic violence.

Children and young people are harmed by domestic violence.
Learning activities

A. Risk of Significant Harm

Read the following scenarios which demonstrate the threshold for risk of significant harm:

1. Jason and Amber

Jason is six years of age and Amber is four. They live with their parents in a house that is often dirty with no linen on the beds, dirty dishes in the sink and little or no food in the refrigerator. Jason’s school attendance has been poor and he often attends school smelling of urine and he has what appears to be infected sores on his arms and legs. His mother has taken him to the local hospital for treatment on several occasions. After the most recent visit his mother was referred to the social worker by the emergency department nurse.

The social worker finds mother to be nervous and unwilling to discuss her home life or her husband, other than to say that he controls the money and only gives her a limited amount for shopping and care for the children. The social worker suspects domestic violence but the mother does not confirm this. The mother is referred to the local child and family health team or family support service. A local GP is suggested for follow-up and contact details provided. The mother also discloses that she is seeing a counsellor in regard to her financial concerns. The social worker explains to the mother that she is still concerned and requests to speak to the counsellor to clarify what is being offered to the mother. The social worker and local NGO offer to share information with each other in relation to the care and protection of the children, the safety of the mother and domestic violence concerns.

At this time this case does not meet the threshold for significant harm as the children and mother are receiving beneficial care. The social worker and other services would continue to provide their service / relationship and support as well as documenting any further concerns and exchanging information relating to the safety, welfare and wellbeing of the children.

Later, the police are called to the house because the father is intoxicated and has hit the mother in the face. Jason tells the police that his father has threatened to kill them all and that he believes that his dad might have a gun. He tried to stop his dad hurting his mum and was pushed into the wall and hit his
head. His sister could not stop crying because she saw what happened to Jason and their mum.

This case now meets the threshold for significant harm as the children are at risk of significant harm from domestic violence (substance abuse, injured protecting a parent, significantly distressed, possible weapon and threat to kill). There is also an accumulation of indicators of harm.

2. Rachel

Rachel’s teacher is concerned about her increasing absence from school. Rachel is eleven years of age and has a mild learning disability. She is struggling with her school work and her performance is declining. Her mother, Heather, has mental health issues. The School Liaison Officer (SLO) visits Heather who is hostile and defensive of her allowing Rachel to miss school. The SLO is concerned about Rachel and discusses her concerns with the school principal who contacts the DET Child Wellbeing Unit. They check the database and discover that there have also been concerns recorded in relation to supervision from the Housing Worker. A combined visit is made between the school principal, SLO and the Housing Worker. Rachel’s attendance improves and she receives additional support with her learning. She is supported on a 20 day Attendance Improvement Plan.

Does not meet the threshold for risk of significant harm but if her attendance deteriorated again it would be reported to Community Services.

3. Jasmine

Peter and Jasmine have a 3 month old baby. The couple have moved from interstate and have no local supports. They have made few contacts since arriving in town. Jasmine has a previous diagnosis of schizophrenia and has not engaged with mental health services. When the Early Childhood Nurse visited she became concerned about the baby’s failure to gain weight. They have had problems contacting Jasmine but when they visit they have noticed that she is not engaging well with the baby and does not always attend to his needs when he cries. Jasmine states that the other tenants in their shared house are talking about her and she is scared to leave the house. When Peter was spoken to he commented that Jasmine has been unwell lately but her medication has been increased and she should be better soon. Neither Jasmine nor Peter is accepting referrals to Mental Health Services.
On this latest visit to see the baby the Early Childhood Nurse finds Jasmine asleep on the lounge with the baby beside her. He is crying loudly and his nappy is dirty. His arm is trapped under Jasmine’s body. The nurse had difficulty rousing Jasmine but she was not concerned about what was happening. Other residents in the house have previously reported lack of care for the crying baby. The nurse contacts the Health CWU and a report is made to Community Services as this case meets the threshold for significant harm.

Jasmine has mental health issues that are making it difficult for her to provide for the child’s basic needs. This has been noticed on more than one occasion and she is not responding to the baby’s cues.

B. Effects of abuse and neglect

Read the following case studies and think about the possible impact of harm or risk of harm on this child or young person. It is important that you look at the scenarios from the child or young person’s point of view.

The questions you will need to consider are as follows:

1. What do you think this child or young person might be feeling as a consequence of their situation?

2. What beliefs might the child or young person form about themself and others as a result of this abuse?

3. How might a child or young person of this age show these feelings and beliefs?

4. How might the abusive situation affect the child or young person as an adolescent or adult?

5. As a worker, what might you notice that could help you identify harm, or risk of harm, in relation to this child or young person?

Child story 1:

You are a 13-year-old boy and live with mum and dad and three brothers. You know that you’re stupid; you’ve always been told that. You try really hard to do what mum and dad want but they keep changing the rules – you get confused and feel lost all the time. You know your parents put up with you only because they have to, but you’re scared that they will just put you out one day.
Dad hits you with the back of his hand when you get in the way, which you always seem to do. He belts you if you do something wrong – but you’re never quite sure what you’ve done – he doesn’t tell you. For as long as you remember it has been like this but it’s different for the other kids. They’re still little and don’t cause troubles like you.

**Child story 2:**

You are a 15-year-old girl who was kicked out of home by her mother. Actually, that was the best thing she ever did for you, because she never wanted you and used to moan about how much she had to spend on you. She used to make fun of you in front of her friends, and say how ugly you were. You stayed with various friends at first, but now you’re on the streets. You steal what you can to eat, and sleep in parks or public toilets. You can’t see any way out.

**Child story 3:**

You are a 2-year-old boy living with your mum. Lots of adults come and go in your life. You never know who will be around when you wake up or where you will be. You’re not fussy any more; you hang on to whoever is there. Sometimes when you wake up there is no one there at all. You feel frightened and wonder if anyone will ever come for you. There is a bottle in the cot, you curl up and suck on it. It tastes yuk and sour, but somehow sucking on it makes you feel a bit better. Your nappy is soaking wet and stinks and the skin on your bottom burns. You feel hollow and start to switch off. You know there is no point in crying any more.

**Child story 4:**

You are a 16-year-old girl who attends a private school. You are the eldest child in your family, and your younger brother and sister also attend this school. Six months ago one of the teachers offered to tutor you in maths, your weakest subject, after school. However the teacher has begun kissing you and touching your breasts, because “you’re special”. The teacher also talks about how wonderful sex is, and how much you would enjoy it. Your parents are very involved in school management and activities, and are close friends with the teacher. The teacher is very popular with the other students at school, and coaches your brother’s football team. You tried to tell your best friend what was happening, and she told you not to tell such awful lies about such a great teacher.
Child story 5:

You are 10-year-old twins living with your parents. Your parents have high status jobs, you live in an expensive house in an up-market suburb, and you attend a well-known school. Your father is a cold, controlling person who hits and verbally abuses your mother whenever she doesn’t do what he wants, and sometimes for no reason at all that you can see. You can never predict when he is going to explode. He doesn’t hit you, but he hits mum if you do something wrong. Mum says not to tell anyone, because it would affect dad’s job, and she doesn’t want her friends to know.

Child Story 6:

You are an 11 year old girl whose family came to Australia as refugees 8 years ago. Your family has found settling in Australia difficult, partly because of traumatic experiences in your country of origin and partly because of language and cultural differences. Your parents only mix within their cultural group. Recently your mother has started talking about a ‘special event’ to mark your becoming a woman: she says that it is necessary for you to be circumcised in order to be accepted in your cultural group and to get married. You are scared of the procedure, but don’t know how to stop it.

Note:

Only about one in four children or young people who are harmed or are at risk of harm directly tell someone about what is happening to them. Re-read the case studies above, and for each one list the factors that you think would make it hard for this child or young person to disclose that they are being harmed.
Indicators of risk of harm provide a trigger that encourages workers to consider whether an injury, behaviour or disclosure raises the possibility that a child or young person may be at actual risk of harm from situations of abuse or neglect. Some indicators are sufficient as a single sign to give reasonable grounds to suspect risk of harm while others are meaningful when they co-exist with other indicators. Recording of these indicators is a vital factor in helping us to make a decision about the level of risk of harm to a particular child or young person. Indicators need to be considered in the context of a child or young person’s circumstances and their age or other vulnerabilities, such as disability or chronic illness.

The role of the person who hears a disclosure of harm is not to interview or gather evidence as in an investigation. This is the role of the caseworkers in Community Services or the Police Force.

**Recognising and acknowledging harm or risk of harm to children and young people**

The NSW Children and Young Persons (Care and Protection) Act 1998 has three basic principles which guide interactions with children and young people:

- minimising intrusive intervention
- encouraging respect for the identity and experiences of children and young people, and
- ensuring the safety, welfare and wellbeing of children and young people at all times.

In order to achieve this we must:
• Recognise the importance of the observation of children and young people, and their interactions with parents, caregivers and other adults, given it is the minority of situations where children and young people will make an explicit disclosure.

• Know what is typical in terms of both general child and adolescent development and the behaviours of the specific child or young person so that you can recognise what is atypical.

• Know the physical and behavioural indicators of harm or risk of harm as defined by the relevant legislation in your State or Territory. For example in NSW, as well as the categories of risk of harm outlined in s.23, s. 25 of the Act allows for pre-natal reporting where there is concern that a child may be at risk after birth (inc conjunction with S23(f) and S27). Sections 120, 121 and 122 deals with the reporting requirements for homeless children and young people, or a child or young person who lives away from home without parental permission.

• Realise that recognising ‘the indicators of abuse and neglect of children and young people’ is about forming a responsible concern or well-founded suspicion that there is a risk of harm to a child or young person which is current or likely to occur. It is not your responsibility to prove that harm has occurred, or who is responsible for the harm.

• In NSW a Mandatory Reporter’s Guidance tool is available to assist you in making a judgement about the significance of the risk of harm when making decisions about reporting concerns.

• Seek advice or consultation from supervisors when necessary. It is particularly important to seek advice from an agency supervisor or staff member at specialised services (eg sexual assault services) if you are a new worker or working on your own. You can also consult with the intake officer of the Community Services Helpline in NSW, the Child Wellbeing Unit or Family Referral Service in your area if appropriate, or the statutory child protection service in your State.
Know your agency’s established policy and procedures for reporting abuse and follow appropriately.

Be approachable for disclosure, but recognise that children and young people may be hesitant to disclose because of concerns about what might happen. Assure the child or young person that you are available to talk about anything that might be worrying them.

Talk in a general way with the child or young person. This can offer useful information. For example, by asking “What happened to your face?” or, “I’ve noticed you don’t hang out with your friends any more – is anything happening that you’d like to talk about?”, either what the child or young person says and the manner in which they respond may assist you in making a judgment about reasonable grounds.

Always maintain a child or young person focus.

**Observing physical indicators**

In many situations there could be a range of explanations for a child or young person’s injury or behaviour, and simply observing that child or young person may not provide sufficient information to have reasonable grounds to notify.

Children and young people can have all kinds of injuries from accidents; sometimes it is difficult to tell if an injury is cause for concern. Other indicators may actually have an organic cause such as a birth mark. A Mongolian Spot on an infant looks very similar to a large bruise on the lower back. These marks appear at birth or shortly after and are common to Asian, East African, Hispanic and Native Americans. They are not to be confused with physical abuse.

When a child or young person presents with an injury that is suspect, we need to enquire how the injury was sustained and use our professional judgment. We should not interrogate the child, young person or their family members. If you have concerns about an injury, consult with your colleagues, your supervisor, Child Wellbeing Unit, Family Referral Service or Community Services for advice.

If a child has an injury, ask yourself the following:
• Are there are other indicators?
• Is the injury suspicious?
• Are the explanations from the parent and child or young person inconsistent?
• Does the explanation fit the injury?
• Have previous injuries occurred?
• Are there injuries of various ages?
• Is the injury common for accidents in this age group (eg does the developmental stage match the injury)?

You need to record a precise description of the injury (size, colour, shape, location, appearance) and the explanation given by the child and care giver (write it verbatim: word for word). You could also use a body chart or map to record the injury/injuries. This is usually an outline of the front and back of a child’s body. It is not appropriate to take photographs as this may be a breach of the child’s privacy and could also be illegal if it shows private body parts.

**Observing behavioural indicators**

In many instances of harm or risk of harm, there are no visible physical injuries. A worker may become concerned about a child or young person through observations of interactions between a parent, care giver or other adult and a child or young person. Or, workers may notice a marked change in a child or young person’s behaviour, such as regression to bedwetting and soiling in an older child, to deterioration in physical appearance, outbursts of aggression, or withdrawal in a previously calm or outgoing child or young person.

As with physical injuries, behavioural changes in a child or young person can occur as the result of situations other than abuse (such as parents separating), but it is important to remember that such changes can indicate harm or risk of harm. See Serious Psychological Harm for indicators of Significant Harm.
Recording indicators of harm or risk of harm

It is very important that workers in the community services, health, education, children’s services and law enforcement industries record any injuries or behaviours that may be indicators of abuse or neglect. Recording indicators ensures accuracy, provides evidence for making reports of risk of harm and helps us to identify emerging patterns that may indicate that risk of significant harm is present.

Workers need to be aware of the service-specific procedures for making and keeping such observations. Records of suspect injuries or unusual behaviours should be kept separate from other records so that confidentiality is maintained and information is not inadvertently shared with parents or others.

As with all types of observations, records of suspect injuries or unusual behaviours should be recorded accurately and objectively. You should give a clear description of the incident or behaviour of concern, and the dates and times of your observations. Importantly, you should simply describe what you saw or heard without subjective or emotive interpretation.

You should record any explanations given by the child or young person or their parents for behaviour changes or injuries. Remember that explanations that are inconsistent with the injury or behaviour, or explanations that differ between parent and child, can be indicators of abuse. Children will often try to protect the perpetrator of abuse for a number of reasons, including coercion, love or fear. Children will even try to hide injuries or make up stories to explain injuries, such as “I fell off my bike”. Adults will also try to explain away injuries. You should also record in detail any incidents of disclosure.

Observations relating to suspected psychological abuse and neglect might need to be recorded over a period of time before you feel you have reasonable grounds to make a report to the relevant State government department. Records may be kept in a special communication book or an individual child’s file.
Records

All records relating to suspected abuse should include:

- the date, time, name/s and signature/s of staff making the record

- A clear and concise physical description of the injury if applicable (the site of the injury on the child or young person’s body, and the type, colour and shape of the injury). A map that draws the location of the injury can be included

- A verbatim (i.e. word for word) record of any disclosures by an adult or child, where possible

- a clear and concise observation of relevant behaviour or conversation of the child or young person (if applicable)

- information about the setting where the observation or conversation took place

- contextual information, for example what happened before the observation or conversation, the child’s mood or demeanour; and

- Whether indicators are rare, frequent, chronic or periodic. Note also whether all or only a few children in the community display these indicators.

