

WORKING WITH CHILD PROTECTION

A practical guide for community workers



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Working with Child Protection - A practical guide for community workers.

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The project has had a strong focus on consulting the community sector in the Blue Mountains, Greater Lithgow, Oberon, Bathurst and surrounding communities.

In addition, consultations have been undertaken with legal practitioners, peak organisations and the Department of Family and Community Services.

Workers from the Elizabeth Evatt Community Legal Centre also contributed valuable information.

Many community sector workers across the state shared their experiences and offered advice during the development of this manual. We thank them for their valuable insights and contributions.

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This manual includes information and material from:

- The Children and Young Persons (Care and Protection) Act 1998 (NSW)
- Keep Them Safe: www.keepthemsafe.nsw.gov.au
- NSW Mandatory Reporter Guide
- Child Wellbeing and Child Protection NSW Interagency Guidelines
- Special Commission of Inquiry into Child Protection Services in NSW
- Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.

NOTE The NSW Child Protection System is in the process of change. It is recommended you regularly check the Keep Them Safe website to stay up to date with the changes. Don't rely solely on the information in this manual to determine your actions, always check your agency policy, The Children and Young Persons (Care and Protection) Act 1998 (NSW), and the Child Wellbeing and Child Protection NSW Interagency Guidelines.

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About this manual

Who this manual is for

The aim of this manual is to help community workers, such as those who work in family support, women's refuges and neighbourhood centres, better understand the child protection system so they can provide effective services for the children, young people and families they support.



How this manual was developed

In 2008, Legal AID NSW funded the Elizabeth Evatt Community Legal Centre to develop a manual on the NSW care and protection system to support community sector workers. Since the project began, changes in NSW child protection legislation and the Keep Them Safe reforms have begun. These reforms, which have changed the role of the community sector in areas as such as mandatory reporting, have highlighted the need for a practical manual for community workers.

The project has had a strong focus on consulting the community sector in the Blue Mountains, Greater Lithgow, Oberon, Bathurst and surrounding communities about their information needs. In addition, consultations have been undertaken with legal practitioners, peak organisations and the Department of Family and Community Services.

Many community sector workers across the state contributed their experiences and advice during the development of this manual. We thank them for their valuable insights and contributions.

How to use this manual

This manual can be used as a resource to support your work with children, young people and their families.

It explains key parts of the NSW care and protection system, covering both legislation and practical tips for working with children, young people and families.

Each chapter deals with a different topic. You may choose to read the whole manual to understand the child protection system in NSW, or dip into the manual as a reference guide. It can also be used as an in-house training tool.

Remember to check the
Keep Them Safe website
www.keepthemsafe.gov.au
for updates to the Child
Wellbeing and Child
Protection NSW
Interagency
Guidelines.

Child Protection in NSW

Chapter 1 provides an overview of the laws and approach taken to child protection in NSW. It describes the roles and responsibilities of key government and non-government agencies.

Each Australian state has its own child protection laws, regulations and systems.

The NSW legislation governing child protection is called the Children and Young Persons (Care and Protection Act) 1998 (NSW). You can find a copy at www.legislation.nsw.gov.au. (Throughout this manual, this legislation will be referred to as the Act.)

The Child Wellbeing and Child Protection NSW Interagency Guidelines (the Interagency Guidelines) support practice in NSW for agencies working with children protection issues. They provide information and guidance to all agencies – both government and non-government – involved in the delivery of child wellbeing and child protection services.

To see the Interagency Guidelines, go to:
www.keepthemsafe.nsw.gov.au/interagency_guidelines



Australia is a signatory to the United Nations Convention on the Rights of the Child, which includes a universally agreed set of standards and obligations for laws and policies about children. For more information, see www.unicef.org/crc/.

Cornerstones of the child protection system

The NSW child protection system is based on the principles below. These principles should guide how you work with families and other agencies.

- The safety, welfare and wellbeing of the child or young person is paramount and is therefore at the centre of all work carried out with the child, young person or family.
- While anyone who believes that a child or young person is at risk of significant harm can report their concerns to the Department of Family and Community Services, the law requires people who do certain types of work to report children at risk of significant harm. This is called mandatory reporting. A tool called the Mandatory Reporter Guide will help you decide if you must make a report.
- Regardless of whether you make a report, you should continue to work with the child or young person and their family to reduce risk and support them to meet their goals, if it's safe to do so.
- Under some conditions, agencies may share information about the safety, welfare and wellbeing of children and young people. While it is best practice to talk to the family about your intention to share information, there may be times when you can't or shouldn't tell the family, for example, when it is unsafe, or the family is not available. You must comply with the law when you share information about a family. Good interagency work reduces risk.
- The NSW approach to child protection acknowledges that keeping children safe is a shared responsibility – that is, no single person, agency or government department can go it alone on child protection. Taking a planned and co-ordinated approach to working with children, young people and their families keeps children and young people safer. Interagency collaboration is crucial.

If you work near a state or territory border, find out the local protocols or co-operation agreements for child protection matters when families move across borders.

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Who is involved in child protection in NSW?

Many organisations work with children, young people and families where there are child protection concerns, including non-government organisations (NGOs) in the community sector, and government departments, such as health and education.

NGOs may provide services to children, young people and the whole family to reduce risk and encourage wellbeing.

NGOs and other community organisations

NGOs respond to child wellbeing and protection concerns through referral, reporting and service delivery as well as providing care and support services to children, young people and their families.

They provide a variety of services that support families and children, including:

- **Support services for families:** prevention, early intervention and child protection work with the whole family. Services include case work, counselling, support, advocacy, parenting courses, financial services and living skills.
- **Children's services:** including long day care, preschool, family day care, before and after school care, and specialist services working with children at risk.
- **Services for people with disability:** including case management, behaviour support and therapy, respite care, training and employment support services, and counselling services. Services are provided to children and young people with a disability, and their families and carers.
- **Services for homeless people:** including outreach, counselling, case management, accommodation, advocacy and living skills.
- **Support services for young people:** including youth health services, specialist youth services, counselling, mediation and support, advocacy, street work, recreational activities.



Government organisations

Child Wellbeing Units

Child Wellbeing Units operate in government agencies that make the majority of child protection reports. These agencies include NSW Health, NSW Police, Department of Family and Community Services (Juvenile Justice, Housing NSW and Ageing, Disability and Home Care), and the Department of Education and Communities.

These units provide advice and support, including helping staff to:

- determine if a child or young person is at risk of significant harm
- use the Mandatory Reporter Guide
- identify support and referral options for children and families where the matter does not reach the reporting threshold.

Department of Family and Community Services

Key roles include:

- respond to requests for assistance from children, young people and families
- document all child protection concerns and conduct cumulative harm assessments
- receive, assess and decide what action to take about reports of children and young people at risk of significant harm
- provide, arrange and request care and support services for children, young people and families, including homeless children and young people
- initiate care proceedings in the Children's Court where there are serious risk and safety issues.

Department of Education and Communities

Key roles include:

- provide child protection education to students and teach protective strategies to children in preschool and child care centres
- co-ordinate decision-making and services to children and young people and their families with other services providers if required.

NSW Health

Key roles include:

- provide maternity, paediatric and child health services
- conduct medical examinations, assessments and treatment, counselling, therapeutic group work and advocacy services for children and young people who have been abused
- provide counselling for children aged under 10 who exhibit sexualised or sexually abusive behaviour
- work with Joint Investigation Response Teams (JIRT)
- prepare and support children and young people who have to go to court, where their abuse is the subject of criminal proceedings
- provide health assessments for children entering out-of-home care

Department of Justice and Attorney General and Justice

Key roles include:

- responsibility for the Children's Court, which hears applications under the Act and can make a variety of orders in relation to the care and protection of children and young people.



NSW Police

Key roles include:

- undertake joint investigation with other agencies on reports that may be subject to criminal charges and keep children, young people and families and agencies informed about investigations and legal processes
- respond to information about abandoned children in cars or public places and locating missing children or young people
- provide specialist youth liaison services, Aboriginal Community Liaison Officers and Ethnic Community Liaison Officers
- operate the Joint Investigation Response Squad, which investigates serious crime against children and young people, and the Joint Investigative Response Team unit, which works with The Department of Family and Community Services and NSW Health to assess referrals from the Child Protection Helpline.

KEY POINTS

- Child protection is everyone's business.
- The safety, welfare and wellbeing of the child or young person is the key priority when working with a child or young person at risk and their family.
- In NSW, agencies are expected to work together to reduce risk and ensure the safety, welfare and wellbeing of children and young people.
- If you have concerns about a child or young person or you think the child or young person is at risk of significant harm, it is best practice (where it is safe to do so) to talk to the family about your concerns.
- While anyone who believes that a child or young person is at risk of significant harm can report their concerns to the Department of Family and Community Services, the law requires some people in certain professions to report children at risk of significant harm. This is called mandatory reporting.
- Many organisations work with children, young people and families where there are child protection concerns, including non-government organisations in the community sector, and government departments, such as health and education.

Information Exchange

While the consent of the child or young person – or their family – is not required to exchange information, it is best practice to tell families that their personal information may be, or is being, provided to other agencies, as long as it is safe to do so.

Many agencies value the principle of empowering and engaging with families in determining what information should be shared, however co-ordinating services to ensure a child or young person's safety, welfare and wellbeing takes priority over privacy and confidentiality concerns.

The Act allows exchange of information under some circumstances (related to the safety, welfare and wellbeing of the child or young person) and requires agencies to share information when it improves co-ordination of services for a child or young person at risk.



The legislation

Laws applying to the exchange of information about children and young people started on 30 October 2009.