When we believe that one of the children or young people in our care is at risk of harm or being harmed we need to document our concerns as per our agency policies and procedures as soon as possible. As evidence this needs to be objective in nature and should not contain your personal opinions or values.

The best way to record your concerns is using a standard format such as an anecdotal record. By documenting observations or suspicions we can build up a picture or emerging pattern of behaviours over time. Regular recording of evidence can demonstrate clear evidence of abuse or neglect. This will be important in determining the cumulative effect and seriousness of your concerns.
**Format for recording observations / indicators and/or disclosures of risk of harm**

The anecdotal record is a reliable method of recording your observations of indicators or disclosures of risk of harm. Your observations may include a variety of methods and this can give you a holistic picture of whether the child or young person is at risk of harm. Following is a basic format that you could use for recording your observations.

<table>
<thead>
<tr>
<th>Child’s Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child’s Date of Birth:</td>
</tr>
<tr>
<td>Observer:</td>
</tr>
<tr>
<td>Setting:</td>
</tr>
<tr>
<td>Date and Time:</td>
</tr>
<tr>
<td>Anecdotal Record: (what was seen, said or done)</td>
</tr>
<tr>
<td>Observer’s Signature:</td>
</tr>
</tbody>
</table>
Assessing risk of harm indicators

Agencies and workers in child-related employment are required to make judgments 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. It is essential that we keep the child or young person as the primary consideration: our focus should be on the consequences of the actions or inactions by the caregivers or other authority figures for the child or young person, not trying to work out reasons for their behaviour.

There are a number of elements that will assist workers 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 (such as disability or chronic illness) 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 or adverse 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, and
- indications that a child or young person’s emotional, physical or psychological well being is significantly affected as a result of abuse and neglect.

Other factors which, while they are not grounds for current concerns in themselves, may heighten risk of harm and thus need to be considered when deciding whether a report should be made to a Child Wellbeing Unit, Family Referral Service, other support agency, or Community Services include:
 limited access to financial and other resources
social isolation
presence of disability
absence of educational opportunity.

The Mandatory Reporter Guidance tool (MRG)

The MRG has been developed to help mandatory reporters to determine whether their concerns about risk to a child or young person meets the new statutory threshold of ‘risk of significant harm’ and whether or not to report their concerns to the Community Services Helpline. It forms part of the common assessment framework for all agencies working with children, young people and their families.

The MRG is an interactive tool and is available on-line at the Keep Them Safe website and through the Community Services website.

A child or young person is at risk of ‘significant’ harm if the circumstances that are causing concern for the safety, welfare or wellbeing of the child are present to a significant extent. This means the extent is serious enough to warrant a response by a statutory or legal authority. The person is at significant risk if the harm is not minor or trivial and is likely to produce a substantial and demonstrably adverse effect on the child’s safety, welfare or wellbeing either before or after their birth.

The MRG is a guide rather than a rule. It may not be 100% effective and may not answer all your questions or all circumstances. There will be unusual circumstances that don’t fit neatly into the ‘decision trees’ and there will be situations that are difficult to answer yes or no to.

If in doubt consult your supervisor, Child Wellbeing Unit (CWU), Community Services (CS) or other professional. You are never prohibited from reporting to CS and your enquiry will be recorded.

Remember: the child or young person’s safety and wellbeing are the paramount consideration.
Main Categories of Harm

- Physical Abuse
- Neglect
- Sexual Abuse
- Psychological Harm
- Relinquishing care
- Carer concern
- Unborn child
- Child or young person in care of Minister

Decision Trees

Selecting decision tree – second level

Neglect

- Supervision
- Shelter/environment
- Food
- Medical Care (Medical Professional or non Medical Professional)
- Mental Health Care
- Education (not enrolled or habitual absence)

Sexual Abuse

- Of child
- Of young person
- Problematic sexual behaviour

Carer Concern

- Substance abuse
- Mental health
- Domestic violence

Process for Completing the Mandatory Reporter Guide

(From the Structured Decision Making System - NSW Mandatory Reporter Guide, December 2009)


1. From the Starting Page select the maltreatment or allegation type that best represents or fits your concern for the child or young person. If you have more than one concern start with the most serious concern.
If no tree fits, you probably have nothing to report and may need to go straight to offering a service or referral.

2. Start with the first question in your selected decision tree. Apply the definition to the information that you know and determine whether it is a yes or no answer that fits best. Follow the arrows and keep answering the questions until you reach a decision point. Ensure that you apply the definition on the right of the screen to each question.

3. Some of the questions have an and/or requirement. For example: the child or young person was significantly injured/harmed or an incident occurred that would often result in significant injury or harm, but the child or young person escaped harm through intervention by a third party or chance. If you don’t know the answer, then your response is NO.

4. Once you have reached your decision point you can print out a Decision Report. If you are unsure consult with your CWU, supervisor or other professional. You may wish to consult with them before trying to gain further information to help you answer questions. If you need to speak to the family limit yourself to only the piece of information required.

5. Your decision point may tell you to Report to Community Services Immediately, Child Wellbeing Unit, Document, etc. If the decision is ‘Immediately report to CS’ it is not necessary to complete any additional decision trees. Contact the CS Helpline and explain all your concerns, even if you did not complete a decision tree for each one.

6. If any other decision trees are relevant complete those too if you have not been told to ‘Immediately report to CS’.

7. Your decision point is a guide, not a prescription. It is important to respond in the most protective way. Take into account other circumstances of which you are aware that were not considered while completing the decision tree.

8. You may now follow the recommendation, complete an additional tree or consult with your CWU or another professional.
9. If you do report, tell the Child Protection Helpline about your actual path through the decision tree/s and the facts that supported your responses, as well as any unique circumstances that led you to determine that a report was necessary.

The reporting process is examined in more detail in Chapter 9.

For more information contact the Keep Them Safe website: http://www.keepthemsafe.nsw.gov.au

**Professional and ethical responses to indicators of risk of harm:**

<table>
<thead>
<tr>
<th>Action</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make Notes</td>
<td>Record what you observe (see and hear); date and sign the entry</td>
</tr>
<tr>
<td>Continue to Observe</td>
<td>Record what you observe; date and sign the entry</td>
</tr>
<tr>
<td>Consult colleagues</td>
<td>Get support and advice from your colleagues and supervisors; compare notes and brainstorm possible strategies</td>
</tr>
<tr>
<td>Develop action plans</td>
<td>Know your employer’s policies and procedures about what to do</td>
</tr>
<tr>
<td>Talk to other agencies about helping the family</td>
<td>Collaborate with or engage Government and Non Government agencies such as Child Wellbeing Units, Family Referral Services, and Prescribed Bodies such as community health services, regional Community Services contacts, disability services, or local government services</td>
</tr>
<tr>
<td>Talk to the child or young person</td>
<td>Do this with respect for their need for privacy and confidentiality; request their consent to Exchange of Information</td>
</tr>
<tr>
<td>Talk to the parents</td>
<td>Only do this when it will not jeopardise the safety of the child or young person</td>
</tr>
<tr>
<td>Put the child’s interests first</td>
<td>Do not let your considerations for parents or carers prevent you from acting in the child or young person’s best interests</td>
</tr>
</tbody>
</table>
Sharing and exchanging of information

New rules in the Children and Young Persons (Care and Protection) Act 1998 flowing from the Children Legislation Amendment (Wood Inquiry Recommendation) Act 2009 allow ‘prescribed bodies’ to exchange information on request where it relates to the safety, welfare and wellbeing of a child or young person. This information would assist with making a decision, assessment, investigation or service delivery. The prescribed bodies as listed in the 2006 Interagency Guidelines for Child Protection have been revised. Commonwealth Government agencies including the Family Court of Australia, Centrelink and Department of Families, Housing, Community Services and indigenous Affairs are not recognised as ‘prescribed bodies’ for the purposes of information exchange under the new chapter (16A) in the Children and Young Persons (Care and Protection) Act 1998. Community Services is covered by S248 of the Act for the exchanging of information.

Consent for exchange of information is not necessary under the new legislation. However, seeking consent is part of best practice case management and helps with maximising client engagement. Seeking consent should not place the child or young person at further risk.

Records need to be kept of information exchanged and this should be stored securely in line with your agency’s policies and procedures.

Templates for letters of request for Exchange of Information can be found on the Keep Them Safe website.

For further information refer to Chapter 4: Ethical Practice in Child Related Employment.
Learning activities

1. Read the following scenario.

Amy Brown is a two and a half year old who attends your child care centre. Amy is a known biter and the staff have in the past provided strategies to her mother, Laura Brown, to assist her to deal with Amy’s biting. Today, on arrival, Amy is crying and has an obvious bite mark on her left forearm that is bleeding. Laura is distressed and discloses that she has bitten Amy in a moment of frustration as a “last ditch effort to stop her from biting the other children”. You settle Amy and apply first aid.

- Write a brief anecdotal record that documents this incident.
- How would you respond to Laura’s disclosure?
- What policies and procedures are you required to follow?

2. Read the following scenario.

Natalie and Joe

The Smith family were referred to the family support service where you work six months ago. The referral was from the local drug and alcohol service. The family consists of parents John and Marcia and their two children, Natalie (aged 8) and Joe (aged 2). Both parents have a history of abusing a number of legal and illegal drugs and they currently attend a methadone program.

Joe attends your child care program. He is usually brought by his father. He is a very withdrawn child who spends a lot of time sitting in a corner rocking and humming to himself. He appears to have limited speech. From time to time he has arrived at the service in very smelly clothes. He appears hungry most mornings and has frequently grabbed food from other children. Recently his attendance has been erratic, and his father has failed to pick him up on time on a number of occasions. When you spoke to his father, he appeared ‘out of it’.

Joe has not turned up again this morning, and you visit the house to talk to his parents. Neither parent is home, but Natalie is home looking after Joe. She says she has to stay home from school to look after Joe when her father is ‘scoring’ and her mother ‘working’. She is a very thin, pale child who appears depressed. She has a number of bruises on her arms and legs. The house appears very messy and dirty to you: piles of unwashed dishes, dirty floors and an odd smell. Natalie doesn’t know when her parents will be home: she tells you they often stay away for a couple of days at a time, and then come home with ‘lots of friends’ and have parties. Natalie tells you she doesn’t like some of her parents’ friends because ‘they hurt me’.
Write a brief, objective and accurate account that records your observations in this case.

Go to the Keep Them Safe website and using the Mandatory Reporter Guidance tool select an appropriate decision tree and determine whether these children are at risk of significant harm. Print out your Decision Report.

Read the following scenario.

3. Julie, aged 3 years, has been attending your service for the last 6 months. Recently you have noticed that she is behaving very withdrawn. Today, she is crying off and on most of the time and you notice that she flinches when you touch her shoulder. At rest time you notice that she has a large red mark on her shoulder and some small finger mark bruises on the tops of her arms.

Your suspicions have been aroused because the following indicators were identified:

- Julie’s distress
- Her withdrawn behaviour recently
- Flinching when touched
- The red mark on her shoulder and the bruises on her arms

Using the format given previously write up your observations of Julie.

As above, determine whether this child is at risk of significant harm or not.

Read the following scenario.

4. Mark Wilkinson is an eight year old child who attends after school activities at the Neighbourhood Centre where you work. His family attends your church, and you have worked on church projects with his parents. Mark is very quiet and socially isolated from his peers at the Centre, preferring activities which he can do on his own. You have also noticed frequent bruising on his legs and arms. You have heard his parents saying how active Mark is at home, and how he is always “bumping into things”. You are concerned, because this doesn’t fit with Mark’s behaviour at the Centre. At the same time, you are aware that Mark’s mother has suffered post natal depression for the last 6 months, and you don’t want to cause further distress for the family, who are very popular members of the church.

What are the issues for you in this scenario?

How would you resolve these issues?
Chapter Eight: Child-focused practice and responding to disclosure of risk of harm

Defining a child-focused practice

Child-focused practice has two essential components.

1. A child-centred belief that every child has the right to a safe passage through childhood and the right to grow in an environment free from harm.

2. The child’s needs and welfare are the primary concern and the primary focus of practice. Professional knowledge and practice need to be examined in terms of their potential for furthering the best interests of children.

If we are not child-centred:

- it is easier to lose sight of the child within practice
- there is less chance of effecting change for children, and
- it is difficult to know if we have produced effective interventions.

Nurturing care

Child focused practices involve nurturing care practices.

When we are nurturing we:

- Use communication that is age appropriate and avoids the use of jargon.
- We explain our role and its limitations in ways that children can understand.
- We demonstrate an awareness and sensitivity to the needs of children and young people and can demonstrate this by acknowledging children’s fears, likes and dislikes, provide opportunities for them to express their own views about things that effect them; by being aware of significant relationships that children have both within and beyond the family. We look for reasons that are prompting poor behaviour or impacting on a child’s concentration; and we follow through on commitments.

- We ensure children and young people are involved in participatory decision-making processes. We can do this by involving them in assessments of their needs, make them feel comfortable and provide opportunities to express their own points of view.

- We make allowances and adjustments for children and young people who are disabled or who are from culturally diverse backgrounds – give them extra time and attention to ensure inclusion, or to assist them to access services

- We ensure children and young people have an active role in assessment of their needs and situation.

While providing nurturing, child focussed care we still need to work within our agency policies and procedures. Sometimes we might feel uncomfortable with how we are permitted to ‘nurture’. For example, some children like a lot of physical contact and constantly want to be picked up or cuddled; or like to be patted on the back at rest time and this may not fit within your service’s guidelines. This can cause you to feel anxious about the possibility of being accused of inappropriate conduct. Remember, behaviour that is appropriate for the care, management and discipline of children is not reportable conduct.

We do need to be aware of how our own behaviour, values and attitudes can impact on children but we must remember to put the interests and needs of the child first. Practices that ensure the safety, welfare and wellbeing of children are appropriate and when we act sensitively by responding to the emotional needs of children in developmentally appropriate ways we are providing care that is child focussed.
Child focused response to risk of harm

What is meant by the term ‘child-focused practice’ when it is used in relation to responding to children and young people who have experienced harm?

Child-focused practice includes:

- listening to the child or young person
- believing the child or young person: being aware that children and young people rarely lie about harm or risk of harm
- not minimising the seriousness of the harm
- respect
- age appropriate responses
- empathy
- focusing on the child or young person’s needs
- the provision of accurate information to the child or young person
- ensuring the child or young person is able to participate in decision-making about his or her future
- maintaining appropriate boundaries
- addressing individual differences such as special needs, culture, etc, and
- ensuring services are relevant and accessible to children and young people, and that they are child-friendly in focus.

The NSW Children and Young Persons (Care and Protection) Act 1998 contains a number of principles of child-focused practice. These include:

- when making a decision about a child or young person, the main consideration must be his or her safety, welfare and well being, and
- the rights of children and young people to participate in decision-making are recognised and there are specific obligations to put this principle into practice.
Barriers to a child-focused practice in relation to responding to harm

Many children and young people do not disclose and / or do not get protection from adults in their lives. Often this is because adults do not focus on the child and discount the evidence they see. Instead, priority is given to the needs and accounts of adults over those of children and young people.

Impact of individual and community attitudes on responses to child abuse and neglect.

As we saw in chapter four, people respond to indicators of abuse of children and young people in different ways. This response often reflects commonly held beliefs or myths, their own personal experiences or the quality of their own lives. Such beliefs and experiences may lead some people to denying the existence of harm or risk of harm, particularly in their circle of family, friends, neighbours and colleagues. Others may recognise that the abuse of children and young people is a problem in society, but feel helpless to do anything about it, feeling any intervention should be left to ‘experts’, or that intervention does ‘more harm than good’.

Some common attitudes may also minimise the seriousness of maltreatment of children and young people. These attitudes include:

- the acceptance of the use of violence and force
- the acceptance of the physical punishment of children and young people
- racism
- inequality between men and women, and
- the acceptance of parents’ ‘ownership’ of children and young people and their right to treat them as they wish or see fit.

Discounting the seriousness of child abuse

In some instances, individuals and communities recognise that child abuse exists, but use a number of statements as a means to discount the seriousness of actual or potential harm to children and young people. Adults, including people who work with children and young people, can use these
statements to give themselves permission not to get involved in protecting a child.

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<th>Statements which discount the seriousness of child abuse</th>
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<td><strong>Rationalisation of personal experiences of abuse</strong></td>
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<td><strong>Racism and stereotyping</strong></td>
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<td><strong>Worker’s inexperience, lack of information and support</strong></td>
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<td><strong>Workload stress</strong></td>
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<td><strong>‘Professional’ distance</strong></td>
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CHAPTER EIGHT: CHILD FOCUSED PRACTICE AND RESPONDING TO DISCLOSURE OF RISK OF HARM - CHCCHILD401A

Needs of the system taking precedence over needs of the child

<table>
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<th>‘This child is already creating too many problems.’</th>
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Defeatism                  | ‘The damage is already done, and intervention will distress the family and may make it even worse.’ |

(Source: Child Protection Council 1998 in Cameron and West 2001)

Children never deserve to be harmed or abused.

**Fears about responding to disclosure**

Some people, including doctors, teachers and workers in the community services and children’s services industries, may be concerned about a child or young person at risk of harm but may have fears about notifying or reporting suspected cases of child abuse to the relevant State welfare department. These fears may be based on:

- media reports they have heard about or read in newspapers, where it appeared that the child or young person was not protected after reporting to
- fears that they may be wrong and have caused needless distress to the family
- over-concern with the rights of parents or caregivers
- fears that the family may be broken up
- fears that reporting will damage the relationship between them and the family
- fears that the child or young person may be removed from their home
- fears that they may have to go to court and / or be sued
- fears for their own safety
- fears that intervention may make the situation worse
- a general mistrust of statutory welfare systems.
It is important to remember that child abuse is a crime and that adults have a responsibility to protect children and young people.

**Issues for children and young people in disclosing risk of harm**

Children and young people seldom tell an adult that they have been, or are being sexually, physically or psychologically abused in a direct way. They may experience a sense of helplessness and hopelessness and so may take weeks or years to let their abuse be known. There are a number of reasons why they may be reluctant to disclose that they are being harmed, or are at risk of being harmed:

- the child or young person may fear that no one will believe them
- believe that they are responsible for the abuse
- they may feel scared and powerless
- feel ashamed of the abuse, of the abuser, or of protecting the abuser
- may want to protect their own ‘reputation’
- may want to protect the person responsible
- May have been threatened with further harm if they tell or harm to others
- in the case of sexual abuse, the child or young person may have enjoyed aspects of the abuse and have mixed feelings, and / or been sworn to secrecy by the perpetrator
- the child may not have the verbal skills to disclose everything
- or not realise that it is inappropriate behaviour by others.

Children and young people can disclose purposefully (they have made a decision to tell someone) or they may disclose accidentally. Disclosures may be active (detailed and coherent) or tentative (partial, vague or vacillating). The child
or young person may disclose tentatively to ‘sound out’ what your response will be. This is a vital time to the child and will influence further decisions to disclose. If the child senses that person is not interested in listening or doesn’t believe them they may stop disclosing what happened to them.

They may:

- intentionally tell a trusted adult that they have been abused, or fear that they will be abused
- ‘blurt out’ that they have been abused, or are frightened of being abused
- Say “what if…” or “I have a friend who…” scenarios
- Tell another child about the abuse
- Give hints or little pieces of information (for example, through drawings, plays or stories) to see what the reaction would be. Depending on the reaction, they will either remain silent or disclose
- Or they may present with somatic symptoms, such as feeling ‘sick’.
A child-focused response to disclosure

If a child or young person discloses directly to you that he or she is being sexually or physically abused, it is important to:

- Find a private place to talk
- listen to them without interrupting or criticising, using their own words – freely and in their own way
- take their fears and concerns seriously and acknowledge that it is hard to talk about what is happening to them
- acknowledge the impact of disclosure on the child or young person
- be aware of the their cultural and linguistic background and how this might impact on disclosure (maybe another trusted person needs to be present who can understand them and accurately record their communication)
- be aware of your own emotions in relation to what they are telling you, and keep those emotions under control
- be prepared to actively listen, provide and clarify information and assist them when they tell you about an event or behaviours that indicate risk of harm
- be open and non-judgemental and support them in telling their experience
- do not ask leading questions or questions that might make the child feel guilty or inadequate
- use a calm reassuring tone and talk at the child or young person’s level of understanding
- tell the child or young person you believe them
- do not make promises you cannot keep – especially that you won’t tell anyone
- offer support to the child or young person, including ongoing support if appropriate to your job role
• respect the confidentiality of the disclosure – that is, only tell other workers on a ‘need to know’ basis

• avoid expressing doubt, judgment or shock

• not draw conclusions, engage others in discussion, ask probing questions, accuse parents or discuss the circumstances of the disclosure with parents or carers; and

• trust your judgment and translate your concern into action – think of the child or young person.

There are some important messages that you need to give the child or young person at the time of disclosure.

• It is not their fault; it is never the child or young person’s fault and they have a right to be safe.

• It was right to tell – “I am glad you told me.”

• Other children have been in this situation; it is not just them; they are not alone.

• It is not acceptable for adults to harm children or young people – no matter what.

• Tell the child or young person that you will need to talk to other people whose job it is to help keep children and young people safe.

Generally, the law does not require you to seek the child or young person’s permission to make a report, as their safety, welfare and wellbeing overrides the principle of their participation in decision-making (the exception is reporting the homelessness of young people, where you do need their permission).

However, children and young people who have just disclosed abuse may have real concerns about what you are going to do, and these need to be addressed. How you tell the child that you are going to make a report will depend on their age and capacity to understand, as well as whether they disclosed intentionally or accidentally.

Immediately after hearing the disclosure write down and date the comments and statements made by the child or young person using their exact words. It is also important to record any observations about their mood or demeanour and communicate this information to the Helpline when you make
your report. This will help Community Services during the assessment and investigation process.

A child focused response to concerns about abuse

If you suspect abuse, but the child or young person has not disclosed to anyone, you need to be aware that they may be experiencing emotional distress. You need to approach them in a caring and sensitive way and assure them that you are willing to listen and to help if there is a problem. Responding to your belief that harm to a child or young person has occurred, or that there is a risk of harm, can be the first important step in stopping the harm and preventing further harm from occurring.

Effective approaches to children and young people who are demonstrating indicators of possible harm or risk of harm include:

- establishing rapport with the child or young person
- being ‘non directive’: that is, listening to the child or young person with interruption or interpretation
- giving the child or young person time to talk to you without interruption from others
- showing respect and understanding
- watching the child’s or young person’s body language
- being aware of your own body language and the messages you may be communicating without meaning to
- being careful not to jump to conclusion: that is, keeping an open mind and not asking leading questions.

Note: It is essential that you are aware of the following if the child or young person indicates they are at risk of harm.

- It is not your role to investigate or prove that an injury is non-accidental, probe for details, contact parents, take the child or young person home or arrange medical examinations.
- It is not your role to seek corroboration of the child or young person’s story.

- It is not appropriate to question a child or young person about the details of the abuse. Community Services and the police will need to investigate. Minimising the need for the child or young person to re-tell the details is vital. Also, legal proceedings may be jeopardised if you ask investigative questions.

- You do not discuss your feelings about the abuse or the perpetrator in front of the child or young person.

- Avoid making promises to the child or young person that you cannot keep, for example, “You will be safe now,” or “This will never happen again”. Remember the child or young person needs your support, not your attempts to make everything alright when it is not.

- It is not appropriate to indiscriminately discuss the circumstances of the child or young person with others not directly involved with helping that child or young person.

To minimise the effects of abuse, a child or young person needs:

- the abuse to stop

- people who can help in a practical way

- people who understand their behaviour

- people who respect their rights and will attend to their needs

- help to see that they are not to blame

- opportunities to safely express their feelings and make sense of things

- optimism about their future, and

- consistency between service providers.

It is important to remember that government agencies can only provide services to children, young people and families if concerns about the safety, welfare and well-being of children and young people are brought to their attention.
This generally means that efforts to stop child abuse depend on the existence of a community network of people who are prepared to listen to children and young people, take responsibility for their welfare and, when necessary, speak out on their behalf.


Taking into account the child or young person’s views

When a decision is made to report to Community Services a child or young person should be told that a report is being made. How they are told depends on whether the abuse was disclosed intentionally or accidentally, as well as on their age and capacity to understand. It is not a legislative requirement to seek their consent except when reporting homelessness of young people. Even if a child or young person opposes you making a report you must still do so if they are at risk of significant harm. They may also have siblings who are also at similar risk. Failure to report can be seen as colluding with the abuse and the abuse. When making your report remember to provide information about the child or young person’s mood, demeanour or reaction to hearing that a report is to be made. Legislation requires that Community services have regard to any known wish expressed by a young person, including their opposition to a report being made.

Responding to a disclosure by a parent or caregiver

In some cases, a parent or caregiver may disclose that they have harmed a child or young person, or that they are frightened that they may do so. Or, they may disclose that their partner or another family member is harming them. This may occur because they want the abuse to stop but feel powerless to protect the child, young person or themselves or because they still love their children.

Parents or caregivers may harm, or be at risk of harming, children and young people in their care for a number of reasons, including:
- poor parenting skills due to their own experiences as children – lack of a successful model of parenting and family life
- may have been abused as children or are victims of domestic violence themselves
- being overwhelmed by current events in their lives and unable to cope
- difficulty controlling their anger or frustration, resulting in them lashing out at the child
- lacking understanding of the child or young person’s needs or having age appropriate expectations of their child or young person
- mental or physical illness or disability which limits their ability to meet their child’s needs.

Responding to a parent or caregiver who discloses harm or risk of harm to a child or young person involves the same skills as responding to the child or young person themselves.

- Suspend your personal judgement of the parent; remain calm.
- Do not prematurely judge them as innocent or as the minimally responsive party.
- Do no ignore their role as a parent who has failed to protect their child.
- Thank the parent or caregiver for telling you.
- Acknowledge how hard it is for them to tell and it is right to tell.
- Tell them that other parents / carers have been in this situation before – they are not alone.
- No child deserves to be harmed, no matter what.
- You may explain why the behaviour is wrong (e.g. normal childhood behaviour or inappropriate parenting technique that gives the child the wrong message).
- Offer support or referral as indicated.
It is important that we are non-judgemental (either positively or negatively) about the parent or caregiver, and that we don’t minimise or exaggerate their behaviour and attitudes because we like or disapprove of them. It is essential that we remember that our focus should be on the child or young person and the risk of ongoing harm. Regardless of whether the parent or caregiver expresses remorse, swears they will seek counselling and never harm the child again, or is an ‘innocent party’ to the abuse, our responsibility is the protect the child, not the parent or caregiver. Our role is to focus on how the child or young person is experiencing their parent or carer’s behaviours, their particular vulnerabilities and any risk of significant harm.

It is good practise to discuss concerns with parents or carers and to advise them of your legal obligation to report concerns of risk of significant harm to Community Services or to seek support through relevant services for families. This is especially important where there is an ongoing relationship with the family. The decision to inform should be based on professional judgement and the principles of working in partnership with families and involving them in decisions that involve them. Sometimes, the matter may need to be reported prior to telling the family because of the level of risk to the child or young person.

Remember to put the rights and needs of the child or young person first in our actions and decisions.

When working with Aboriginal and Torres Strait Islander (ATSI) peoples consultation, respectful relationships and cultural sensitivity are needed in order to work effectively and ensure the safety and welfare of children and young people. The right of ATSI people to participate in the care and protection of their children is included in the Children and Young Person (Care and Protection) Act. If behaviours are occurring that could cause significant harm they should not be dismissed on cultural grounds. Unfamiliar cultural behaviours should not be reported if they do not place the child or young person at risk of significant harm. Consultation with community elders may be necessary to determine whether these behaviours are culturally acceptable to the ATSI communities. Any cultural information that may assist in the assessment of a case should be included in a report to the Community Services Helpline.

This same principle applies when working with culturally and linguistically diverse communities – behaviours suspected of
causing significant risk of harm should not be minimised or dismissed on cultural grounds.
The responsibilities of workers and employers in child-related work

Responsibilities of workers

Your roles as someone who works with children and young people includes responsibilities to protect them from abuse by recognising and reporting your concerns regarding suspected harm or protection issues.

To do this you must:

- Know what is typical in terms of both general child and adolescent development and the behaviours of the specific child or young person so that you can recognise what is atypical.

- Know the physical and behavioural indicators of harm or risk of harm as defined by the relevant legislation in your State or Territory.