There are two ways to exchange information under the Act:

- Chapter 16A, which allows exchange of information directly between prescribed organisations; and
- Section 248, under which the Department of Family and Community Services can direct the provision of information about statutory child protection matters.

What is a prescribed body?

Generally, prescribed bodies are:

- NSW Police
- a government department or a public authority
- a government school or a registered non-government school or a TAFE
- a public health organisation or a private hospital
- a private fostering agency or a private adoption agency
- a designated agency which is a department of the public service or an organisation that arranges out-of-home care
- any agencies that conduct a residential child care centre or a child care service
- any other organisations that have direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children.

In this section, the term 'agency' applies to all prescribed bodies, whether government or non-government.

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Chapter 16A

Chapter 16A prioritises the safety, welfare and wellbeing of a child or young person over an individual's right to privacy.

It allows exchange of information between agencies (government agencies and non-government organisations) that relates to a child's or young person's safety, welfare or wellbeing.

The child or young person does not have to be known to the Department of Family and Community Services or meet the threshold for risk of significant harm.

Section 248: Exchanging information with the Department of Family and Community Services

The Department of Family and Community Services can use Chapter 16A or Section 248 of the Act to exchange information. Only the Department of Family and Community Services can exchange information with Commonwealth bodies, such as Centrelink.

When exchanging information under Section 248, the Department of Family and Community Services may:

- supply an agency with information
- direct the agency to give the Department of Family and Community Services information relating to the safety, welfare and wellbeing of a particular child or young person, or class of children or young persons.



When will the Department of Family and Community Services provide information to you?

Agencies may ask the Department of Family and Community Services for information under Section 248. The Interagency Guidelines state that the Department of Family and Community Services will provide information when the agency:

- is providing a service under a case plan together with The Department of Family and Community Services
- has ongoing contact with the child or young person and their safety or wellbeing and the service outcomes would be compromised without that information
- needs assistance or advice to make decisions about support and services for the child or young person and their family
- discovers that allegations against an employee have been reported to The Department of Family and Community Services on a child protection matter (details of that report need to be given to the Ombudsman by the agency head)
- needs to determine whether a person might pose a threat to a child or young person.

Agencies can only request information that already exists – you are not required to do extra assessments, or to collect new information to meet the request.

What information can be exchanged?

You may provide or ask for information that would:

- help to make a decision
- assess or investigate a child's situation
- deliver a service.

For example, relevant factual information may be shared if it relates to:

- a child's or young person's history or circumstances
- a parent or other family member
- people having a significant or relevant relationship with a child or young person
- other agencies' dealings with the child or young person, including past support or service arrangements.

Keep in mind that the information you provide or request can't be used for any purpose other than that relating to the safety, welfare or wellbeing of a child or young person.

As long as you act in good faith in providing the information, you are protected from civil or criminal action, or disciplinary action, and you aren't breaching professional standards of conduct (section 29 of the Act).

How to exchange information

When asking for information under Chapter 16A, or directing agencies to provide information under Section 248, the Interagency Guidelines say an agency should:

- **Identify the subject** of the information request and, if it is not the child or young person, identify the subject's relationship to the child or young person. Provide any identifying information (full name, address) so that agencies can be sure that they are talking about the same person.
- **Explain how** the request relates to the safety, welfare or wellbeing of the child or young person (or class of children or young person).
- **Explain why** the information will assist the agency to make a decision, assessment or plan, or to initiate or conduct an investigation, or to provide any service, or to manage any risk to the child or young person (for requests under Chapter 16A).
- **Provide sufficient detail** to assist the other agency to understand the purpose of the request and to locate the relevant information in an efficient manner.
- **Provide background** to the request, including whether or not the agency has informed a child, young person or parent that the information has been sought and if not, why not (for example, where there are safety concerns).
- **Indicate the time period** for which the information is sought (eg, for the past six months) and the type of information sought.
- **Provide a realistic timeframe** for the agency to provide the information, ensuring that urgent matters are prioritised (unless the information is required for court proceedings where a more limited time frame may be required).
- Preferably **phone the providing agency** before making the request to discuss your needs and ensure the request is well targeted, ie, ask for the relevant information and avoid requesting all files/documents.



Can I refuse to provide information?

There are times when you should not disclose information, such as when you believe the information

- does not relate to the safety, welfare and wellbeing of a child or young person
- would prejudice an investigation of a possible breach of a law, care proceedings or a coronial inquest
- endanger a person's life or physical safety
- identify a confidential source of information
- is not in the public interest.

See section 245D(4) of the Act for a full list of the exemptions. Talk to your supervisor and check your policies and procedures manual before making a decision.

If you refuse to provide information, you should respond in writing, clearly stating your reasons under section 245D(4) of the Act.

Exchanging information in writing or verbally

Generally, agencies should have a standard form for providing or requesting information. You should always keep records of information requests in accordance with your service's policies and procedures.

A separate form or letter should be used to request information for each person or class of children or young persons.

Policies and procedures

It is good practice for each agency to have policies and procedures around information requests and to nominate one person to manage the process for information sharing.

A sample policy is shown on page 21.

The Keep Them Safe website has examples of standard documents that agencies can download. See www.community.nsw.gov.au/kts/guidelines

Policies and procedures

It is good practice for each agency to have policies and procedures around information requests and to nominate one person to manage the process for information sharing.

Below is a sample policy.

SAMPLE POLICY. Exchanging Information in writing or verbally

Policies

- The agency will exchange information as required under the Children and Young Persons (Care and Protection) Act 1998 (NSW).
- All information requests should be approved by the nominated employee before exchange.
- It is good practice to inform the family of the intent to share information where it is safe to do so.
- Information can be provided in writing (email, letter) or verbally.
- The agency will keep records of all information exchanges, including file notes of verbal exchanges.
- It is critical to respect the privacy of the families involved, and ensure the information is provided in a secure way.
- The agency will respond to urgent requests for information as quickly as possible.

Procedures

- discuss the request with the person authorised to manage information requests (eg, supervisor).
- confirm that the person making the request is authorised to do so (ie, it is about a professional matter).
- identify the child or young person and family who are the subject of the information request.
- determine how the information exchange relates to the safety, welfare and wellbeing of the child or young person.
- ensure the agency is specific about the type of information they need and the time period it covers.
- ask the requesting agency if they have informed the family of the request. If not, why not.
- determine the urgency of the request and negotiate when the information will be provided.
- make a decision about the information exchange and document the exchange.



Who else can ask for information about your clients?

Other statutory agencies, as well as the Department of Family and Community Services, can direct agencies to provide information about individuals or classes of people. These statutory agencies include the NSW Police Force, the Children's Guardian and the Child Death Review Team.

Check your policies and procedures to see if you have a duty to provide the information. If in doubt, seek legal advice.

What about information that will be used in the Children's Court?

The Interagency Guidelines state that if the Department of Family and Community Services asks another agency for information to use in a matter before the Children's Court, the Department of Family and Community Services will inform that agency of the legal proceedings and obtain consent for the release of the information. Consents to attach that information to any affidavit will also be sought from the agency.

Taking the initiative

Workers often worry that parents will remove children from their service – such as a child care centre – if they raise their concerns or intervene in some way. They fear a child may be moved to a new service that has no knowledge of the child's situation.

The Act allows you to take the initiative and pass on important and relevant information to the new service. You can provide the information without being asked as long as it relates to the safety, welfare or wellbeing of the child or young person.

CASE STUDY

Jane, at a children's service, receives a phone call from a family support service, asking for information about Akisha, aged 4, who has been in Jane's centre for six months.

After consulting with her co-ordinator, Jane phones the manager of the family support service. She verifies the support worker's identity, confirms that she is working with Akisha's family and that she has discussed the information request with her manager before making the request.

After consulting with her supervisor, Jane agrees to the request because the family support service confirmed it is working with Akisha's family and has specific concerns about her safety, welfare and wellbeing.

Jane documents the phone conversation and files the record.



KEY POINTS

- You don't need the consent of parents, carers, children or young people to exchange information about the safety, welfare or wellbeing of a child or young person.
- Chapter 16A of the Act allows for the exchange of information between agencies without any Department of Family and Community Services involvement.
- Not only can information be shared, agencies are required to take reasonable steps to co-ordinate decision-making.
- Although you don't have to inform families that you are exchanging information about them, it's usually good practice,(as long as it is safe for the worker and client to do so).

Identifying and reporting children at risk

We all bring our own ideas and experiences to our work with children, young people and their families. This means we may view and assess the child's situation differently to other people.

You may believe they are, or are at risk of being neglected, psychologically harmed, physically or sexually assaulted, not attending school, being harmed by domestic violence, or not having medical treatment when they need it.

You may be concerned about an individual child or young person, a family or a group of children.

This chapter will help you understand what child protection concerns can be reported to the Department of Family and Community Services. It will also define a mandatory reporter, when and how to make a report, and what happens next.



What can be reported to the Department of Family and Community Services?

The Act requires one or more harm circumstances to be present to a significant extent for a report to be made. Reports can be made about a child (0-15 years old) or about a young person (16 and 17 years old). Reports cannot be accepted about people aged 18 or above.

Section 23 (1) of the Act identifies circumstances that can be reported.

In summary they are:

- (a) basic physical or psychological needs not being met or at risk of not being met
- (b) parent/carer unwilling or unable to arrange for a child to receive necessary medical care
- (b1) parent/carer unwilling or unable to arrange for the child or young person to receive an education
- (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated
- (d) at risk of serious physical or psychological harm resulting from exposure to domestic violence
- (e) suffering or at risk of suffering serious psychological harm resulting from parent or carer's actions
- (f) mother did not act to eliminate or minimise risks following prenatal report under section 25 of the Act.