Realise that recognising ‘the indicators of abuse and neglect of children and young people’ is about forming a responsible concern or well-founded suspicion that there is a risk of harm to a child or young person which is current or likely to occur. It is not your responsibility to prove that harm has occurred, or who is responsible for the harm.

- Seek advice or consultation from supervisors when necessary. It is particularly important to seek advice from an agency supervisor or staff member at specialised services (eg sexual assault services) if you are a new worker or working on your own. You can also consult with the intake office at your Child Wellbeing Unit (if you work in NSW Police, NSW Health, Department of Education and Training, or Human Services), a Family Referral Service, Community Services Helpline in NSW, or the statutory child protection service in your State.

- Know your agency’s established policy and procedures for reporting abuse.
• Inform children and young people of their rights to be protected from risk of harm and of the avenues for support available to them.

• Assist in supporting children, young people and their families in partnership with government and non-government agencies.

• Always maintain a child or young person focus.

**Responsibilities of employers**

It is the responsibility of the employer to:

• Ensure that all staff are clear about their roles and responsibilities under the Acts and regulations and of their obligations as mandatory reporters and the procedures for reporting. They also need to be aware of the physical and behavioural indicators that a child or young person may be at risk of harm.

• Provide training and development for employees in the recognition and reporting of suspected risk of harm.

• Provide reporting procedures and professional standards for care and protection.

• Report to the NSW Ombudsman any allegations of abuse or neglect of children or young people, as well as convictions made against an employee, and ensure that they are investigated by the head of the agency with the appropriate action to be taken in relation to the finding.

• Notify the Commission for Children and Young People details of employees, or carers against whom relevant disciplinary proceedings have been completed, or of persons whose employment has been rejected because of a risk assessment in the employment screening process.

• Enable employees to have access to Acts, regulations and procedures where this is necessary for them to fulfil their obligations, eg the *NSW Interagency Guidelines for Child Protection Intervention 2006* (proposed revision in 2010: *Child Wellbeing – NSW Interagency Guidelines*) and a current child protection policy with
all the current and relevant Acts and regulations within it.

- Establishing networks for referral and support for ‘at risk’ families who do not meet the raised threshold for reporting (significant risk of harm).

- Work with other agencies to provide support for children, young people and their families.

Summary: What do we do after hearing a disclosure?

- It is important to support the child, young person or their parent / carer and to be non-judgemental.

- Document verbatim what is said and done in an objective manner.

- Follow your agency policy and procedure for child protection.

- Inform your supervisor.

- Implement the use of a Mandatory Reporter Guidance Tool to determine the level of risk of harm for decision-making and then refer to either a Child Wellbeing Unit, Family Referral Service, other support service or Community Services Helpline.

- Ensure that a report is made to Community Services or other appropriate welfare agency if you believe you have reasonable grounds for concern of significant harm; or seek advice if you are not sure.

- If the allegation involves a staff member, decide if it is reportable conduct and if so, report to the NSW Ombudsman within 30 days. The Head of Agency will need to investigate the allegation, do a risk assessment and make decisions about the interim actions to take to ensure the safety and well-being of the children in the service.

- Document the date, time and reference number of the report.

- Continue to support and observe the child.

- Maintain the relationship with the family where possible.
Report back to Community Services or Child Wellbeing Unit if further indicators / information is identified.

Maintain confidentiality.

Participate in Exchange of Information requests with Prescribed Bodies where concerns raised are about the safety, welfare or wellbeing of a child or young person.
Learning activities

1. Why do you think the following statements are myths?
   - People who commit sexual offences against children and young people are sick deviants.
   - All men have a right to regular sex.
   - Children lie about having sex with adults.
   - The mother must have known that it was happening and allowed it to continue.

Refer to Dynamics of Sexual Abuse to inform your decisions.

2. Go back to the list of statements that minimise harm, and add any other statements you have heard or of which you are aware. What impact do you think statements like these might have on children and young people at risk of harm?

3. How do we ensure we maintain a child-focused work practice?

4. Write down what you think would be a child-focused work practice in one of the scenarios in activity 6.

5. What are your own concerns about:
   - Responding to a child or young person who discloses harm or risk of harm?
   - Approaching a child or young person who is displaying possible indicators of harm or risk of harm?

6. Consider the following scenarios:

Scenario 1

Duncan is a 4-year-old boy who has attended your centre for the last three years. Up until six months ago he seemed to be a settled, happy child with a good relationship with his parents and sister. Over the last six months, centre staff have noted changes in Duncan’s behaviour. He has become more aggressive with his peers and defiant with staff. He becomes more frustrated more quickly, cries more often and occasionally soils himself. When the child care workers discuss their concerns about these changes with Duncan’s mother, she acknowledges that she also has noted this behaviour, but can’t think of any changes in the family’s situation that could explain Duncan’s difficulties. She comments: “We’ve been spending more time at my
mother’s place – she’s remarried, and her husband Scott can’t see enough of the kids. Duncan sometimes isn’t so keen to go, but you can’t let a 4-year-old be the boss of the rest of us.”

Today Duncan is drawing and you sit alongside him to see what he is doing. Duncan has drawn two figures, one small and the other big, with what appears to be a large, erect penis. They are surrounded by what seems to be a cage. You say: “Who’s in your picture, Duncan?” Duncan says: “That’s Scott and his bad dick that he puts in my bottom.” He then runs away from the table and pushes another child over.

- How would you respond to Duncan?
- What might be some of the barriers to Duncan being believed?
- What might be the consequences for Duncan, both as a child and later as an adult, if his situation is ignored or dismissed?

Scenario 2

Jerry is a 15-year-old boy who has been a member of the church youth centre that you have run for the past three years. He has always seemed to enjoy attending the weekly activities, and has attended all the holiday camps. His parents are middle-class professionals who are heavily involved in church activities. They are close friends with the minister and have been very supportive of changes you have wanted in the way the youth group is run. However over the past year, Jerry has become increasingly moody and reluctant to get involved with activities at the centre. He has even picked fights with the other young people on a number of occasions. He has stopped playing sport and spending time with his friends, and his parents report that he stays in his room most of the time. They have put Jerry’s behaviour down to ‘puberty blues’. This evening you are playing pool with Jerry when out of the blue he says: “It’s not okay to hit your wife and kids just because you’re in a bad mood, is it?” When you ask why he has said this he tells you that his father has business worries and has “been taking it out on mum and us kids”.

- How would you respond to Jerry?
- What might be some of the barriers to Jerry being believed?
- What might be the consequences for Jerry, both as a child and later as an adult, if his situation is ignored or dismissed?

Scenario 3

You are a worker at a vacation care centre. Mary, aged 9, and her sister Susan, aged 7, have been coming for the last week. They are both thin,
very quiet, and often seem very tired. They do not mix with the other children: they spend their time either sitting and watching the other children play, or sleeping. They are shy with staff, and answer questions with a ‘yes’ or ‘no’, or not at all. You have a number of concerns: they eat very little, their clothes are not warm enough, and their mother is frequently late in picking them up. Today Susan seems to have a temperature. When you ring home there is no answer. When you ask Mary where mum might be, she says that her mother is probably at the pub: “that’s where she spends most of her time”.

- What might you say or do next in this situation?
- What are the consequences for Mary and Susan if no action is taken?

7. What might make it particularly difficult for children and young people from the following backgrounds to disclose that they are being harmed, or are at risk of harm?

- Aboriginal
- Culturally and linguistically diverse
- Disability

8. You are a child care worker in an OOSH centre. The two Jones girls, now aged 10 and 8, have been very reserved, not interacting with the other children. They are always collected by their mother, who is also reserved with staff at the centre. Today, however, she is very distressed, and has a large bruise on her face. When you ask her what has upset her, she says “Who is going to believe an upmarket professional beats his wife and children when he’s drunk?”

- How would you respond?

9. Disclosures of harm or risk of harm to children or young people can raise ethical dilemmas. What are the issues in the following case studies, and how would you resolve the issues?

Lisa Smith is a single parent with 5 children under 8 years of age. One of the children has a moderate intellectual disability and another has recently been diagnosed with chronic asthma. The eldest child is aggressive at school towards his siblings. You have been Lisa’s Family Support Worker for the past year, and you have developed a good relationship with her. You really admire her determination to do the best for her kids. Today you noticed a large bruise on the eldest child’s face. When you ask how it happened, Lisa bursts into tears and tells you that her son was suspended from school for fighting with other children. While at home yesterday, he hit his disabled sibling and threw a vase at the television, breaking the screen. Lisa tells you she snapped and hit her son with her fist. She pleads
with you not to tell Community Services, and she promises she will never hit any of her children ever again.

Gina is a 12 year old child who was sexually assaulted by her stepfather. Gina was removed from home by Community Services and placed in the residential care unit where you work, due to her mother’s refusal to believe Gina’s disclosure. Today you are assisting Gina with her homework when she asks you what is going to happen to her, and why can’t she go home, as “Mum said on the phone last night that she has forgiven me for lying, and I need to come home to help her with the younger kids”. Gina knows there is a case plan meeting at the Community Services office in two days time, and wants to know if you can help her tell Community Services she has to go home.
Chapter Nine: Reporting risk of harm

Who reports?

Currently, all States and Territories have legislation requiring the compulsory reporting of harm due to abuse or neglect of children or young people to Community Services or State welfare departments. In most States and Territories, particular professional groups whose work involves children and young people are mandated to report abuse or neglect of children and young people.

A mandated reporter or notifier is a person who has a legal obligation to:

- Make a report or notification (in some States this is still referred to as a notification) if, during the course of their work, they have reasonable grounds to suspect that a child or young person is being abused or is at risk of significant harm. The mandated reporter or notifier is not legally obliged to report when they are not at work but this is a moral decision and is up to the individual.

- Volunteers are not mandated reporters but if they believe that a child is at risk of harm they too should make a report.

- Make a report without delay or as soon as practicably possible.

- Report each time that the person becomes aware of any further reasonable grounds for their belief.
In the Northern Territory, anyone who has reason to believe that a child or young person may be abused or neglected must report this to the appropriate authority. Western Australia also has a ‘whole of community approach to safeguarding and promoting the well-being of children and young people’. Under this approach everybody has a duty to report concerns. Protocols and standards are established under the Interagency Collaborative Framework and the Reciprocal Child Protection Procedures for reporting concerns of abuse. These outline the responsibilities of various agencies in relation to child protection. There are also targeted mandatory reporting laws that require the reporting of child abuse in Western Australia. The Family Court Act 1997 requires that court personnel, counsellors and mediators report child abuse in Family Court cases. The Children and Community Services Regulations 2006 require that the providers of child care services and outside school hours care report abuse in the service to the Department for Child Protection.

**Legal requirements in New South Wales**

Under s.27 of the Children and Young People (Care and Protection) Act 1998 in NSW, anyone in the NSW community can report concerns of harm or risk of significant harm to children and young people if they have current and reasonable grounds to suspect that the child or young person, or class of children or young people, is at risk of significant harm. Section 27 of the Act identifies the people who are required by law (mandatory reporting) to report harm or risk of harm to a child or young person. They are:

- Those people who, in the course of their work, deliver services such as health care, welfare, education, children’s services, residential services or law enforcement to children, and

- Any person who holds a managerial position in an organisation that provides these services and has duties which include direct responsibility for or direct supervision of children. The position could be paid or unpaid, such as a member of a management committee for a child care centre.

Changes to the NSW Children and Young Person’s (Care and Protection) Act 1998 in 2010 expanded the categories of mandatory reporters to include managers and authorised supervisors of children’s services, Child Wellbeing Unit assessment officers, Principal Officers of accredited adoption
service providers, contractors who have unsupervised contact with children, and high risk volunteers.

From the beginning of the school year in 2010 only children and young people suspected of being at risk of significant harm are to be reported to the Community Services Helpline.

An alternate reporting process has been set up with the establishment of Child Wellbeing Units to filter reports from those agencies that make up the majority of mandatory reports: NSW Police, NSW Health, Department of Education and Training, and Human Services (formerly Juvenile Justice, Housing, and Ageing, Disability and Home Care). Members of the public, non-government and other government agencies will continue to report to the Community Services Helpline when they believe that a child or young person is at risk of significant harm.

**Child Wellbeing Units**

Child Wellbeing Units will:

- Advise, support and educate mandatory reporters as to whether there is a risk of significant harm, and ensure that all concerns that reach the threshold of risk of significant harm are reported to the Child Protection Hotline.

- Where concerns do not meet the threshold information will be entered on the CWU database, Wellnet. This information will be visible to staff in other CWUs and will assist in assessing cumulative risk of harm.

- CWU assessment officers will help mandatory reporters to identify services available which could support families.

- Allow Community Services to concentrate on the higher priority cases.

Note: some CWUs may operate differently to others, e.g. the Police CWU may rely on NGOs to “cold call” and offer services to families that they were not in a position to offer services to the family previously; or the CWU may make calls to the Child Protection Helpline on behalf of some mandatory reporters. It is important to be aware of your service’s policies and procedures.
For reports that do not meet the raised threshold of ‘significant’ risk of harm

If a child or young person is not at risk of significant harm the mandatory reporters should:

- Continue to offer the services of their own organisation where appropriate.

- Refer to local services and work collaboratively with other organisations to help keep children safe.

Where available, referrals can be made to a Family Referral Service (previously known as Regional Intake and Referral Service) which will be run by NGOs to link families to local services – initially three FRS will be piloted.

Family Referral Services aim to provide an appropriate response for families falling below the threshold for statutory intervention; prevent an escalation of risk; link families to available services; and improve links between government and non government agencies.

- Access existing services to assist vulnerable children, young people and their families:
  - Domestic Violence Line
  - Brighter Futures Early Intervention services
  - NSW Government agencies – Human Services
  - Commonwealth Government agencies – Centrelink, FaHCSIA
  - Existing NGOs such as family support services and child care services.

Where agencies are unsure of the appropriate referral pathways, databases such as the Human Services Network (HSNet) will be available to provide details of the services within local communities. HSNet’s database ‘ServiceLink’ is a comprehensive online directory of human services across NSW free of charge to members. Contact ServiceLink via email at hsnetservice@hsnet.nsw.gov.au or telephone 02 92284200 or you can go on-line and subscribe at https://www.hsnet.nsw.gov.au/login/login.aspx?ReturnUrl=%2fDefault.aspx.
A large range of online databases for community support are available. The Australian Institute for Family Studies, Australian Family Relationship Clearinghouse has a large number of links to search: 

The Brighter Futures program provides services for families with children 0 – 8 years for up to two years. This is proposed to be extended to children 9 – 14 years of age. Families are supported by a caseworker who will work with families to plan services to achieve goals and ensure the services are provided in response to changing needs (children’s services, home visiting). To be able to access the program parents must be experiencing a vulnerability that if not addressed is likely to worsen and impact on the capacity to parent adequately or the wellbeing of the children eg domestic violence, drug and alcohol problems, mental health issues, behaviour management problems or lack of parenting skills.

**What is reported?**

Section 23 of the *NSW Children and Young Persons (Care and Protection) Act 1998* lists categories of risk of harm to a child or young person:

- Failure to meet basic physical or psychological needs
- Failure to provide necessary medical care
- Physical or sexual abuse or ill-treatment
- Risk of serious physical or psychological harm through exposure to domestic violence
- Risk of serious psychological harm
- The birth mother did not eliminate or minimise risk factors that gave rise to a pre-natal report
- Failure to make proper arrangements for children to receive education in accordance with the *Education Act 1990* (from January 2010).

These circumstances may relate to a single act or omission or to a series of acts or omissions that when viewed together may establish a pattern of significant harm.
It is mandatory to report concerns that a child is at risk of significant harm in relation to any of these categories. Workers are not obliged by law to report risk of harm to a young person, but should do so, involving the young person in the decision to report and the process of reporting.

It is also mandatory for people or agencies that provide residential accommodation to report a child who is living away from home without parental permission to Community Services (s.123 of the Act). However, it is not mandatory to report other types of homelessness of either a child (s.120) or a young person (s.121). Under NSW legislation, homelessness of a young person may only be reported with the consent of the young person (or Community Services must be told that the young person has not consented when you make the report). A child or young person is considered to be ‘homeless’ if they are living without family assistance:

- with no accommodation at all
- with only temporary accommodation, or
- with only emergency, refuge or crisis accommodation.

A child or young person living in accommodation where they do not have access to basic utilities such as power and water may also be regarded as homeless. While reporting the homelessness of children (except for s.123) or young people is not mandatory, policies and procedures within some organisations may direct staff to make these reports.

Pre-natal reporting: it is also possible, but not mandatory, to report concerns that an unborn child may be at risk of harm after their birth (s.25). The aim of reporting is to provide early intervention and assistance which could prevent or minimise the likelihood of a child being at risk of harm when they are born. However, under amendments made to the Children and Young Persons (Care and Protection) Act 1998, mandatory reporting must occur if a pre-natal report has been made and “the birth mother did not engage successfully with support services to eliminate, or minimise to the lowest level practicable, the risk factors that gave rise to the report” (s23 (f)).

For a child or young person to be at risk of harm there must be at least one or more of the above circumstances present.
When should a report be made?

Each State has particular avenues for reporting harm or risk of harm to the statutory body responsible. In NSW, reports of significant harm are currently made to the Community Services Child Protection Helpline, which is a specialised initial contact centre for assessing and referring risk of significant harm concerns.

The NSW’ Children and Young Persons (Care and Protection) Act 1998 requires that reports of risk of harm must (in the case of mandatory reporters) be made when an individual has:

- reasonable grounds to make a report
- a suspicion of risk of significant harm
- and current concerns about the safety, welfare or wellbeing of a child or class of children (that is, other children or young people who have contact with an alleged abuser).

‘Reasonable grounds’ mean that any concern you have must be based on an objective appraisal of any information available to you and should not be just based on a hunch. An objective appraisal could be the result of:

- your personal observations of a child or family
- what a child, their parent, or another person has told you
- what you can reasonably infer based on your professional training and / or experience.

From January 2010, a Mandatory Reporter Guidance tool has been provided to assist mandatory reporters to assess indicators of risk of harm and to identify whether they meet the raised threshold of grounds for reporting to Community Services or another decision point. The goal is to help reporters to make accurate reports.

Other Structured Decision Making tools being developed include a screening tool for Helpline and a response priority tool for Helpline. This reflects the implementation of a Common Assessment Framework, as outlined in the Keep Them Safe report.

Significant harm is harm that in the circumstances causing concern for the safety, welfare or wellbeing of a child or young
person are present to a significant extent. That is the extent is not trivial or minor and may reasonably be expected to have a substantial and demonstrably adverse effect on the child or young person’s safety, welfare or wellbeing or in the case of an unborn child after their birth.

‘Current concerns’ simply means that at the time of making the report, the reporter is worried about the current or ongoing safety, welfare or wellbeing of the child or young person. The concerns may be in relation to current abuse or neglect the child or young person is experiencing, or a reasonable suspicion that harm may occur in the near future if there is no intervention. In other cases, the concern may be in relation to a person who is known to have, or is suspected of having, harmed a child in the past and who is still in contact with the child, or has recently resumed contact.

| It is not your responsibility to prove that abuse has occurred. |

**Other reasons to notify the Child Protection Helpline**

The Helpline should be notified if the child or young person is under the parental responsibility of the Minister, there is no concern that reaches the threshold of risk of significant harm but the child or young person is pregnant, a runaway, missing, or homeless. In the case of homelessness refer to the Neglect: Physical Shelter / Environment tree first. If that leads to a report to CS, report as neglect. If it does not lead to a report to CS, advise the Helpline that the report is being made because the child or young person is in care, and not due to neglect.

When an allegation is made against an employee designated agencies are required to notify the Ombudsman of all allegations against employees that constitute sexual offences, misconduct, assault, ill-treatment, neglect and behaviour that causes psychological harm to children. Allegations may also be reported to the Child Protection Helpline if there are also current concerns that a child or young person is at risk of significant harm. The responsibility for investigating the allegation remains with the employer although some statutory organisations may undertake a parallel investigation for other purposes, such as risk assessment, care issues or conducting a criminal investigation (see [http://www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)).
Making a report in New South Wales


You should use the Mandatory Reporter Guide (MRG) tool to help you when making a decision about risk of significant harm and what action you should take, such as reporting to Community Services (CS), consulting your Child Wellbeing Unit, or referring for support if you are a person required to report abuse or neglect to Community Services under the Children and Young Persons (Care and Protection) Act 1998. If you suspect on reasonable grounds that a child or young person may be at risk of significant harm and those grounds arise during the course of your work or employment you should use the MRG.

Significant = sufficiently serious to warrant a response by a statutory agency irrespective of a family’s consent; It is not minor or trivial; and it may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person’s safety, welfare or wellbeing. It may result from a single act or omission or an accumulation of these.

Reporting risk of significant harm to Community Services

If the MRG Decision Point is to report to Community Services you should make your report to the Child Protection Helpline within the next 24 hours, either by phone on 133627 or TTY 96337698, or e-report if available. This information is provided on the Decision Report.

Describe to the Helpline worker the specific circumstances that supported your Yes or NO responses on the decision trees.

A fax report form is available on the Community Services website BUT if the outcome of the MRG is “Immediate report to Community Services” or you have concerns of a high risk of significant harm and / or imminent risk of significant concerns for the safety of a child or young person you must make the report by telephone on 133 627.

Faxed reports are sent to the Child Protection Helpline on 9633 7666.
Note: You must ring 000 if there are urgent concerns for a child’s life or health.

As previously discussed, it is good practice to inform the child or young person of your intention to report your concerns and to seek their views as far as is age-appropriate. When you make a report to the Child Protection Helpline, remember to provide information about the child or young person’s reaction to the report to enable Community Services to take into account any view or wish expressed by a child or young person, including their opposition to the report being made.

**Consulting with a professional or referring to a Child Wellbeing Unit**

If you work for the Departments of Human Services, Education and Training (DET), Health or the NSW Police force you will need to consult with your CWU before reporting to Community Services.

The role of the CWU is to:

- Help reporters identify whether their concerns meet the threshold for significant harm, and if so to ensure these concerns are reported to Community Services.
- Provide advice to mandatory reporters about possible service responses by the agency or other services for children, young people and their families, particularly when the concerns do not meet the raised threshold.
- Over time to drive a better alignment and coordination between agency service systems to enable a more timely response to children, young people and families in need of assistance.

When the decision point is to contact CWU you should do so as soon as possible and no later than the next business day. The CWU will assist you to determine what actions need to be taken.

The CWU Assessment Officers may:

- Review the circumstances of the concern and the completion of the MRG.
- Make an appraisal of any additional information available that may impact on the risk of harm decision. This can include reviewing concerns recorded in the database (Wellnet) and any other concerns that can be gathered by the agency.
- Consulting with the CS Helpline on the assessed risk level.
- Consult with a CS Centre, or an out of home care or Brighter Futures agency where that agency has a current case management role with the child or young person.

- Where the concern is below the threshold, the CWU will assist in developing a plan of action with the mandatory reporter. This may include:
  - Identifying resources that could be offered to the family by the agency or another agency.
  - Identifying what other services could be contacted to determine how the family could be assisted and supported (e.g. a Family Referral Service).
  - Identifying who is best placed to further discuss the concerns with the family and offer them referrals and services.
  - Planning how the family’s situation may be monitored.
  - Discussing how you should document your concerns, any planned actions and outcomes.
  - Providing advice on information exchange requirements.

**If you do not have a CWU:**

If you are from another agency and do not have a CWU and the risk of significant harm threshold is not met and you still have professional concerns, you may discuss possible actions with your supervisor or a colleague, and/or report to the Child Protection Helpline.

Your agency may have provided advice on who to contact in your agency or elsewhere to discuss any child protection concerns. This may be in your Child Protection policy and procedures.

You may refer directly to an appropriate service, contact a service to assist in identifying supports or services, or seek additional information under exchange of information provisions, for example:

- a Family Referral Service, if available;
- the DV Line; a local referral or advice service;
- services listed on HSNet, the NSW Government’s Human Services website, at http://www.hsnet.nsw.gov.au or on the Families NSW website at http://www.nswfamilyservices.asn.au
**Referrals**

This decision point occurs when there is no significant harm or risk of significant harm, but the family may benefit from services and appear open to services. You may respond in a number of ways depending on your knowledge of and relationships with family members.

a. Ask your CWU for information on services or other guidance.
b. Access suitable referrals through the NSW Government’s Human Services website, HSNet.
c. Consult with a Family Referral Service, where available. You may call them for information to pass to the family, or you may provide relevant information to the Service so they can contact the family directly.
d. Use your agency’s existing referral network.

Note: Certain agencies or ‘prescribed bodies’ can share information regarding the safety, welfare and well-being of children and young people and their parent or carers without their consent; however, where possible, client consent should be sought.

**Document and continue relationship (also document and monitor)**

When the decision point of ‘Document and continue relationship’ (or ‘Document and monitor’) is reached, you are not required to report. However, you will need to document the decision and continue your professional relationship with family members, where appropriate.

**Document**

Based on your agency’s policies, document relevant information about your concerns, and print and file the decision report issued after completion of the MRG.

**Continue Relationship (or Monitor)**

• If your professional role includes an ongoing relationship with the child or young person AND/OR parent or carer, it is expected that such a relationship will continue regardless of the reporting decision. It is important to maintain a connection to the family so that if conditions worsen, you will be available to report to Community Services if need be. This relationship may include monitoring, creating or maintaining a safe space where the child or young person or parent or carer
may further disclose concerns that already exist but which they have been reluctant to disclose, or to disclose new incidents. The relationship may also include supporting the child or young person or parent or carer who may be experiencing other difficulties that are not reportable as abuse or neglect.

• If your professional role does not include an ongoing relationship with the child or young person and/or parent or carer, you are not required to maintain contact.

NOTE: Some circumstances are not reportable because they do not meet the threshold of risk of significant harm and yet the child or young person may experience emotional or physical stress. You may be able to assist the child or young person in learning coping strategies or accessing suitable services, or to foster trust so that a child or young person will alert you if conditions change.

Irrespective of a report to Community Services, consider whether your concerns should be shared with other agencies connected with the child or young person, such as school, health, mental health, justice or housing.


If you are working in a service where the policies or procedures require you to report firstly to your supervisor, you must be satisfied that the report was made promptly and that all of the grounds were included in the report. Many government departments (for example police, education and health) have ministerial directions about reporting child protection concerns. These directions should always be followed in addition to the requirements under child protection legislation. There are also additional requirements with the establishment of the Child Wellbeing Units to filter reports of risk of harm. In the same way, non-government organisations will have policies and procedures which they should also follow.

Your manager or supervisor cannot prevent you from making a report where you have concerns for significant risk of harm. If they do not want to make a report, it is your responsibility as a mandated reporter to ensure that the report happens if you have reasonable grounds or current concerns for a child or young person’s safety, welfare or well being.

Your identity as reporter will remain confidential unless:
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- you choose to personally inform the child or young person and/or their family
- you consent in writing to your identity as the reporter being disclosed
- the court decides that it needs this information in order to ensure the safety and well being of the child or young person, or
- the court decides that it is satisfied that the interests of justice require that the evidence be given

If law enforcement agencies require the identify of a reporter in order to investigate serious offences that have been alleged to have been committed against children or young people, the identity of the reporter may be released to the police. The reporter will be notified that their identity is to be released unless doing so would prejudice the investigation.

Safeguards for people making a report

The identity of a person making a report is kept confidential, except in the situations given above. Any person who makes a report in good faith has the following protection by law:

- The making of the report does not constitute a breach of professional ethics or a departure from accepted standards of professional conduct.
- No liability for defamation can be incurred because of the report.
- The making of a report does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.
- The report or its contents is not admissible in any proceedings as evidence against the person who made the report, and a person cannot be compelled in any proceedings to provide the report or give evidence of its contents.
- A report is an exempt document under the Freedom of Information Act 1989.
- The identity of the person who made the report, or information from which the identity of that person could be deduced, must not be disclosed to any
person without their consent or the leave of the court.

- If you make a report you cannot be prevented from helping that child or responding to their needs (s29A).

**Making a report of harm or risk of harm concerns**

All mandatory reporters need to provide their contact details to Community Services when making a report. These details are kept confidential and will show that you have fulfilled your duty of care and your legal obligation. This will also allow Community Services to clarify any issues that they need to know and to provide you with feedback on the progress of the case.

Non-mandatory reporters can make an anonymous report, but in these situations Community Services is unable to seek clarification or provide feedback.