Mandatory reporters should tell families about their legal obligation to report to the Department of Family and Community Services. Where it is safe to do so, it is best practice to talk to the family before making a report and you should continue to support the family after you make the report.

Mandatory reporters should tell families about their legal obligation to report to Community Services. Where it is safe to do so, it is best practice to talk to the family before making a report and you should continue to support the family after you make the report.

It is not mandatory to report about young people aged 16-17 years or unborn children, but you may use your professional judgment to decide whether concerns about the safety, welfare or wellbeing of an unborn child or a young person warrant a report to the Department of Family and Community Services.

Section 23 (2) of the Act says such circumstances may relate to a single act or omission, or to a series of acts or omissions. This is known as **cumulative harm**.

A child or young person is also at risk of significant harm where the following sections of the Act apply:

- Section 154(2): situations involving a child being in out-of-home care for more than 28 days unless this is arranged by the Department of Family and Community Services or is provided by an authorised carer or a close relative.
- Section 156A(3): voluntary out-of-home care arrangements made by a relevant agency where the child or young person remains in out-of-home care for more than three months in any period of 12 months, unless care is provided by a designated agency, or where a child or young person remains in voluntary out-of-home care for more than 180 days, unless the agency has prepared a plan to meet the needs of the child or young person in accordance with the Children's Guardian's Guidelines.

Section 25 of the Act permits 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, to make a report to the Department of Family and Community Services.

What is mandatory reporting?

In NSW, anyone who believes that a child or young person is at risk of significant harm can report their concerns to the Department of Family and Community Services' Child Protection Helpline.

However, the law requires certain people to report children at risk of significant harm. This is called **mandatory reporting**. Those people work in the government, private sector or non-government organisations (see below).

The Department of Family and Community Services are responsible for receiving child protection reports, assessing those reports and deciding what action to take, including about whether to initiate child protection proceedings in the Children's Court.



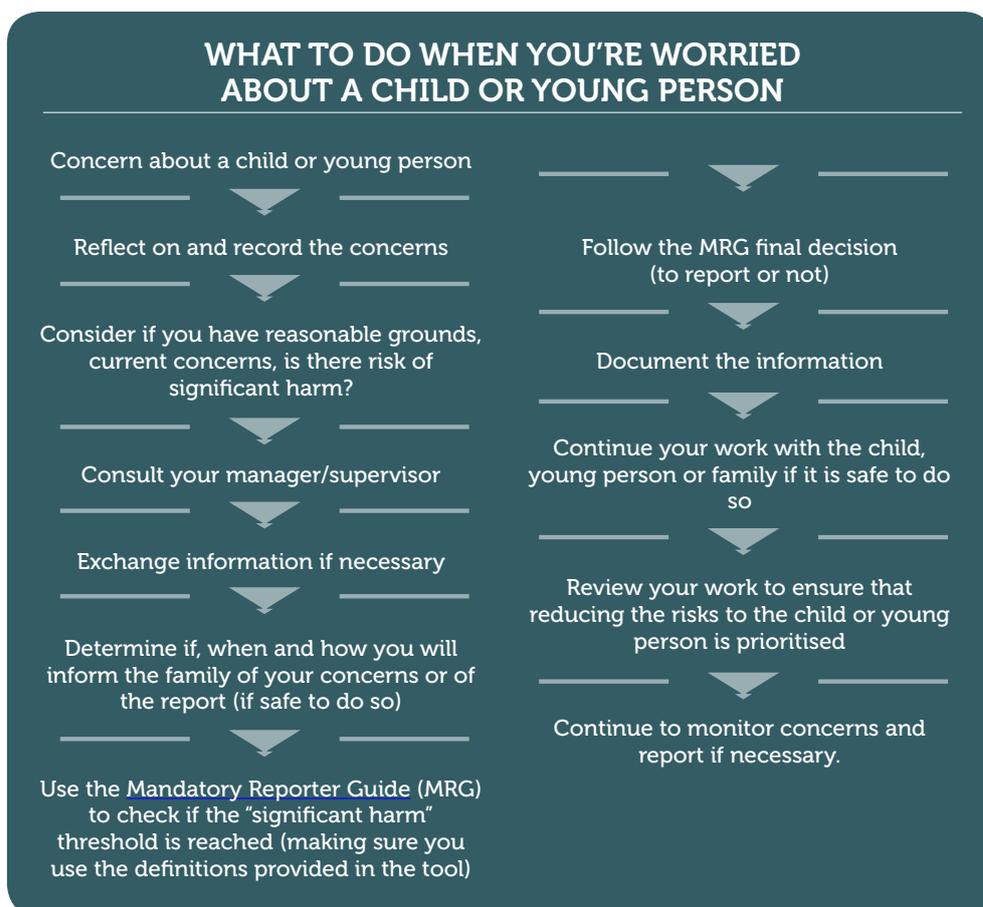
Who is a mandatory reporter?

Section 27 of the Act defines mandatory reporters as people who deliver the following services to children as part of their paid or professional work:

- health (nurses, doctors, dentists)
- welfare (psychologists, social workers and youth workers)
- education (teachers)
- children's services (child care assistant, family day carer)
- residential services (refuge workers, community housing providers)
- law enforcement (police).

If you aren't sure if you are a mandatory reporter, ask your supervisor, or check your policy and procedure manual. Your peak body may also be able to help.

There is no criminal penalty for mandatory reporters who fail to report, but there is a legal obligation to report.



If you believe there is an immediate danger to a child or young person, contact the police and/or the Helpline immediately. Call 000 in an emergency.

When should you make a mandatory report?

If you are a mandatory reporter, you must make a report when you have reasonable grounds to suspect that a child is at risk of significant harm, and current concerns about the safety, welfare and wellbeing of the child for any of the reasons outlined in section 23 of the Act.

You are only a mandatory reporter about matters that arise in the course of your work.

Defining terms

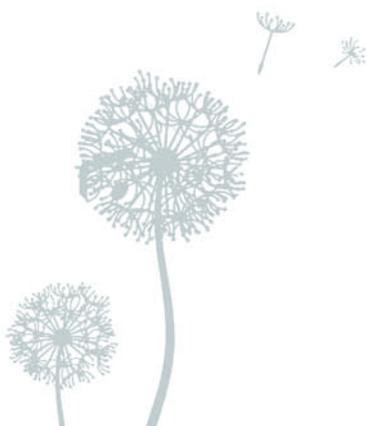
Reasonable grounds are when you suspect that a child or young person may be at risk of significant harm based on what you have seen first-hand, what the child, young person or family has told you, or what you can reasonably infer based on your professional training and/or experience.

Current concerns mean that significant harm arising from abuse or neglect is recent or likely in the foreseeable future.

Current concerns also refer to situations where the abuse or neglect of the child or young person occurred in the past, but still affects the child or young person's safety, welfare or wellbeing.

Risk of significant harm means:

- the circumstances that are causing concern for the safety, welfare or wellbeing of the child or young person are present to a significant extent.
- the concern is sufficiently serious to warrant a response by a statutory authority (eg, the Police or the Department of Family and Community Services) without the consent of the family.
- the matter 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.



Mandatory Reporter Guide

If you are concerned about a child's safety and are considering making a report to the Child Protection Helpline, you should first use the online interactive tool called the Mandatory Reporter Guide (MRG) to determine whether your concerns meet the statutory threshold for reporting risk of significant harm.

The MRG is designed to improve screening and assessment of children and young people so that matters that reach the threshold of significant harm can be reported to the Department of Family and Community Services.

Mandatory and non-mandatory reporters can use the MRG.

The MRG asks questions that help you systematically work through issues relating to your concerns. At the end of the process, the MRG makes a recommendation based on the information you have entered.

The MRG has seven major categories of abuse and neglect of children and young people. Most relate directly to the child or young person's situation (eg, neglect or not enrolled in education), but there are also concerns about the impact of a parent's or carer's behaviour on the child or young person (eg, domestic violence, mental health or substance abuse concerns).

The seven major categories of abuse or neglect specified in the MRG are:

- physical abuse
- neglect
- sexual abuse
- child/young person problematic sexual behaviour
- psychological harm
- relinquishing care
- unborn child

Be familiar with your agency's policy and procedures about reporting. When a matter is not an emergency, your agency may direct you to talk to your supervisor before making a report to the Department of Family and Community Services.

If you work in a government agency that has a Child Wellbeing Unit, you can call that unit for help in determining whether a concern meets the threshold for risk of significant harm, and to talk about options to help the child or young person and family.

How to use the MRG

- 1. Step one:** Choose which category of abuse or neglect (decision tree) is closest to the concerns you have. You may have a number of concerns when dealing with a child, young person or family. Choose the most pressing concern first.
- 2. Step two:** Answer the questions, which are designed to gather information about the type and severity of abuse. Ensure you read all the definitions for each question before answering yes or no.
- 3. Step three:** After you have answered all the questions, the MRG will guide you to a recommended course of action.
3. If your concern doesn't meet the threshold for risk of significant harm and you are still concerned, you may test the next most pressing issue and go through the process again. The MRG will also ask you to record any other concerns that may not have been covered in the questions.
- 4. Step four:** Print the MRG so you have a copy for your file and you can refer to it when talking to the Child Protection Helpline. It will also help to assess cumulative harm (a series of acts or omissions that, when viewed separately may not indicate significant risk, but when viewed together suggest a pattern of significant harm - see section 23(2) of the Act).