**Information to provide when making a report**

If you or your supervisor makes a report, officers of the relevant State government department will usually request the following information:

- The names of all children/young people involved (including aliases) or other means of identifying them
- Their age, date of birth (or approximation)
- Address of child and family
- School or child care details
- Whether the child or young person is indigenous - Aboriginal, Torres Strait islander or both
- If the child has a disability – nature / type, severity, impact on functioning
- If the child is the subject of an Apprehended Violence Order (AVO)
- If the child is under the care of the Minister or residing in out of home care
• The name and address of their parents / carers and other household adults

• Home and / or mobile phone number

• Cultural background of parents, languages spoken, religion and other cultural factors

• Information about parental risk factors and how they link to child’s risk of harm (domestic violence, alcohol or other drug abuse, unmanaged mental illness, intellectual or other disability)

• Protective factors and family strengths; non offending parents ability to care for and protect child

• Any previous suspicious death of a child or young person in the household

• If the carer is pregnant

• Is the parent or carer the subject of an AVO

• A description of the family structure (e.g. biological parents, blended parents, single parent)

• Name, age, gender of siblings and whether they live with the child or young person

• Services involved with the child, young person or family if available

• Principal language of family and whether an interpreter or signed language is required

• If parent knows of the report and their response

• If the child or young person knows about the report and their views

• Information related to worker safety issues

• The outcome of the Mandatory Reporter Guide – your reasons for concern

• The reporter’s details – name, agency address, phone and email details; position; reason for reporting today; nature of contact with child or family; nature of ongoing role with child or family (including frequency, duration and type)
If report is being made by someone else in the agency, the name of the agency worker who sourced the report.

At the time of making the report, you or your supervisor should note:

- The exact time and date the report was made
- The name of the Child Protection Helpline officer accepting the report, and
- Any other relevant information, eg a report number, what its likely path will be, and who could be contacted for more details

Once a report is made to the Helpline no further report needs to be made unless new information comes to hand.

Reporting should be in one form only (phone, fax or eReport). It is unnecessary to duplicate a report by confirming in writing. The summary page from the online Mandatory Reporter Guide can be printed and placed in your confidential records.

**Issues in making a report**

An ethical consideration at this point is whether a worker or their supervisor should inform the parents or caregivers that a report of harm or risk of harm is being made to Community Services.

It is generally considered to be good professional practice to inform children, young people and families about the decision to report disclosures or indicators of harm and risk of harm, because being open with the family can promote partnerships. However, it is strongly suggested that this decision be made only after discussions with your supervisor, or coordinator or Child Wellbeing Unit. Remember that it must be within your role and responsibilities and should follow agency policies and practices.

You should not, however, tell the family if this could jeopardise the safety of the child or young person, or your own safety. In cases of suspected sexual abuse or domestic violence, it is inappropriate to discuss the nature of your concerns with the family. In the case of a young person (16 years or older) the decision to report should be discussed with them.
What happens when a report is made?

State Human or Community Services departments responsible for child protection are mandated by law to conduct assessments and investigations of reports of harm or risk of significant harm and to offer support and referral to appropriate services to families where abuse has occurred or is likely to occur. They are authorised to act on behalf of a child when parents or carers are unable or unwilling to do so.

The Helpline may do the following:

- Screen out the report as they do not consider it to be a risk of significant harm
- Refer the report to Brighter Futures
- Assess the report but not open it for ongoing services
- Offer ongoing services or further assessment to the child or young person, other family members, or to the family together; or
- Arrange protective placement for the child or young person.

Irrespective of what Community Services does it is important to maintain your professional relationship with the family as far as appropriate and possible.

Reports which seem valid and fall within the jurisdiction of these departments are investigated. An evaluation is made of the level of evidence that a child is at risk of significant harm and the department then decides whether or not to substantiate these reports. If a case is substantiated, the case is managed through the provision of services, the arrangement of foster care, the overseeing of reunification efforts and/or by taking the matter to court where decisions are made about parental rights.

The initial assessment made by the caseworker at the Community Services Helpline involves screening and prioritising ‘child at risk’ reports based on available information, so that the most appropriate response is made. If the Helpline caseworker decides there is reason to believe that a child or young person is at risk of significant harm, they then may refer the matter on for a secondary assessment. Or, the decision may be that the report should be dealt with by other means, such as referral to other organisations or family support services, or that no further protective action is necessary.
Under the changes to the child protection system proposed in the Keep them Safe Report, a common assessment framework will be used by Community Services, the Child Wellbeing Units and non government organisations to identify and respond to the needs of children, young people and their families, particularly in the areas of chronic and serious neglect, parental substance abuse, high risk adolescents, serious mental health issues and high risk domestic violence cases.

In NSW, secondary assessments are conducted by either a local Community Services office, known as a Community Services Centre, or the Joint Investigative Response Team (JIRT), where police and statutory child protection workers (Community Services) carry out joint investigations in child abuse and neglect cases of a criminal nature: that is, where there is significant physical or sexual abuse, or any abuse that results in the serious injury or death of a child. Secondary assessment by a caseworker from a Community Services Centre can involve:

- detailed assessment of the child or young person and their caregivers
- medical examination and / or psychological and developmental assessment of the child or young person or parent
- liaison with other agencies
- ongoing casework
- possible removal of the child / young person and placement with relatives, foster carers and other out-of-home care placements
- possible court action.

Secondary assessment by JIRT can involve:

- conducting an investigation
- medical examination and /or psychological and developmental assessment of the child / young person /parent
- possible removal of the child or young person
- possible criminal charges laid against the alleged offender.
Following secondary assessment Community Services or JIRT may conclude that:

- sufficient evidence exists to support or substantiate the allegation
- sufficient evidence does not exist to support significant risk of harm, or
- harm or risk of harm is indicated, although sufficient evidence does not exist to support the allegation. Additional services may be provided if it is believed that there is a future risk of harm.

The Children’s Court has the power to order the removal of children from the custodial parent or carer, or to require that a child remain at home subject to the supervision of the authorised welfare agency.

Feedback to mandatory reporters

The Child Protection Helpline will provide feedback to mandatory reporters on the reports it receives by letter or fax. If the feedback indicates that the threshold is not met, reporters may need to consider what additional services or supports can be provided locally. These services should assist in addressing identified problems and minimising the risk of future harm. Community Services can also provide feedback to mandatory reporters where this is for the purpose of furthering the safety, welfare and wellbeing of a child or young person.

The Helpline can provide feedback to mandatory reporters as to what initial action has been taken. This may be that the case has been closed at the Helpline, or that it has been transferred to JIRT or the local Community Services Centre. If a report is transferred to a Community Services Centre, then the Centre will provide feedback on the action being taken when:

- it is requested by a mandated reporter
- the reporter has an ongoing role with the child or young person or family
the feedback will enable the reporter’s work with the child or young person and / or their family to continue.

Changes under the Keep Them Safe reform provides for feedback to all reporters. Previously, too many reports were made to Community Services by reporters who kept on reporting in the hopes of escalating the child within the system as they had not received feedback.

In the past a worker’s official responsibilities in relation to mandatory reporting usually ended after recognising and reporting harm or risk of harm although there may have been some further involvement, such as acting as a support person for the child or young person during an interview with the officers from Community Services, or a service is required to make periodic reports to Community Services officers about a child or young person who is attending the service. On rare occasions, staff from services involved with a child or young person may be asked to give evidence in the Children’s Court. Under Keep Them Safe, services will have an ongoing responsibility in either providing or offering services to families, and in maintaining the relationship in order to support the families.

These possible outcomes of reporting should not deter you from making a report when you have reasonable grounds to do so. Remember, as a worker you have legal and ethical responsibilities.

Workers also have a professional responsibility to continue to support and protect the child or young person by providing a consistent, secure and caring environment.

What may happen if a report is not made?

The consequences of not making a report include:

- The child or young person may continue to be trapped in an abusive situation, with potentially negative long-term consequences.

- Failure to report may be seen by the child or young person and family members as colluding with the abuse and the alleged abuser.

- Other children may be exposed to risk of harm by the alleged perpetrator currently or in the future.
● The child or young person could be severely physically or psychologically harmed or killed.

● As a mandated reporter, if you fail to report your belief when you have reasonable grounds for concern you may be fined under the provisions of the child protection legislation in your State or Territory, although this has been removed under the NSW reform.

● You may also be subject to disciplinary action by your employer.
Writing a report for the court

If you are asked to write a report for the Children’s Court you should include:

- Title the report: Report to the Children’s Court in relation to (name of child)
- Include names of all relevant family members
- State your role, your agency and the service it provides
- An account of your professional involvement with the child and their family
- A description of the abuse or neglect, if appropriate
- Your professional assessment of the family’s situation
- Your major concerns about the child’s well-being
- The capacity of the parents and caregivers to care for and protect the child in the future
- Present your information as a chronological account of your involvement with the child or young person
- Draw on facts and link these to your professional knowledge, training and theory
- Provide examples to support your statements, giving precise details and dates;
- Distinguish between your own observations and knowledge gained from other sources
- State your conclusions and recommendations.

Learning activities

Draw on the material in this book, as well as related readings and documents, to answer the following questions. Use your own words as much as possible.

1. What are the reporting requirements regarding harm or risk of harm as set out in the legislation in your State?

2. What are the procedures for reporting harm or risk of harm in your State?

3. What concerns do you have about making a report of harm or risk of harm to a child or young person you are currently working with?

4. Why do you think it is necessary to have the consent of a child or young person when reporting homelessness?

5. What kind of assistance and support to a pregnant woman could reduce the likelihood of the newborn child being placed in ‘out of home’ care?

6. Refer back to the scenarios in the activities section of Chapter 5. What do you think would be ‘reasonable grounds’ for reporting in each of these scenarios? Are these children at risk of significant harm?

7. Describe the procedures followed in your service if a child or young person is identified as being at risk of harm. Describe your responsibilities and the responsibilities of the person directly above you in detail.

8. A 5-year-old child discloses an incident you believe to be child sexual assault. How do you respond (broadly) and why do you respond this way?

9. Outline the role and responsibility for the organisation in your State or Territory to whom you report children or young people at risk of harm. Provide a flowchart as to how reports are dealt with in your State or Territory.

10. When might it be appropriate to inform family or caregivers of the decision to report? You might want to discuss this with other learners or your facilitator.
Chapter Ten: An interagency response to risk of harm

Introduction

In NSW, the framework for a partnership approach to child protection is provided by the Children and Young Persons (Care and Protection) Act 1998. The Interagency Guidelines for Child Protection Intervention 2006 previously set out how this approach would be achieved. These guidelines are being progressively re-written and are now titled: Child Wellbeing and Child Protection NSW Interagency Guidelines. This new title broadens its focus from child protection to child wellbeing and assists in differentiating this document from previous guidelines.

The Interagency Guidelines hold that child protection is a responsibility of the whole community and, in particular, stresses the critical importance of collaboration between 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.

While Community Services has held the primary responsibility for providing care and protection for children and young people in New South Wales, it is recognised that no single agency has all the knowledge, skills or authority to safeguard a child or young person from abuse or neglect, and that a whole of community approach is required.

Families have multidimensional needs and issues including domestic and family violence, drug and alcohol use and abuse, mental health issues and neglect. No one agency can address all of these issues. The NSW government has committed to implementing Intensive Family Support Services for children whose families are in high stress and where, without intervention, the children are likely to be placed in out of home care; and to integrated case management, now known as Family Case Management, for assisting frequently
encountered families’. These families are estimated to number between 2,500 and 7,500 families. These approaches will involve both government and non-government agencies working together to identify and support families, not just children at risk.

The Justice Wood Inquiry findings in Keep Them Safe identified a need for improvements in interagency approach. Issues included a lack of systematic cross agency training, a lack of understanding of each others’ roles, a view that Community Services has the primary role in child protection services and a lack of understanding of the range of services available in the community to support children, young people and their families. Wood also found that interagency cooperation was hindered by boundaries, resource limitations, privacy and information exchange constraints, and the lack of a clear structure for the flow of information between agencies. The five year plan to reform the child protection system in NSW will address these issues and necessitate changes to the Interagency Guidelines.

Interagency practices provide a context for change. Effective interagency collaboration can enhance assessment of need and delivery of service, minimise service delivery gaps, increase resource efficiency, and provide increased support for workers. The Keep Them Safe reform recognises that coordination, collaboration, information sharing and referral processes is needed to support families.

Keep Them Safe also recognises that cultural change is necessary to encourage better information sharing and trust between government and non-government organisations. Cultural change and workforce development will also support enhanced services for vulnerable groups such as children and young people with a disability, and giving Aboriginal organisations a voice in determining how services are to be delivered to local groups.
Working with other agencies

Keep Them Safe proposes better agency coordination and information sharing to provide improved responses for children and young people through the common assessment framework, joint service planning and service delivery. The Common Assessment Framework will include information, resource materials and assessment tools such as the Mandatory Reporter Guidance tool, to enable agencies to better identify and respond to the needs of children, young people and their families.

To prevent a lack of communication between services, and to increase resources available to the child, young person and their family, agencies should work in partnership with each other and with the child or young person and their family. This is to ensure the safety, welfare and well being of the child or young person. The implementation of Chapter 16A under the Children and Young People (Care and Protection) Act 1998 will allow for a freer Exchange of Information between Prescribed Bodies that relates to the safety, welfare and wellbeing of children and young people.

Role of agencies in strengthening families in order to prevent risk of harm

Both the government and non-government agencies listed below have particular roles and responsibilities in relation to the protection of children and young people. However, all share the role of recognising and responding to children and young people at risk of harm. Under Keep Them Safe one of the elements is that partnerships should be strengthened across the community services sector.

Government agencies

Government agencies have a major role in relation to the protection of children and young people.

These agencies include the following:

- Community Services. The role of Community Services includes providing services to children, young people and carers when a request for assistance is received, receiving, assessing and investigating reports of child abuse and neglect, acting to ensure the safety of children and young people, and ensuring the provision of quality out-of-home care and support services for children and
young people unable to live with their families. Assistance will continue to be provided to families through the Brighter Futures program which is proposed to be extended to children 9 – 14 years of age.

- NSW Police Service roles also include identifying, reporting and investigating child abuse and neglect, applying for Apprehended Violence Orders, and initiating legal proceedings for child abuse and neglect offences under the *Crimes Act 1900*.

- NSW Health – roles include conducting medical examinations and assessments, medical treatments, crisis and ongoing counselling for children who have been, or are suspected of having been, abused or neglected. NSW Health also delivers preventative programs and early intervention services that aim to protect children and young people.

- Office of the Director of Public Prosecutions – the role includes advising investigators on the sufficiency of evidence, prosecuting all criminal proceedings for child sexual assault offences, and supporting children who are victims or witnesses throughout court proceedings.

- Department of Education and Training – inform children and young people attending Departmental facilities of their right to be protected from abuse, provide child protection education to children and young people in schools and teach protective strategies to children in preschools and child care centres.

- Corrective Services – child protection related roles include assessing risk and providing interventions to reduce the risk of known child-related offenders re-offending, and ensuring inmates under the age of 18 are safe from harm.

- Juvenile Justice – the role includes providing assessment and offence related services to children and young people in custody, who may be victims as well as offenders.

- NSW Department of Sport and Recreation – educates coaches, administrators, parents and children about child protection.
• Aging and Disability, and Home Care – provides specialist support to young people with a disability in transition from out-of-home care to independent living.

• Housing – provides housing assistance to young people in transition from out-of-home care to independent living.

(From: Interagency Guidelines for Child Protection Intervention, 2006 – to be reviewed when new guidelines are made available in 2010)

Other government agencies that play an important role in the care and protection of children and young people include the following:

• The NSW Ombudsman
  The role of the NSW Ombudsman in the protection of children and young people 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.

• Courts and Tribunals
  The role of Courts and Tribunals in the protection of children and young people is to provide independent and impartial resolution of legal disputes involving or affecting children and young people. In particular, the Children’s Court hears and determines most applications for care orders relating to children and young people, while the Children’s Court Clinic provides expert clinical assessments of children, young people and their families who are involved in care proceedings.

• Commission for Children and Young People
  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.

• Children’s Guardian
  The Children’s Guardian has the role of exercising parental responsibility for a child or young person,
and promoting and safeguarding the rights and interests of children and young people in out-of-home care.

- Other government departments with a role to play in child protection include the Attorney General’s Department, the Health Care Complaints Commission, and local government authorities.

**Non-government agencies**

Key non-government agencies involved in the protection of children and young people include:

- children’s services
- disability services
- family support services, such as Domestic Violence Line or Brighter Futures Early Intervention Service
- out-of-home care services
- supported accommodation services
- youth services, and
- the non-government schools sector.

The role of these services in the protection of children and young people is to recognise and report suspected risk of significant harm, and to work collaboratively with government agencies when intervening with families. Some non-government agencies may be involved in offering continuing support and assistance to children, young people and families where there has been abuse and neglect by reducing the risk of further harm and providing specialist crisis intervention, counselling and ongoing care or where risk of harm does not meet the raised threshold.

**Your role**

Reporting concerns of risk of significant harm may not be the end of your role or responsibilities in this case. Your role will be determined by your job description, the type of organisation for which you work, and the type of services it provides. Some possible roles are outlined below.
Continued support to the child or young person

Your agency, and you as a worker, may continue to be involved with the child or young person or their family as part of a Community Services case plan. Community Services may require your continued involvement because of the relationship you and your agency already have with the child or young person, and continuation of the provision of services by your agency is considered important in ensuring the safety, welfare and wellbeing of the child or young person, or, if the child has been removed, as part of possible restoration.

In some cases, reporting concerns about a child or young person will not result in statutory (legal) intervention, or such interventions will be limited. This may be because of different perceptions of risk of harm and protective factors, such as not meeting the new ‘significant risk of harm’ threshold. Your Child Wellbeing Unit, Community Services, or the equivalent statutory organisation in your State or Territory, may decide that a report does not require further investigation, or on investigation determines that no further protective action is necessary at this time. It is important that you, as the worker who made the report, continue to support and observe the child or young person where possible, documenting any further concerns you may have. Keep in mind that you do have the option of reporting again in the future if new risk factors are noted or the child or young person discloses harm.

Working with new referrals

Following assessment of risk of harm to a child or young person, Community Services or your State’s equivalent statutory child protection agency may refer a child, young person and / or their family to your agency for ongoing services such as family support, child care, counseling, etc. The NSW Children and Young Persons (Care and Protection) Act 1998 requires that agencies must use what is termed their ‘best endeavours’ when responding to a request for a service from Community Services. This means the agency is obliged to do its best to respond to a request for a service which is aimed at promoting and safeguarding the safety, welfare and well-being of a child or young person.

Participation in case planning meetings

You as a worker in a particular organisation or agency may also be involved in case planning meetings. ‘Case planning’ refers to the process in which participants (such as
Community Services, the child, young person and family, where appropriate, and government and non-government agencies and organisations providing services to the child, young person or family) set goals for the future, define desired outcomes, and agree on strategies to meet those outcomes.

It is particularly important that children and young people are involved wherever possible in the decision-making process of case planning. Section 10 of the NSW Children and Young Persons (Care and Protection) Act 1998 sets out the principles for participation in decision-making by children and young people. You also need to be aware of the possibility of conflicts of ideas and values between workers from different organisations and agencies about appropriate interventions, their roles in relation to the child or young person or their family, and the decision-making process. It is essential that these conflicts do not override the need to ensure that children and young people are protected from harm.

**Providing information and information exchange**

The Children and Young Persons (Care and Protection) Act 1998 stresses the importance of the exchange of accurate information relevant to the assessment of risk and the needs of the child, young person and their family between Community Services and professionals and services with child protection obligations and responsibilities.

Section 248 of the Act allows Community Services to direct government and non-government agencies to provide information to Community Services about the safety, welfare and well-being of children and young people in relation to requests for assistance and in child protection interventions. This exchange is not a breach of professional ethics and is not grounds for legal action against a worker or service. Your agency may also have established policies and procedures for managing requests for information.

Community Services also has the discretion to provide information about a child or young person and their family to ‘prescribed’ agencies on request when:

- It is considered necessary for the safety, welfare and well-being of a child or young person.
- The agency is providing a service under a case plan in collaboration with the Department of Community Services.
The information is necessary for the agency to effectively deliver the service to the child or young person, or their family.

Other ‘prescribed agencies’ under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* will also be able to Exchange Information where it is required for the safety, welfare and wellbeing of a child in order to make decisions, assessments, investigations or service delivery for a child or young person where there are concerns that the person is at risk of significant harm. An agency is not required to exchange information if it believes that it would prejudice a criminal investigation or coronial inquest, endanger a person’s life, or is not in the public’s interest.

**Developing links with other agencies**

It is important that agencies with responsibilities in the protection of children and young people work cooperatively with each other. Ways of doing this include building better networks between agencies, establishing formal protocols for interactions between agencies, and creating opportunities for shared training. Interagency collaboration doesn’t mean the coordinator only – all staff need to know the relevant local services which can assist in protecting children and young people and supporting their families. This can involve regular attendance at local interagency meetings, attendance at seminars, and involvement in case conferences. It is essential that links be developed between generalist agencies and those offering support services to people from culturally and linguistically different backgrounds.

**Involvement in making and receiving referrals**

As part of your agency’s continued involvement with a child or young person at possible risk of harm, your agency may decide that it is appropriate that the agency consult with or refer families to other agencies to access additional services (such as housing) which can assist in supporting and strengthening the family. This is especially important where the child or young person is not regarded as being at risk of significant harm.

Some family support referrals to other agencies would be made through the service supervisor, but it is a task that may be delegated, particularly where workers know the family well.
Therefore, when you refer a family to another agency, remember the following:

- If you are referring parents to a support service, you need to be clear as to how that service can help in this situation. Without this information, people are unlikely to follow through on referrals. Provide directions on how to phone or get to these services, as well as their hours and any other details you can.

- It is useful to phone the service yourself while the carer is present and make a referral over the phone. You can then arrange an appointment time and perhaps be able to give the carer the name of the person they will see.

- If you are making a referral for family support reasons, always do it with the carer’s full permission, and if material is required in writing, allow carers to see it before it is sent. It is their story and they have the right to see how it is told. They have the right to say what should and shouldn’t be shared with another agency, unless it is in relation to a legal report or information disclosed by a child or young person.

- Restrict the sharing of information to that which is necessary for the agency to know: respect the child or young person’s right to privacy where possible.

**Advocacy**

Depending on your work role, you may act as an advocate for the child or young person, and their family, in relation to other services. Advocacy means consulting with children and young people and their families as active partners where appropriate, and either taking action on their behalf, or assisting them to advocate for themselves where possible.

This may be in relation to where and with whom a child or young person lives if they cannot live at home, the child or young person’s future goals, and contact with family members. Be prepared to advocate for the child or young person and their needs at meetings with other agency workers. Quite often in such meetings, you will be the one who knows the child or young person better than anyone else, and, if they are present at the meeting, you are someone they know and trusts to help them follow what is happening and support them to contribute.
On a broader level, all individuals and agencies who work with children, young people and their families need to identify gaps in service provision and lobby for more prevention and early intervention strategies, so that we as a society can respond to the rights and needs of children and young people in a proactive rather than a reactive way.
Learning activities

1. What might be some problems that could arise when working with diverse agencies in relation to harm or risk of harm to children and young people?

2. If you are working in NSW, look up s. 10 of the *Children and Young Persons (Care and Protection) Act 1998* and summarise the principles underlying participation in decision-making by children and young people. If you are working in another State or Territory, is there an equivalent section in the relevant child protection legislation?

3. What might be your role/s in the following situations?

   - You are a drug and alcohol worker in a community health centre. Julie and Merv Smith have been on the methadone program for a year, and have been attending counselling with you for three months. A report was made to Community Services a month ago about the care of their three children, and the Smiths have admitted their parenting skills are not good. They have, however, stated that they love their kids and are really concerned about an upcoming case conference.

   - You are a worker in a non-government family support service. June Sinclair, a 19-year-old single parent of two children (aged 2 and 6 months), has been referred to your service by Community Services following a report by the local hospital of delayed physical, emotional and social development in the case of both children. The Community Services caseworker reports the house is “a mess”, and June doesn’t seem to know how to meet the children’s needs.

   - You are a family caseworker in a non-government organisation. Janine Porter and her children have been referred to you by Community Services following the investigation of a disclosure by two of the children of sexual abuse perpetrated by their stepfather over a number of years. Mr Porter has been removed from the home, and Janine is supportive of the children.

   - You are a worker in an accommodation service for young people. Sonia (aged 15) has lived there for six months after leaving a domestic violence situation at
home in another town. She is unhappy at her new school and misses her mother and siblings. She is threatening to run away and return home.

- You are a child care worker at a child care centre where there are several children who are considered by Community Services to be ‘at risk of harm’. One of the parents tells you in confidence that she is not coping with her two pre-school-aged children and frequently leaves them alone at night while she goes out “to get a break”.

4. Read the following scenario that demonstrates clearly how good interagency practices and the Exchange of Information are working towards ensuring the safety, welfare and wellbeing of the children involved.

**Thomas and Angela**

The Miller family have been attending a Family Support Service ever since Thomas’s mum, Angela, saw an advertisement in the school newsletter. Thomas has two other brothers. Thomas has been in trouble at school for fighting and had been suspended. Angela talks to the Support Worker about this as she said that she could not tell her husband as he would get angry. Angela said that he often comes home late as he needs to go to the pub to relax after work each day and she didn’t want to bother him. She appeared nervous and teary and the worker suspects that Angela may also have been drinking. The worker referred her to the local NGO Brighter Futures early intervention program with Angela’s consent as she believed that the family could benefit from more sustained support.

The Brighter Futures Caseworker visits Angela at home and notices that Thomas has bruising on both his arms.

This case does not meet the threshold at this time as the injury is not significant and there is no disclosure from the parent or child about the nature of the injury. The Brighter Futures worker needs to talk to the child and ask what happened. An inconsistent explanation is provided for the injury by parent and child. Further inquiry at Thomas’s school indicates that the explanation given for the injury is not correct and the bruising had also been noticed at school and reported this to the DET CWU. Further
contact by the DET CWU with the Police CWU has confirmed at least 2 callouts for domestic violence. These did not meet the threshold as no serious injury was sustained, no weapon was used and there had been no significant increase in the pattern of violence.

The Brighter Futures worker also contacts the family support service to exchange information regarding the safety of Thomas and his brothers. Angela is provided with the contact details for the DV hotline, drug and alcohol services, and local support services. The Brighter Futures worker calls a case meeting with the school counsellor, the family support service, the drug and alcohol worker, and the Domestic Violence Liaison Officer to discuss any further supports available or needed.

The benefit from this new collaborative system that allows an exchange of information in relation to the safety, welfare and wellbeing of children and young people is clearly demonstrated. There is no need for Community Services to be involved and the services can continue to work with the family to support long term intervention. Also, there is transparency for the mother and involved agencies about what is happening.
Conclusion

After examining our legal and ethical responsibilities, it is now clear that both individuals and organisations have responsibilities that relate to a key number of areas including employment screening, being informed of our responsibilities, identifying and minimising risk of harm, reporting to designated statutory services, and working collaboratively to protect the safety, welfare and well being of children and young people.

As workers in child-related employment, it is our duty to be aware of our responsibilities under the legislation that cares for and protects children and young people and to act in an ethical and nurturing manner. If we have concerns about the risk of harm to a child or young person, we must report it appropriately. It is also important that we continue to play a supportive role with the child or young person and assist them to link with other available support if requested.

Our primary responsibility is to the child or young person, and we have a professional responsibility to report concerns of abuse and neglect.

If you suspect that this is occurring, contact your appropriate child protection agency.

Child Protection and wellbeing is a community responsibility and must be shared.

As a community we need to support the care, safety and wellbeing of children, young people and their families.
Glossary

Apprehended Violence Order (AVO)

An Apprehended Violence Order (AVO) is an order made by a court that restricts the behaviour of the person against whom the order has been made. The purpose of an AVO is to protect a person from violence, harassment or intimidation in the future. An AVO usually states that a person cannot assault, harass, threaten, stalk or intimidate another person, or go within a certain distance of his/her home or workplace. Other orders can be included if necessary. In NSW there are two types of AVOs:

- **Apprehended Domestic Violence Orders (ADVO)** are made when the people involved are related, living together or in an intimate relationship, or have been in this situation earlier.

- **Apprehended Personal Violence Orders (APVO)** are made when the people involved are not related and do not have a domestic or personal relationship, e.g., neighbours.

Assessment

Assessment refers to the process of obtaining, organising and analysing information in order to determine the risk of current and future harm to a child or young person.

Caseworker

A caseworker is a community services officer who is responsible for responding to reports and other care and protection work with children and young people. Caseworkers were formerly known as district officers.

Child

Under the *Children and Young Persons (Care and Protection) Act 1998*, a child is any person under the age of 16 years, except where otherwise stated. Under the *Ombudsman Act 1974*, a child refers to a person under the age of 18.
**Children’s Guardian**

The Children’s Guardian is a person who has responsibility for children who are placed in out-of-home care. These responsibilities include promoting the best interests and rights of children and young people in out-of-home care, reviewing case plans and reports when reviews are conducted and making decisions that the law defines as part of parental responsibility.