The MRG can be found at www.keepthemsafe.nsw.gov.au



Possible outcomes of the MRG

Once you have worked through the MRG, it will give you a final instruction, which will be one of the following:

- Immediate report to the Department of Family and Community Services. You should make a report to the Child Protection Helpline as soon as possible. In some cases, you will also need to arrange medical care and/or inform the police.
- Report to the Department of Family and Community Services.
- Consult a professional or Child Wellbeing Unit. If the risk of significant harm threshold is not met and you still have concerns, discuss possible actions with your supervisor or a colleague, and/or report to the Helpline. You may refer directly to a local service, contact a service to assist in identifying supports or services, or seek additional information under the information exchange provisions.
- Document and continue the relationship. If your role includes an ongoing relationship with the child or young person or parent/carer, such a relationship should continue regardless of the reporting decision, if it is safe to do so. 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.
- Consider appropriate referrals. This decision point occurs when there is no significant harm or risk of significant harm, but the family may benefit from services. Use your existing local networks to make referrals, or look for services listed on HSNNet (www.hsnet.nsw.gov.au), or on the Families NSW website (www.nswfamilyservices.asn.au).

No tool is perfect. The MRG is a guide that supports professional judgment – it does not replace it. If you have strong concerns but the MRG has not identified a risk of significant harm, you can talk to your supervisor, call the Keep Them Safe Support Line (1800 772 479) or the Child Protection Helpline (133 627) to discuss your concerns.

What if my concerns don't reach the reporting threshold?

If the MRG shows your concerns don't meet the threshold for risk of significant harm, you don't have to report the matter to the Department of Family and Community Services.

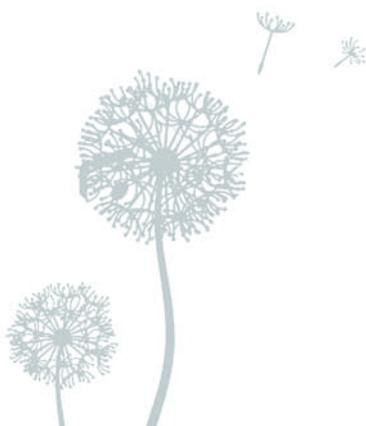
You should continue working with the child, young person or family where it is safe to do so, while ensuring that strategies address the needs of the child and young person and that their safety, welfare and wellbeing is a priority.

You may need to make referrals and co-ordinate services for the child or family. One agency will usually co-ordinate services for the family and make sure that the frequency and intensity of the services match the family's needs. This is decided at the local level and it is often the service with the closest engagement with the family.

However, all services working with the family should co-operate and contribute to achieving better outcomes for the family.

If you continue to have concerns about the child or young person, you should document those concerns, talk with your supervisor, exchange information where necessary and test your concerns against the statutory threshold to see if the matter should be reported to the Department of Family and Community Services.

Making a report does not automatically prevent you from continuing your work with the child, young person or family, as long as it is safe to do so.



Protection for mandatory reporters

Reports to the Department of Family and Community Services are confidential and the law generally protects the reporter's identity (if known) if the report is made in good faith.

Section 29 of the Act offers protection to reporters (including mandatory reporters). In particular:

- the report shall not be held to be a breach of professional etiquette or ethics, or a departure from accepted standards of professional conduct
- the reporter will not be liable for any defamation caused by making the report
- the report, or its contents, will not be admissible in any proceedings as evidence against the person who made the report
- a court can't compel a person to provide the report or give any evidence about its contents
- a report is an exempt document under the Freedom of Information Act 1989 (NSW).

If the police need to know the identity of a reporter to investigate alleged serious offences against children or young people, the identity of the reporter may be released to the police.

How to make a report

If you are a mandatory reporter, you can call the Child Protection Helpline on 133 627. The helpline operates 24 hours a day, seven days a week.

If there are no immediate safety issues, you can use the 'Risk of significant harm report fax form'.

Reports should be made in one format only, i.e. either by phone or fax. Duplicating or confirming a report in writing is unnecessary.

Mandatory reporters will receive a feedback letter or fax on reports. This will include information on whether the report meets the threshold and information about which Community Service Centre will handle the matter.

Members of the general public should call 132 111.

Making a report does not automatically prevent you from continuing your work with the child, young person or family, as long as it is safe to do so.

What information should I tell the Helpline?

The child must be able to be identified, or the Department of Family and Community Services won't be able to take any action. Briefly, the Child Protection Helpline will ask you about:

- The child (name, address, age, school, or child care details)
- The family (names, ages, address, contact details, cultural background, parental risk factors)
- You (name, agency address and contacts, position and reason for reporting)
- Other information (services involved with the family, main language, if the parents know about the report).

For a detailed list of information to provide to the Helpline, see the Interagency Guidelines.

What should you do if you're still worried?

If the feedback says your concerns have not met the statutory threshold for significant harm and you're still worried about the child or young person, there are a number of things you can do:

- Remain alert to anything that may indicate increased risk and report the new information to the Department of Family and Community Services.
- Continue to work with the family and, if it's safe, talk with the family about your concerns and build trust and strong relationships so they can tell you if they need further help.
- Try to see the family more often or increase your level of engagement with them.
- Share information with other services working with the family.
- Bring in other services to address your concerns: joint case-work is more effective in keeping children safe than services working in isolation.
- Get support and supervision about the best way to maintain safety for the child or young person, the family and yourself.
- On rare occasions, you may want to ask your manager to raise the matter with the Department of Family and Community Services.

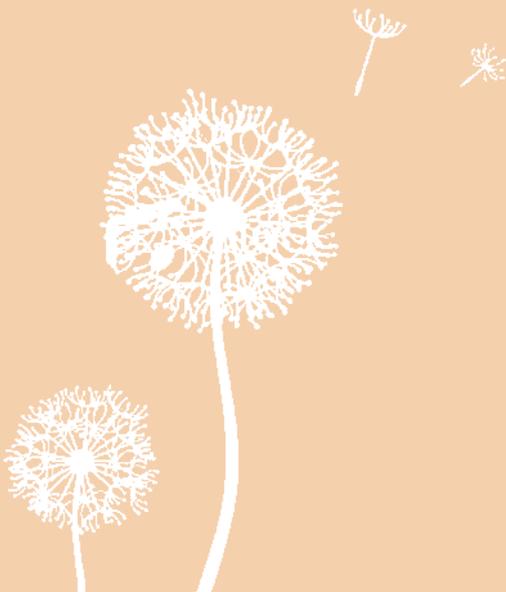


KEY POINTS

- Any member of the community who suspects on reasonable grounds that a child or young person is at risk of significant harm may report their concerns to the Child Protection Helpline.
- Mandatory reporters have a legal obligation to report child protection concerns to the Child Protection Helpline.
- The statutory reporting threshold in NSW is “risk of significant harm”.
- A mandatory report applies to children aged 0-15 years at risk of significant harm.
- If you’re not sure if you are a mandatory reporter, ask your supervisor, check your policy and procedure manual or read the Act. Your peak body may also be able to help. Section 27 of the Act specifies those workers who are mandatory reporters.
- Be familiar with your agency’s policy and procedures about reporting – if the matter is not an emergency, your agency may direct you to consult your supervisor about your concerns before making a report to the Helpline.
- Mandatory reporters should use the online MRG to determine if a child or young person is at risk of significant harm before contacting the Helpline.
- Mandatory reporters should telephone 133 627, or if there are no immediate safety issues fax to 02 9633 7666.
- Non-mandatory reporters should phone 132 111.
- Once a report is made to the Child Protection Helpline, no further report needs to be made unless new information comes to hand.
- There is no criminal penalty for mandatory reporters who fail to report, however there is a legal obligation to report.

The Children's Court

Supporting parents through a process in the Children's Court can be difficult. It is often a time of great distress and anxiety for the family. The issues may be very complex and facts disputed. Often your focus will be on helping families be a part of the process, and to express their concerns and preferences about what should happen to their children. They may want you to attend meetings with the Department of Family and Community Services, with legal representatives and go to court with them. Be very clear about your role in each of these steps.



You may need to help families to access legal advice and representation. Never try to give legal advice yourself. You may need to support families to make initial contact with their legal representative. Families may ask you to attend meetings with their legal representative and that's okay if attending is a part of your work with the family, and the solicitor is agreeable. Always remember, solicitors do not take instructions from community workers, only the family can decide what they want their solicitor to do on their behalf.

The Act says the Children's Court cannot conclude that the basic needs of a child or young person are likely not to be met only because of a parent's or primary care-giver's disability or poverty.

Parents may tell you they don't know what is expected of them – what they have to do to either keep their child or have them returned. To help them understand what is expected of them, they should have any agreements in writing. It is important that families get legal advice before they sign any agreements with the Department of Family and Community Services.

This chapter explains the role of the Children's Court, what happens at court, and what decisions it can make, all of which have a big impact on families.

Remember: The focus of your work is on helping the family through the process. Don't be tempted to express your own personal views about what might happen, or even about what you think should happen. Nobody knows the outcome until the court action is finalised.

Remember, conversations between clients and legal professionals are covered by legal professional privilege, which means anything said during those meetings should not be repeated or documented by any person other than the client or the solicitor.

Community workers can help parents to

- Develop a workable and realistic plan to address concerns before meeting with the Department of Family and Community Services about their child
- Consider who would be a good support person to take along to meetings to help advocate for them
- Ask for the written record of any meeting, including outcomes or agreements.

What is the Children's Court?

The Children's Court is a specialist court that determines whether a child or young person needs care and protection orders.

The court also deals with juvenile criminal law cases, but this work is separate to its care and protection division.

The role of the Children's Court in child protection includes:

- determining whether a child or young person is in need of care or protection
- hearing and determining applications for care orders relating to children and young people.

Decisions in the Children's Court are made under the Children and Young Persons (Care and Protection) Act 1998 (NSW), which states that in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount.

There are seven specialist Children's Courts in NSW. In regional and rural areas of NSW, the Local Court sits as the Children's Court. The Children's Court also conducts specialist circuits, where a Children's Magistrate visits towns to deal with Children's Court care matters. The President of the Children's Court (a District Court Judge) also hears some matters.

Children's Registrars assist in the administration of matters before the Children's Court and facilitate dispute resolution conferences.

What happens at court?

Proceedings in the Children's Court are conducted as informally and with as little legal technicality as possible. The Act (section 93) says the process should not be conducted in an adversarial manner.

Giving evidence

In the Children's Court, all witnesses need to give their evidence by way of affidavit. Witnesses can be cross examined, which means they appear in court to give their evidence verbally, and asked questions to clarify the information in the affidavit. They may be issued with a subpoena, which either requires them to attend court on a specified date and time (subpoena to attend), or requires them to produce particular documents by a particular date and time (subpoena to produce).

The Magistrate will listen to Department of Family and Community Services staff about what orders and arrangements they believe are in the best interests of the child or young person.



Tips for community workers attending court

While the Children's Court is less formal than other courts, it is still important to follow court etiquette. When attending court you should:

- arrive on time
- turn off your mobile phone
- not eat or drink in the court room
- not talk unnecessarily in the court room
- take off your hat or cap and sunglasses
- stand until the Magistrate is seated and stand when the Magistrate leaves the court
- not approach the Magistrate directly unless asked to do so
- address the Magistrate as 'Your Honour'
- not enter or leave the court room when a person is taking the oath/affirmation.

More information about attending court can be found in the Interagency Guidelines at www.keepthemsafe.nsw.gov.au/

The parents, and any other party to the proceedings, usually through a solicitor, are also given an opportunity to tell the Magistrate what they think should happen to their child or young person.

Workers from non-government agencies and government services, such as community health workers, doctors, counsellors, early intervention workers and support workers, may be asked to give evidence in care proceedings. Their evidence can help the court to understand the family or child's situation.

Section 96(3) of the Act says children and young people are not required to give evidence in the Children's Court, unless they are the parents of a child subject to proceedings.

If you are required to write a report, swear an affidavit, give evidence or respond to a subpoena, seek your manager's advice and assistance first. Make sure you understand the way the court works and what is expected of you in court.

If appropriate, your agency should seek legal assistance.

It is important that parents attend court when asked to do so. If they fail to attend, the matter may be dealt with in their absence.

The Family Court and the Children's Court

There are a few important points to note in relation to the relationship between the Family Court and the Children's Court:

- If a child is the subject of a child welfare order (that is, a care order), that child cannot be made the subject of an order made under the Family Law Act, except with the consent of the child welfare authority, or in circumstances where the order is expressed to start after a child welfare order ceases. The Department of Family and Community Services can intervene as a party to matters before the Family Court or the Federal Magistrates Court.
- If there is a family law order in existence in relation to the child or the young person, new orders from the Children's Court override those orders.

CASE STUDY

Darren and Gemma separated after their daughter, Kylie, made a disclosure of sexual abuse by her father. The Department of Family and Community Services were notified of the disclosure and undertook an investigation. When Gemma began proceedings in the Family Court to restrict Darren's time with Kylie, the Department of Family and Community Services became a party to those proceedings. This happened because of their involvement with the family, and to ensure their views were heard about orders that would be in Kylie's best interests. The Magistrate granted Darren limited time with Kylie, which was to be professionally supervised.



Who can attend the court?

The Children's Court is a closed court. This means that only people involved in the case can be present in the courtroom when the matter is dealt with. The general public cannot attend Children's Court hearings.

Generally, the media have a right to attend Children's Court and report on the proceedings. However, they cannot identify (or publish information which may lead to the identification of) any child or young person who is the subject of the proceedings, who gives evidence, or who is mentioned in the proceedings. Sometimes the court can exclude the media from some or all of the proceedings.

A participant in proceedings before the Children's Court may, with the permission of the Court, be accompanied by a support person. The support person cannot speak on behalf of a party and cannot give instructions to the solicitor. A witness in the case cannot generally also act as a support person.

Who has the right to appear in court and be represented?

- the child or young person
- the child or young person's parents or any other person who has parental responsibility
- the Director General (who delegates responsibility to the Department of Family and Community Services).

The Children's Court may grant leave for other people to be joined as a party to the proceedings if it decides they have a genuine concern for the safety, welfare or wellbeing of the child or young person. This means they can file evidence and be cross-examined.

Participation of children and young people

A key principle of the Children's Court is that children understand what is happening and the implications of any decisions. The court also has a responsibility to ensure the child or young person's views are taken into consideration. Their views are put to the court by their legal representative. Children do not give direct evidence to the court, and a child or young person is usually not required to attend, unless the Court specifically asks them to do so. Some children may wish to attend, but others will not want to or are very young.

CASE STUDY

Murray was removed from his mother's care when he was four years old due to the impact of his mother's drug use on his physical safety and his emotional wellbeing. On a number of occasions he was left alone in their flat while his mum, Danni, went out to score. He often went without being fed and he was not fully toilet trained. Murray's grandmother, who had taken care of Murray on two occasions when her daughter was in rehab, wants Murray to live with her but the Department of Family and Community Services did not agree to place Murray with his grandmother. Murray's grandmother made an application and was joined as a party to the proceedings.

Legal representation for children

All children and young people who are the subject of care proceedings will be independently represented in proceedings before the Children's Court. Legal AID NSW will arrange and fund this representation. There will usually be the one solicitor appointed for the sibling group, not a lawyer for each individual child.

They will be represented by a solicitor who is on staff at Legal Aid or a private solicitor who is a member of Legal Aid's specialist care and protection panel for children.

Children aged 12 years or over, or who are deemed capable of instructing a solicitor, have a direct legal representative. This representative acts on the child or young person's instructions and also has responsibility for ensuring the court hears the views of the child or young person, and that all relevant evidence is heard in proceedings.

If a child or young person is not able to give instructions because they are too young or not capable for other reasons, they are represented by an independent legal representative. This representative must also ensure that the court hears the child or young person's views where they are able to express their views. However, the representative does not have to act on the instructions of the child or young person and instead can make recommendations to the court about arrangements that are in the child's best interests.



Legal representation for parents

The solicitor will speak in court for the parents. The role of the solicitor is to advise the client and explain the proceedings.

The parents and their solicitor will get copies of court papers and reports that the Magistrate will read. Encourage parents to ask their solicitor about anything they don't understand.

Legal advice is available from:

- **Law Access**

Law Access is a telephone service that offers free legal advice and referral. It operates Monday to Friday 9am-5pm. For more information, go to www.lawaccess.nsw.gov.au or call 1300 888 529, for the cost of a local call from anywhere within NSW.

- **Legal Aid NSW**

Parents may be eligible for Legal Aid. An in-house Legal Aid solicitor can only act for one party in the matter, but Legal Aid will fund each eligible party to the proceedings (by paying a private panel solicitor).

Other parties such as grandparents or other relatives may be eligible for Legal Aid.

Legal Aid also provides free face-to-face legal advice. Legal advice is not means tested and people don't need to apply for a grant of legal aid to get free legal advice. Legal Aid only provides legal advice face to face (not over the phone) and appointments are usually limited to about 20 minutes.

For more information or to find the nearest Legal Aid office, go to www.legalaid.nsw.gov.au or call (02) 9219 5000.

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If a Legal Aid client is not happy with the solicitor who has been allocated to their case, they have the right to change solicitors.

Clients simply need to nominate another solicitor and call Legal Aid to arrange for their Legal Aid grant to be transferred to the new solicitor.

The earlier parents seek legal advice the better.

If a client is granted Legal Aid, they do not pay legal fees.

- **Private solicitors**

Some private law firms provide advice and representation in care and protection proceedings, either through Legal Aid (if they are on a Legal Aid panel and your client is granted Legal Aid) or by billing the client. For help in finding a private solicitor, contact Law Access, which works with the Law Society of NSW to provide the names of three private solicitors in any location in NSW or in an area of law. Call 1300 888 529.

- **Community Legal Centres**

Community Legal Centres are non-government organisations which provide free legal advice and assistance. Some Community Legal Centres provide representation in care and protection proceedings in certain circumstances. For more information, go to www.clcnsw.org.au or call 02 9212 7333.

- **Aboriginal Legal Service**

The Aboriginal Legal Service provides advice and some representation in care and protection proceedings and sends solicitors to some Children's Courts. For more information, go to www.alsnswact.org.au or call 02 8303 6699.

The Court is able to appoint a guardian ad litem (guardian for the lawsuit), who instructs the solicitor in accordance with the child or young person's best interests. A guardian ad litem would only be appointed in special circumstances where age, disability or illness is a factor.

Sometimes a guardian ad litem is appointed to look out for the best interests of the parent/s and to instruct their solicitor. This would be where a parent is unable to give proper instructions because of an intellectual disability, mental health or incapacity. A guardian ad litem can be discharged during the course of proceedings if a parent gains capacity.



If a parent has had a child removed from their care and not restored, the Children's Court presumes that any subsequent child of that parent found to be at risk is in need of care and protection. The onus is on the parents to prove otherwise, ie, that the circumstances that gave rise to the original orders no longer exist (section 106A of the Act).