**Child pornography** is material that depicts or describes (or appears to depict or describe), in a manner that would in all circumstances cause offence to reasonable people, a person who is (or appears to be) a child:

a. Engaged in sexual activity;

b. In a sexual context; or

c. As the victim of torture, cruelty or physical abuse (whether or not in a sexual context).

(2 Division 15A Child Pornography (91H) of the NSW Crimes Act 1900 defines a child as under 18 years.)

**Child Prostitution**

Child prostitution is any sexual service, whether or not involving an indecent act:

a. That is provided by a child (under the age of 18 years) for the payment of money or the provision of any other material thing (whether or not it is in fact paid or provided to the child/young person or to any other person);

b. That can reasonably be considered as aimed at the sexual arousal or sexual gratification of a person or persons other than the child/young person; and

c. Includes (but is not limited to) sexual activity between persons of different sexes or the same sex, comprising sexual intercourse (as defined in section 61H) for payment or masturbation committed by one person or another for payment engaged in by a child.

(3 Division 15 Child Prostitution (91C) of the NSW Crimes Act 1900 defines a child as under 18 years.)
Child Related Employment

Work of the kind that primarily involves direct contact with children where that contact is not directly supervised by a person having the capacity to direct the person in the course of the employment.

Child Wellbeing Unit (CWU)

A unit in a government agency to screen agency reports and contacts. This includes NSW Health, NSW Police, Department of Education and Training, and Department of Human Services (Ageing, Disability and Home Care, Juvenile Justice and Housing NSW). Mandatory reporters in these government departments will consult their CWU when they have concerns for the safety, welfare or wellbeing of a child or young person.

Class or kind agreement

A class or kind agreement is an agreement made between the Commission for Children and Young People and an employer which changes some of the relevant employment proceeding reporting arrangements of that employer.

Class or kind agreements recognise the individual conditions, complaint processes and professionalism that employers provide. Oversight of complaints processes by the NSW Ombudsman is often a key factor in a making class or kind agreement.

Cognitive Delay

Cognitive delay usually refers to a developmental lag, meaning that an individual’s cognitive abilities do not match the expectations for his/her chronological age. It is a term most often used in describing children. Because children continue to grow and develop cognitively, it is not always clear whether or not they will catch up with respect to the delay. Sometimes development lags because of illness or malnutrition or other environmental factors and when the situation is rectified, the cognitive abilities rebound. However, it is also possible for delays to become permanent, in which case they are probably better thought of as an impairment or disability, although the term ‘delay’ is sometimes still used.

Community Services (CS)

The government department responsible for helping children and families. CS has also previously been known as
Confidentiality

Confidentiality means keeping information private. This may be covered in your code of conduct or ethics. This is limited by the *Children and Young Persons (Care and Protection) Act 1998* s.27 and s.248. Exception to this is the Exchange of Information necessary for the safety, welfare or wellbeing of a child or young person (Chapter 16A) between 'prescribed bodies'.

Contact

Contact is the word used in the law to describe involvement between children and parents who aren’t living together full-time.

**Contact Order:** An order made by the court that states who can see a child or young person and how often.

Current concerns

This means, at the time of making a report, you are concerned about the current or ongoing safety, welfare or well being of the child or young person.

**Current Concerns of significant harm** arise from abuse or neglect that is recent or likely in the foreseeable future should those circumstances continue unchanged. Current concerns may also arise from a child or young person having contact with someone who is known to be responsible for causing harm to a child in the past.

Current concerns also refer to situations where the abuse or neglect of the child or young person occurred some time in the past but continue to have an impact on the child or young person’s safety, welfare or wellbeing.

Designated agency

A designated agency in NSW is an agency accredited in accordance with the regulations under the *Children and Young Persons (Care and Protection) Act 1998* to provide out-of-home care services, and includes Community Services and Ageing, Disability and Home Care.

In relation to reporting allegations against employees (as per the *NSW Ombudsman Act 1974*) designated agencies are:

- Community Services
Developmental Milestone

Developmental milestones are a set of functional skills or age-specific tasks that most children can do at a certain age range, and which are used to check on children's development. Although each milestone has an age level, the actual age when a normally developing child reaches that milestone can vary.


Domestic violence

This refers to violence, abuse and intimidatory behaviour perpetrated by one person against another in a personal, intimate relationship. Domestic violence occurs between two people where one person has the 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.

Duty of Care

A responsibility to act in a reasonable manner towards others with the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would use. Duty of care says that we have to avoid acts and omissions which can be reasonably foreseen to be likely to injure other people. A reasonable person acts in accordance with relevant policies and procedures, reasonable and lawful instructions, their skills, training, duties and job description, and their commonsense.
Emergency Care and Protection Order
A short-term order made by the court to remove a child from the care of parents because they are at immediate risk of harm.

Ethical Dilemma
A conflict between a person’s core personal and professional values and their responsibilities in a given situation. This may affect a person’s ability to make decisions that are in the ‘best interests’ of a child or young person.

Exchange of Information
Under Chapter 16A of the Children and Young Person’s (Care and Protection) Act 1998 Prescribed Bodies are allowed to share information that relates to the safety, welfare and wellbeing of a child or young person.

Family Referral Service (FRS)
Previously known as Regional Intake and Referral Services. FRS are designed to link families in need of assistance with the most appropriate available services in their local area and improve links between government and non government agencies. At least one of the FRS will have an Aboriginal focus and aim to improve access to culturally responsive services for Aboriginal children, young people and their families.

Female Genital Mutilation (FGM)
FGM refers to the surgical excision of tissue from the female genitalia for cultural, religious or other non-medical reasons. It is widely practised in Africa and is also common in the Middle East. The procedure may be conducted in unhygienic conditions, with or without anaesthesia and adequate medical training. The results can include haemorrhage, shock, scarring, infection, sterility, sexual dysfunction, depression and various obstetric or gynaecological problems.

Helpline
The Community Services Helpline is a central point for accepting reports of children who may be at risk of significant harm. Reports can be made by phone or fax or online (where available). Staff receiving reports are called Caseworkers.

Interim Care Order: An order of the court about the ongoing care arrangements for a child or young person that is put in place before the final decision is made by a court.
JIRT

This stands for Joint Investigation Response Team. This team is made up of NSW Community Services and NSW Police. They respond to reports where there may have been a crime against a child.

Legal

In accordance with certain rules, regulations or laws.

Mandatory Reporter

A “mandatory reporter” is any person who delivers health care, welfare, education, children’s services, residential services or law enforcement wholly or partly to children (aged under 16) as part of their paid work and includes any person who directly manages or supervises such work. If you are a mandatory reporter with current and reasonable concerns that to suspect that a child, or a class of children, is at risk of significant harm from abuse or neglect, and those grounds arise during the course of or from the person’s work, you are required to make a report to Community Services. This is a legal and ethical obligation.

Mandatory Reporter Guidance Tools (MRG)

A tool to assist mandatory reporters to determine whether or not the risk of harm is ‘significant’. The MRG is available to help reporters determine when a matter should be referred to the Community Services Helpline, or whether it requires a different type of referral. It is not there to replace professional judgment, but to support decision-making. The MRG is available on the Keep Them Safe website. It is available as an interactive on-line tool or as a hard copy guide.

Negligence

When a duty of care existed and someone has neglected or breached that duty of care, and, as a result, someone has suffered harm or damage.

NGO – Non Government Organisations

This includes Out of Home Care and Family Preservation services; domestic and family violence services; crisis accommodation and support services; youth intervention and support services; programs funded under the Families NSW Strategy (home visiting, parenting education, supported play groups); Drug, alcohol and mental health services; Juvenile Offender programs (DJJ); and Family Referral Services.
Non-organic Failure To Thrive (NOFTT)

Failure to thrive (also called psychosocial failure to thrive) is defined as decelerated or arrested physical growth (height and weight measurements fall below the fifth percentile, or there is a downward change in growth across two major growth percentiles) associated with poor developmental and emotional functioning. Organic failure to thrive occurs when there is an underlying medical cause. NOFTT occurs in a child who is usually younger than 2 years old and has no known medical condition that causes poor growth.

Psychological, social or economic problems within the family almost always play a role in the cause of NOFTT. Emotional or maternal deprivation is often related to nutritional deprivation. The mother or primary carer may neglect proper feeding of the infant because of preoccupation with the demands or care of others, her own emotional problems, substance abuse, lack of knowledge about proper feeding or lack of understanding of the infant’s needs. Organic failure to thrive is caused by medical complications of premature birth or other illnesses that interfere with feeding and normal bonding activities between parents and infants.

Out-of-home care

This is where children or young people are being cared for by someone who isn’t their family, outside their home, on a full-time basis, such as foster care or in a group home.

Parent/Carer

A biological or adoptive parent, legal guardian or any other adult with parental responsibility for meeting basic physical (such as food, clothing, shelter, supervision, and medical care) and emotional needs, and responding to the behaviour of a child or young person in their care. This also includes young people who are biological parents of a child.

Parental Responsibility:

Relates to all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children. Where parental responsibility is allocated to the Minister for Community Services, the Minister does not usually exercise this responsibility themselves. Instead parental responsibilities are exercised by the Children’s Guardian on behalf of the Minister. The office of the Children’s Guardian accredits Designated Agencies to provide out-of-home care services to children, including those where parental responsibility is
exercised by the Minister, and these Agencies are responsible for placing children with authorised carers.

**Prescribed Bodies**

A ‘prescribed body’ may provide information relating to the safety, welfare or wellbeing of a child, young person (or class of children or young people) to another prescribed body if the information would assist with making a decision, assessment, investigation or service delivery.

Agencies known as ‘prescribed bodies’ include NSW Police, Government departments and public authorities, schools and TAFEs, public health organisations and private hospitals, private fostering and adoption agencies, residential child care centres, child care services, and other organisation whose duties include direct responsibility or direct supervision of health care, welfare, education, children’s services, residential services or law enforcement to children, and designated agencies of the Public Service or organisation that arranges out of home care.

**Protection Planning Meeting (PPM)**

Is an interagency process that collaborates to identify and put into place actions and services required for the safety, well-being and welfare of the child or young person.

**Reasonable**

Rational, logical, practical, realistic, sound; not excessive or extreme; fair.

**Reasonable grounds**

These are grounds which would cause a reasonable person to form a judgment of risk of significant 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 (such as first hand observations of the child or family or has been disclosed), and other relevant information. It is not based on a hunch but rather on what can be reasonably inferred based on professional training and / or experience. It does not mean that the reporter has to confirm their suspicion or have clear proof before making a report.

**Regulation**

A principle, rule or law designed to control or govern conduct
**Relevant Employment Proceeding**

A relevant employment proceeding is a completed disciplinary proceeding where an employer has found reportable conduct occurred.

**Report**

Information provided by a person who believes on reasonable grounds that there are current concerns for a child or young person, or a class of children due to risk of harm from abuse or neglect.

**Reportable Conduct**

Any sexual offence or misconduct conducted with or in the presence of a child; assault, ill treatment, neglect of or any behaviour that causes psychological harm to a child.

**Reportable Conduct under the Ombudsman Act 1974**

Reportable conduct refers to:

- Any sexual offence or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence); or
- Any assault, ill treatment or neglect of a child; or
- Any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to:

- Conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children, and to any relevant codes of conduct or professional standards;
- The use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures; or
- Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under Section 25CA.

**Reportable Allegation**

This is an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.
**Reportable Conviction**

This generally means a conviction of an offence involving reportable conduct.

**Restoration Plan**

Is developed to guide the process of a child or young person returning to the care of their family and includes what needs to be changed for it to be safe for the child or young person to return, what services will be available to assist the restoration and the length of time it is anticipated that restoration will take.

**Risk of harm**

This 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. This includes the child or young person not receiving necessary medical care or education. Risk of harm can also refer to children or young people who may suffer physical, psychological, sexual or emotional harm as a result of environmental factors (for example, homelessness or exposure to domestic violence), or self-harming behaviours.

**Safety**

The condition of being safe; freedom from danger, risk or injury.

**Safety, Welfare and Well-being**

These words are used in the law to describe what a child needs now, and in the future, to ensure that they are well cared for.

**Significant Risk of Harm**

A child or young person is at risk of significant harm if the circumstances that are causing the concern for the safety, welfare or wellbeing of the child or young person are present to a significant extent. ‘Significant extent’ is that which is sufficiently serious to warrant a response from a statutory authority irrespective of a parent’s consent. What is significant is not minor or trivial and is expected to produce a substantial and demonstrably adverse impact on the child or young person’s safety, welfare or wellbeing before or after
birth. This significance can result from a single act or omission or an accumulation of these.

**Statutory**

Enacted, regulated or authorised by statute (a law).

**Statutory Out of Home Care**

Placements that are made following a court order where a family member no longer has parental responsibility.

**Subpoena:**

A notice from a court requiring a person to attend court as a witness, or provide documents to the court.

**Supported Out of Home Care**

Placements that have been agreed to by family members but which are assisted by Community Services, because alternative approaches to care action are being taken to address the needs of children who are in need of care and protection.

**Support Person**

Someone who goes with a parent or child or young person to court or meetings. A support person provides emotional support and may be a paid worker, or a friend or family member. A support person needs to follow direction of the court, or the chairperson of a care and protection meeting, and needs to keep information they hear confidential.

**Systems Abuse**

This occurs when a child or young person is traumatized by the systems they encounter or which have been appointed to make decisions about them. Systems abuse can occur as the result of the lack of suitable policies, practices or procedures within a system that is detrimental to the child or young person’s safety, welfare or wellbeing. It can also occur when their needs are not recognised or the failure to provide suitable and appropriate services that meet their needs.

**Trivial or negligible force**

Trivial or negligible use of physical force is force which is not significant enough to cause concern for, or harm to, a child.
Voluntary Out of Home Care

A placement arranged by the family without State intervention. This allows children in private arrangements made by their families without the knowledge, involvement or support of Community Services to continue with as little State interference as possible.

Working with Children Checks – also known as Probity checks

Legislation requiring the mandatory screening of the backgrounds of those people working in child-related employment. Applicants are screened for relevant criminal records, apprehended violence orders and completed relevant employment / disciplinary proceedings.

Young Person: is a person who is aged 16 years or above but who is under the age of 18 years. As a mandatory reporter in NSW, you may also report concerns you have about the safety, welfare, or well-being of a young person, but are not required to do so.
Bibliography


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Special acknowledgement to Roderick Best, Director Legal Services, Department of Community Services for his presentation to ANZELA, August 2007, on ‘Recent Changes to the Children and Young Persons (Care and Protection) Act 1998 which are applicable to schools’.