This also applies where a parent has been named as a person of interest by a Coroner or police officer in the reviewable death of a child.

Timing

The Children's Court will set a timetable for the proceedings (section 94 of the Act), which allows for:

- preparing evidence
- obtaining an assessment report (where required)
- enabling parents or the child or young person to participate in a service or program that could reduce the need for the court's intervention
- enabling parties to participate in Alternative Dispute Resolution.

Adjournments should only occur when in the best interests of the child or young person.

An application must be filed within three working days – the Court will then decide when to list the matter.

An order to remove a child or young person or assume care responsibility

A child or young person may be removed from the care of their parents or carers where there are reasonable grounds to believe that:

- the child or young person is at risk of serious harm, and
- the risk is immediate, and
- less intrusive actions are insufficient to protect the child.

A child or young person may be removed with or without a search warrant (where the risk of harm is imminent). Where a child or young person is at risk of serious harm and it is not in their best interests to be removed from the premises where they are currently located (such as a hospital, respite care, or other service), the Department of Family and Community Services may assume their care responsibility instead of physically removing them. The arrangement remains even when the child is no longer at the place of care.

Children's Court proceedings

First mention or first return

Once the Department of Family and Community Services has filed an application in relation to a child or young person, a date will be set for the application to be heard in court. This is referred to as the first mention, or first return date.

At the mention the court is informed about the application and issues such as:

- considering whether an interim order will be made. The most common order is an order placing the child in the parental responsibility of the Minister for Family and Community Services
- determining establishment: that is, whether the child or young person was in need of care or protection when the child was removed (if this is not in dispute)
- care arrangements for the child
- contact between the child and parents
- whether the application will be contested (usually by the parents).

Where a care application is contested, the court will list the matter for hearing. While the parties are preparing the evidence, the matter will be moved to a later date (adjourned).

Interim Orders

The Children's Court is often required to make an interim order affecting the child or young person after the care application is filed and before the final decision.

Interim orders generally cover who will have parental responsibility for the child or young person, and when they will see their parents while the Children's Court proceedings are finalised.



Alternative dispute resolution

Generally, all parties are likely to be directed to attend some form of alternative dispute resolution during the course of care proceedings to see whether an agreement can be reached in relation to the issues in dispute.

The purpose of alternative dispute resolution is to:

- identify areas of agreement and disagreement
- determine the best way to resolve any issues
- set a timetable for the hearing of the application by the Children's Court if the matter cannot be resolved by consent
- develop orders that could be consented to by all parties.

When issues are resolved at a Dispute Resolution Conference, a proposal is given to the Children's Court Magistrate. An agreement does not take effect until the Magistrate approves it.

Determination Hearing

Before the Children's Court is able to make a final care order, it must decide if the child or young person was in need of care and protection at the time the care application was made. If the Children's Court determines that the child or young person is not in need of care and protection, the application is dismissed.

If the Children's Court has determined that a child or young person is in need of care and protection, the court must then determine what care orders are necessary to ensure the child or young person's needs are met in the future. If there is a dispute about this, the matter will be listed for a placement hearing.

Final Orders

If the court decides that the child or young person is in need of care and protection, it will make final orders about what should happen to ensure the safety, welfare and wellbeing of the child or young person.

The Children's Court cannot make a final order reallocating parental responsibility until it has considered a care plan submitted by the Department of Family and Community Services, which specifies the proposed arrangements for the child or young person. This care plan must be filed and given to all parties.

That plan must cover allocation of parental responsibility, the

Legal Aid funding will only be allocated for appeals under limited circumstances.

type of placement that the Department of Family and Community Services proposes for the child or young person, any agencies that will supervise the child or young person and any services that the child or young person may require. The care plan can also provide for restoration to a parent.

Challenges to court orders (section 91 of the Act)

Any party to the care proceedings can appeal final orders to the District Court of NSW, which will rehear the matter and can hear new evidence.

The District Court's final decision will be taken as the decision of the Children's Court.

If a party wishes to delay the Children's Court orders from taking effect while the appeal is being determined, they can apply to the District Court for a stay of the Children's Court decision. This will delay the order from taking effect and allow time for an appeal to be considered in the District Court.



Children's Court orders

Emergency Care and Protection Order

An Emergency Care and Protection Order lasts for a maximum of 14 days and can be extended once only, for a further maximum of 14 days. The order places the child in the care responsibility of the Director-General.

Children's Court Clinic Order and Assessment Order

An application may be filed with the Children's Court for a psychological or psychiatric assessment of a child or for an assessment of the parenting capacity of a person seeking parental responsibility for a child.

The court can make an order for the child or young person to be assessed by the Children's Court Clinic, which provides independent expert clinical assessments of children, young people and their families involved in care proceedings. These assessments assist the court to make decisions.

Order allocating parental responsibility: where a child or young person is in need of care and protection, or as an interim order, the court may make an order allocating parental responsibility, or aspects of it.

The specific aspects of parental responsibility that may be allocated include, but are not limited to, the child or young person's:

- residence
- contact arrangements
- education and training
- religious upbringing
- medical treatment.

Order prohibiting an act by a person: this order prohibits any person, including a parent of a child or young person, from doing anything that could be done by the parent in carrying out his or her parental responsibility.

This includes:

- taking a child or young person out of the state or country
- disciplining a child or young person in a particular manner
- consenting to an unusual medical procedure that is highly likely to be detrimental
- allowing contact between a child or young person in the care of a particular person.

Order for supervision: this may be appropriate where a child or young person is found to be in need of care and protection, but the concerns do not necessitate the child or young person being removed from the care of their family or usual carers. Close monitoring and/or direction of the child or young person is required.

Order accepting undertakings: this is a formal promise to the court by a child, young person or their birth parent(s) to act, or to refrain from acting, in a particular manner. If the court is notified by one or more parties of an alleged breach, the court will hear from both sides. If the breach is found, the court may make any order that was available to it at the time the original order was made.

Order for the provision of support services: this requires a service provider to deliver services to the family.

Order to attend therapeutic or treatment program: such orders can be made to facilitate appropriate therapy and intervention where a child between the ages of 10 and 14 has displayed sexually abusive behaviour.

Order for contact: this may be applied for by any party to proceedings to direct contact between a child or young person and any other person who is significant to them, including requirements such as minimum contact and supervision.



Parental Responsibility Contract

A Parental Responsibility Contract is a voluntary agreement between the Department of Family and Community Services and one or more primary carers of a child or young person. It aims to improve the carer's parenting skills and encourage them to take action, such as attending a support service.

While the Parental Responsibility Contract is not a court order, the Children's Court may become involved if an agreed target in a Contract is breached. In this case, the Department of Family and Community Services will file a breach notice in the Children's Court.

If the court finds there has been a breach, the court will presume the child or young person is in need of care and protection. The onus will then be on the primary carer (usually the parent) to prove otherwise.

Sometimes parents' circumstances change. The Children's Court may grant leave to any party to the care proceedings, including a parent, to apply for a rescission and variation of a care order if it is satisfied that there has been a significant change in any relevant circumstances since the care order was made (see section 90 of the Act).

Section 90 applications make up a large portion of the court's work. Section 90(2A) also sets out the factors that the court must take into consideration before granting leave to apply for rescission and variation of a care order. While there may have been a change in the parents' circumstances, this does not always mean they will be granted leave to apply.

Restoration plans

The Magistrate might decide that child can only go home after certain changes have happened – this is called a restoration plan. This plan describes minimum outcomes that must be achieved before a child returns to the parents, what services the Department of Family and Community Services will provide or arrange, and details of other services that the Children's Court requests.

CASE STUDY

Jessica and Troy were in a relationship for three years, and had a son, Jaydean. He was removed due to the impact of ongoing domestic violence perpetrated by Troy. Jessica becomes pregnant to Troy and leaves him before having her daughter, Tiarna.

Tiarna was removed soon after birth when Troy came to the hospital demanding to see his daughter and that Jessica return home. Jessica has sought counselling, has an AVO, is caring for her daughter and is now living with her mother in the country, away from Troy. Proceedings have begun in the Children's Court, where Jessica will argue that the circumstances that led to the removal of Jaydean no longer exist (section 106A).

Jessica is also intending to apply for a rescission or variation of the care order in relation to Jaydean on the basis that she has now addressed all of the concerns that led to his removal from her care.

Working with families where child protection is a concern

Building relationships with families who have child protection issues is critical to achieving good outcomes for children and their families.

You will often work with families where you want to address the level of risk, as well as help them to achieve sustainable change. You may find that you continue to be concerned about a child or young person, but their level of risk does not reach the significant harm threshold.

Your work should begin with the family's strengths and needs.



While the focus must be on maintaining the safety, welfare and wellbeing of children, work that recognises, supports and builds capacity in parents is usually in the best interests of children.

When working with families, your important roles include:

- advocating for and with families and for their involvement in any plan for the child – help them to understand and have a say in decisions that your agency or the Department of Family and Community Services makes
- helping them to prepare for meetings
- assisting them to obtain legal advice when necessary.

This chapter describes the key ways of working with families, and with other agencies. It also looks at issues specific to working with Aboriginal and culturally and linguistically diverse (CALD) communities.

Work with families that is founded on respect achieves more positive outcomes for children and families.

Look after yourself

Work involving child protection matters is often complex and demanding. Supporting parents, building positive relationships, and at the same time acknowledging the very real risks to children can be a difficult balance.

A number of things will guide your work with families: the Act, the Interagency Guidelines, your agency's policies and procedures and your own training and experiences.

Acknowledge the impact of your own experiences, or those of family or friends on your work.

Establish boundaries, stay within your role and ask for support when you need it. Seek supervision regularly and monitor how your work affects you.

While working for sustainable change can be hard, the family is more likely to stay the distance if they are working towards goals they believe will help their situation and that they decided they wanted to achieve.

One size does not fit all

Many factors determine the way you work with families including: the family's needs and strengths; preferences; cultural beliefs and practices; where they live; the level of risk; their willingness to engage; and their previous experiences with community agencies or with the Department of Family and Community Services.

- Consult with the family to determine the best way to work with them, ask them:
 - what they need
 - what will work for them and what won't
 - how they want their cultural beliefs and practices to be embedded in the work you do together.

Develop a plan

Working with families in a child protection context can be challenging and complex, so a clear plan of action based on the family's needs and strengths will provide framework to reduce risk.

It is important that, wherever possible, families take the lead in setting goals. Sometimes all family members will have an individual plan.

Tips for developing a plan

- The plan should address risk and support the wellbeing of children, as well as help them to access opportunities to develop social and community connections.
- It may help to hold a meeting to talk to other agencies about the plan and about who will co-ordinate the work. Seek the family's permission and involvement.
- All people involved should know the goals of the work, who is responsible for what actions, the timeframes, and what happens if the situation doesn't change.
- Be realistic about what can be achieved quickly and what will take time.
- Involve the children and young people in setting goals and working out strategies where it is appropriate and possible.
- Engaging and involving all family members can contribute to the success of the plan.
- Make sure the family has a copy of the plan.



Effective interagency work

Often a number of agencies are involved with the same family. It helps if there is one overall plan with common intervention goals.

One agency should be in charge of co-ordination – usually the worker who knows the family the best or who works most closely with the family co-ordinates the plan.

Children and their families have the most to gain if agencies have a written agreement on ways of working, responsibilities and reporting mechanisms, and have:

- positive and respectful relationships between workers
- a willingness to resolve conflicts
- a strong understanding of each agency's focus, priorities, pressures and constraints
- the chance to work with the family together, such as for home visits. The Special Commission of Inquiry into Child Protection Services in NSW in 2009 (the Wood Inquiry) found that a multifaceted approach addresses risk and protection factors more effectively than single-issue approaches.

Make sure the plan is working

Regularly review the progress of the plan with the family and other agencies involved and ask:

- Does the work prioritise children's safety?
- Is it reducing the risk to the children?
- Does it support and celebrate change?
- Does it engage the family's strengths?
- Are the goals clear and agreed?
- Is it building relationships?
- Is it practical?
- Does the family think there is too much to do, not enough to do, or it is about right?
- Is everybody (the family, your agency, other agencies) doing what was agreed?

CASE STUDY

Fayth, who has three children in primary school, has been diagnosed with depression and has no family or friends nearby. Her ex-partner had been violent to her and controlling – he did not allow Fayth or the children to have visitors or to go out much.

She feels exhausted most of the time and doesn't really have the energy or persistence to manage the children's behaviour, which is challenging at times. She finds it difficult to get the children to school or to keep the house clean. The children are a long way behind in their school work.

Regardless of these difficulties, Fayth has a strong and positive relationship with her children and each of them shows affection for her.

The community worker has strong concerns about physical neglect, school attendance and a lack of supervision of the children who are often out late on their own.

Fayth believes her children can do well at school, but she feels overwhelmed by the organisation and tasks involved in getting the children to school each day. Fayth understands that keeping her children home from school is affecting their opportunities.

The community worker helps Fayth and the children to make a plan that gets the children to school every day and rewards them for attendance. Fayth feels she is helping her children to do well at school.

Later, the community worker supports Fayth to attend a parenting program to help with the children's behaviour.

Fayth has plans for the future – she hopes to attend a women's craft group and also wants to go to TAFE to improve her literacy skills so she can help her children do their school work.



What happens if the risk escalates?

If risk escalates when you're working with a family, help the family to understand what they and others need to do to reduce the risks to the children. It is important to be clear with the family about the possible serious outcomes if the risk is not reduced, such as a report to the Child Protection Helpline and Children's Court proceedings.

If risk escalates, use the MRG to help decide if a risk of significant harm report should be made to the Child Protection Helpline.

Working with Aboriginal families and communities

The Stolen Generation has left a legacy of mistrust of "the welfare" in many Aboriginal communities. Past and current experiences with child protection and welfare services may leave families wary of any involvement with the Department of Family and Community Services and community agencies. Families may be very fearful of their children being removed from their care.

The Wood Inquiry found that Aboriginal children were significantly overrepresented in the child protection system in NSW (one-third of all children and young people in out-of-home care in NSW are Aboriginal) and that culturally appropriate interventions to address child protection concerns in Aboriginal families were not widespread.

The Inquiry recommended:

- That new services be developed within the NGO sector to provide more culturally appropriate and focused services. This includes family preservation services and building capacity in Aboriginal agencies.
- That a pilot Aboriginal child specialist advice and support service (similar to a Victorian model) be developed to provide an Aboriginal perspective on the assessment of risk and safety, and to provide advice on significant decisions to the Department of Family and Community Services and the Children's Court.

Working with Aboriginal families

- Take your cue from the family about their culture and relationships and don't make assumptions about what being Aboriginal means to each family or what practices might be considered culturally appropriate to the family. There is significant diversity in cultures and experience in Aboriginal families in NSW.
-

When families have had direct or indirect experience of the Stolen Generation policies, it may be important to explore the effects on their life and their parenting experience. The Human Rights and Equal Opportunity Commission's report on the Stolen Generation found that the impact of the Stolen Generation can last generations.

- If you're unsure about cultural concerns, practices and the effect of the work you are doing in Aboriginal communities, you should ask the family, community elders and Aboriginal workers for guidance.
- Don't assume all Aboriginal families will want a culturally specific service – ask the family what will work best for them.

Having a say

The Act states that Aboriginal and Torres Strait Islander people should participate in the care and protection of their children and young people with as much self-determination as possible. It also says that Aboriginal families, kinship groups, representative organisations and communities should be given the opportunity to participate in decisions about the placement of their children and young people, and in other significant decisions made under the Act.

Working with culturally and linguistically diverse communities

Many things affect the way people bring up their children, including their cultural beliefs and practices, and individual life experiences. There is a lot of variation in what people believe is appropriate, and diversity within cultures.

It is vital that you are open to the range of differences in families from different cultures. If you're unsure of the cultural beliefs and practices of a family or community in relation to child protection, check with the family, the community and other workers.

If required, use either a bilingual worker or professional interpreter. It is not appropriate for children or family members to be interpreters.

Migrant and refugee families

For newly arrived refugee and migrant families, it is important to seek information so you can understand the impact of the refugee or migration experiences on children's behaviour, parenting practices and family dynamics.

In particular, long stays in refugee camps or detention can affect the roles and responsibilities of young people in the family, such as elevating young people to roles normally held by the head of household.



KEY POINTS

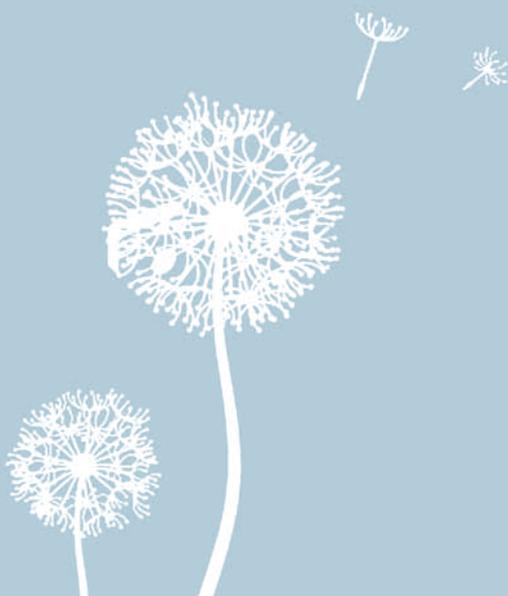
- Work with a family that is based on respect – and begins with the family’s strengths and needs – achieves more positive outcomes for children and families.
- Supporting parents and building positive relationships while acknowledging the real risks to children can be a difficult balance. Get the support you need.
- Many factors determine how you work with families – one size does not fit all. Ask the family how you should work with them.
- Develop a plan of action based on the family’s needs to provide a framework to reduce risk. Wherever possible, the family should take the lead in setting goals. Regularly review the progress of the plan.
- If risk escalates when you’re working with a family, help them to understand what must happen to reduce the risk to the children and the possible serious outcomes if risk is not reduced.
- Aboriginal families may not trust the Department of Family and Community Services or community organisations due to the experiences and effects of the Stolen Generation.
- Take your cue from Aboriginal families about their culture and relationships – don’t make assumptions about what being Aboriginal means to each family. Ask the family, elders and Aboriginal workers for guidance.
- Cultural beliefs and practices shape childrearing practices. It is vital that you are open to the range of differences in families from different cultures. The key principle is to look at the impact on the child or young person in determining risk of significant harm.

Making a complaint

Workers and families have the right to complain and to receive a prompt response.

There are ways to complain and give feedback so that action, if necessary, can be taken.

This chapter gives general information about how workers can raise issues of concern and also how they can help families to make a complaint.



What can you complain about?

There are many reasons a worker or family may want to make a complaint concerning a child protection matter, including:

- the process, such as not being enough given time to consider options or to seek legal advice before signing documents
- the way the worker or family was treated
- assumptions made about families, for example, those based on cultural misunderstandings
- the outcome of an investigation, for example, if a child was removed.

Tips for making a complaint

Most organisations have a set process for making a complaint, which are described on the following pages.

These tips, adapted from the NSW Ombudsman's website, may help to increase the chances of your concerns being heard and acted upon.

Call first, then write

It is usually best to write a letter of complaint, particularly when dealing with a large organisation. If you write, someone will be given the job of answering your letter and it is more likely to be directed to the right area or person.

Before putting your complaint in writing, it can help to call the organisation, to clarify some of the issues or to learn about the organisation's complaints procedures. You should also ask if the organisation has a complaint form.

People often complain because they're unhappy with their own situation and want action that will produce a better outcome for themselves or the families they help. However, complaints can sometimes also draw attention to systemic problems, leading to better outcomes for other workers and families.

Write to the person responsible

If the organisation doesn't have a complaint form and you need to write a letter, you may choose to send your letter to the person your complaint concerns (if there is one individual), their supervisor, or the organisation's complaints officer. If you are unable to identify these people, write to the head of the organisation. Your letter should be firm but polite.

Set out your case

Your letter should be clear and to the point. Summarise in a couple of sentences exactly what your complaint is about. Your letter

should be set out in a logical order and should include:

- relevant dates, places and times
- a description of the incident or problem
- details of any phone conversations and meetings
- why you are upset
- copies of relevant documents.

Decide what you want to happen

A key part of your letter or complaint is to say what action you think is needed to resolve your problem. Make sure your demands are reasonable. If your request is realistic and within the power of the person you are writing to, you are more likely to get your complaint resolved.

Ask for action

Always ask that your letter or phone call be acknowledged in writing. Ask the organisation for an estimate of how long it will take to deal with your complaint. If your matter is urgent, say so and explain why.



Tell them what you will do if the complaint is not resolved

You may be more likely to get action if you say in your letter that you are willing to take the matter further if the complaint is not resolved. For example, you might raise the matter with a more senior person in the organisation, or an outside body such as your local Member of Parliament, the responsible minister, the Ombudsman or another complaints handling body.

Keep records

Keep copies of all the letters you send and receive as well as details of all telephone calls. You may need to provide evidence of your dealings with the organisation, particularly if you decide to refer the matter to another agency.

Be persistent

If nothing happens, call the organisation to check on the progress of your complaint. Make it clear that the problem will not go away unless it is resolved. Write again if needed.

Just as you want other organisations to have a clear system of complaints, make sure your own agency has an accessible, responsive complaints system.

The Department of Family and Community Services will not deal with complaints that are being investigated by the Ombudsman or that have gone to the Minister for Family and Community Services.

If the complaint relates to material provided in a current court matter, clients should discuss their concerns with their legal representative or the Magistrate.

Complaining to specific organisations

All organisations should have a formal system for complaints. This section outlines complaint processes for some key organisations. For more detailed information, contact the organisation.

Department of Family and Community Services

The Department of Family and Community Services suggests clients and community workers who have a concern should talk first to the staff member they know best, and they can also talk or write to that person's supervisor.

If the problem isn't resolved this way clients and community workers can complain by:

- Calling 1800 000 164 to talk to a complaints officer.
- Clients who need an interpreter can call the Translating and Interpreting Service on 13 14 50 and ask to be connected to the complaints number.
- Completing a complaint form. You can obtain the form by downloading it from the Department's website, (www.community.nsw.gov.au/about_us/contact_us/client_complaints.html) or by calling 1800 000 164.

The form can be faxed to the Complaints Manager at 02 9716 2987, or mailed to

Reply Paid 1113
Complaints Manager
Department of Family and Community Services
Locked Bag 4028
Ashfield NSW 2131

For most complaints, a decision will be made within 20 days. Serious and complex cases may take longer. If clients are not happy with the decision, they can take their complaint to the NSW Ombudsman.



NSW Ombudsman

The NSW Ombudsman investigates and reports on complaints about the conduct of government departments, and statutory authorities, including police, local councils, and some non-government agencies.

It also investigates complaints related to any services provided by the Department of Family and Community Services (including Ageing, Disability and Home Care).

Services that are covered include licensed boarding houses; disability day, support, respite and accommodation services; children's services; early intervention; child protection and out-of-home care services (including foster care); refuges; ageing and home and community care services; neighbourhood and family support services.

The Ombudsman has an online complaint form, at www.ombo.nsw.gov.au/contactus.html. You can also call the Ombudsman's office on (02) 9286 1000 or toll free (outside Sydney metro) 1800 451 524 to discuss how to make a complaint.

Legal Aid NSW

To complain about a matter related to Legal Aid, contact the office that was dealing with your legal problem and explain the concerns. Legal Aid staff will try to resolve the complaint immediately. If you still feel unhappy after talking to the staff, you can write a letter or fill in the complaint form.

For a copy of the brochure about how to complain to Legal Aid, call (02) 9219 5000, or download it from www.legalaid.nsw.gov.au/asp/index.asp?pgid=404. The brochure includes a copy of the complaint form.

The Department of Family and Community Services will not deal with complaints that are being investigated by the Ombudsman or that have gone to the Minister for Family and Community Services.

If the complaint relates to material provided in a current court matter, clients should discuss their concerns with their legal representative or the Magistrate.

Private legal practitioners

To complain about private legal practitioners, contact the Office of the Legal Services Commissioner by calling the inquiry line on 9377 1800 or toll free 1800 242 958.

The inquiry line staff will discuss whether the office can handle the complaint and how to use the service.

The Office encourages people to first try to resolve their complaint with their solicitor or barrister before making a formal complaint.

A complaint is formally made when a complainant lodges a complaints form or sends a letter of complaint to the Office.

To obtain a copy of the complaints form, call the inquiry line on (02) 9377 1800 or download it from www.lawlink.nsw.gov.au/olsc

Community workers

All community organisations should have a clear complaints system so that families and other workers know the process for making a complaint.

Generally, though, if families or workers wish to complain about a community organisation or worker, it's best to first approach the worker or their manager. If you are still not satisfied, you could contact the board or the funder of organisation.

If you are still not satisfied with the outcome, you can complain to the NSW Ombudsman.

NSW Police

To complain about NSW police officers, call the customer assistance unit on 1800 622 571 or visit the local police station to try to resolve the matter.

Formal complaints must be in writing. NSW Police has a brochure outlining the complaints process. The brochure includes a form for lodging a formal complaint.

To obtain a copy of the brochure, call the customer assistance unit on 1800 622 571 or download it from www.police.nsw.gov.au/services/additional_services/. This website also has an online form for lodging a complaint.



KEY POINTS

- Workers and families have the right to complain and to receive a prompt response.
- Complaints can draw attention to systemic problems, leading to better outcomes for other workers and families.
- Most organisations have a set process for making a complaint.
- It is best to complain in writing but call first – to find out how to lodge a complaint and who it should be sent to.
- Whether writing a letter or completing a standard complaints form, you should be clear and to the point. Summarise in a couple of sentences exactly what your complaint is about, and include key information.
- Say clearly what action you want to resolve your problem and what you will do if the complaint is not resolved.
- Keep copies of all the letters you send and receive and record details of all telephone conversations about the complaint.
- You can complain to the NSW Ombudsman if you are not satisfied with the outcome of a complaint made to organisations such as the Department of Family and Community Services, Legal Aid NSW, or NSW Police and many community organisations.

Resources



NSW care and protection system

- Keep Them Safe: www.keepthemsafe.nsw.gov.au
- NSW Online Mandatory Reporter Guide: www.keepthemsafe.nsw.gov.au/reporting_children_at_risk/mandatory_reporter_guide
- Keep Them Safe Support Line (for mandatory reporters in non-government organisations): 1800 772 479.
- Child Wellbeing and Child Protection NSW Interagency Guidelines: www.keepthemsafe.nsw.gov.au/interagency_guidelines
- Special Commission of Inquiry into Child Protection Services in NSW: www.dpc.nsw.gov.au/publications/news/stories/special_commission_of_inquiry_into_child_protection_services_in_new_south_wales

Legislation

The Children and Young Persons (Care and Protection) Act 1998 (NSW) can be found at www.legislation.nsw.gov.au

Working with Aboriginal families

- Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families: www.hreoc.gov.au/social_justice/both_report/index.html
- Working with Aboriginal People and Communities: A Practice Resource: www.community.nsw.gov.au/docswr/_assets/main/documents/working_with_aboriginal.pdf
- Aboriginal Child, Family and Community Care State Secretariat (NSW) Inc (AbSec): www.absec.org.au

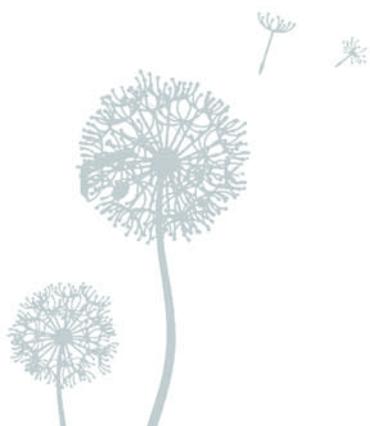
NSW Government

- NSW Commission for Children and Young People: www.kids.nsw.gov.au
- NSW Ombudsman: www.ombo.nsw.gov.au
- The Children's Guardian: www.kids_guardian.nsw.gov.au

Organisations

- CREATE Foundation: the peak body representing the voices of all children and young people in out-of-home care: www.create.org.au
- Association of Children's Welfare Agencies (ACWA): the peak body for child welfare in NSW: www.acwa.asn.au

WORKING WITH CHILD PROTECTION
A practical guide for community workers



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