

# The Shopfront

## YOUTH LEGAL CENTRE

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### Children and young people at risk – reporting and exchange of information

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#### 1 Introduction

The *Children and Young Persons (Care and Protection) Act* 1998 (referred to in this document as “the Act”) deals with matters relating to the welfare of children and young people in New South Wales.

This includes the reporting and investigation of child abuse, licensing of child care services, employment of children, care proceedings in the Children’s Court, and those cases in which the State has parental responsibility for children and young people.

The NSW Department of Family and Community Services (referred to in this document as Community Services) can intervene in matters where the welfare of the child is in issue. Intervention will range from the provision of family support and respite child care to the very extreme action of removing a child from his or her family.

The parts of the Act likely to be of most relevance to youth workers are the sections dealing with situations where a child or young person is at risk of harm.

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#### 2 Changes to the law in 2010

Following an extensive review of the NSW child protection system, the *Children Legislation Amendment (Wood Inquiry Recommendations) Act* 2009 was introduced. Amendments made by this Act include:

- (a) raising the reporting threshold to “at risk of *significant harm*” (from 24 January 2010);
  - (b) setting up an alternative reporting process for mandatory reporters in major government agencies (from 24 January 2010);
  - (c) permitting the exchange of information between government and non-government agencies involved with children and young people (from 30 October 2009);
  - (d) making some changes to the Children’s Court and its procedure (from 1 June 2009).
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#### 3 Definitions of “child” and “young person”

Most laws define a “child” as a person under 18 years of age.

The *Children and Young Persons (Care and Protection) Act* is a bit different. It defines a “child” as a person under 16 years of age, and a “young person” as a person 16 or 17 years of age.

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## 4 Child or young person at risk of significant harm

According to section 23 of the Act, a child or young person is at risk of significant harm when one or more of the following are present to a significant extent:

- (a) the child or young person's basic physical or psychological needs are not being met or are at risk of not being met,
- (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or the young person to receive necessary medical care,
- (b1) in the case of a child or young person who is required to attend school, the parents or caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive education;
- (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- (d) the child or young person lives in a household where there have been incidents of domestic violence, and as a consequence, the child or young person is at risk of serious physical or psychological harm,
- (e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,
- (f) the child was the subject of a pre-natal report and the birth mother did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

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## 5 Mandatory reporting of children at risk of significant harm

### 5.1 When must a report be made?

Mandatory reporting requirements apply to certain persons if, in the course of their work, they suspect on reasonable grounds that a child (*under 16*) is (or a class of children are) at risk of *significant* harm.

The threshold was raised from "harm" to "significant harm" by legislative amendments commencing on 24 January 2010.

There is no definition of "significant" in the Act, but some guidance may be found at <http://www.community.nsw.gov.au/kts/guidelines/reporting/framework.htm#harm>.

### 5.2 Who is a mandatory reporter?

The mandatory reporting requirement extends to all paid workers who deliver (or are responsible for the delivery of) any of the following services, wholly or partly to children (s27):

- (a) health care;
- (b) welfare;
- (c) education;
- (d) children's services;
- (e) residential services; and
- (f) law enforcement.

*Managers* (including unpaid members of management committees) who supervise people working with children are also mandatory reporters.

*Volunteers* are not mandatory reporters (unless they are on a management committee or otherwise responsible for supervising paid staff). However, in many cases an agency's policy or funding agreement will require everyone (including volunteers) to make a report if they suspect a child is at risk.

### **5.3 How is a report made?**

Mandatory reporters working in certain government agencies (eg NSW Health, The Department of Education and Training, the NSW Police, and Juvenile Justice, Housing and Aging, Disability and Home Care) may now make a report to the Child Wellbeing Unit in their department, instead of to Community Services.

Other mandatory reporters, including those in non-government organisations, still make reports to Community Services via the Mandatory Reporters Helpline on 133 627.

### **5.4 Consequences of not reporting**

Until 2010, a mandatory reporter who did not make a report to Community Services when required could be charged with a criminal offence.

As of 24 January 2010 there is no longer any criminal penalty for failing to report. However, reporting is still a legal duty and failure to report could result in disciplinary action from an employer or professional body.

### **5.5 Resources for mandatory reporters**

NSW Inter-Agency Guidelines for Child Protection Intervention: 2006 Edition:

[http://www.community.nsw.gov.au/CommunityServiceswr/assets/main/documents/interagency\\_guidelines.pdf](http://www.community.nsw.gov.au/CommunityServiceswr/assets/main/documents/interagency_guidelines.pdf)

2009-11 edition (this is being published in stages):

[http://www.community.nsw.gov.au/kts/guidelines/info\\_exchange/introduction.htm](http://www.community.nsw.gov.au/kts/guidelines/info_exchange/introduction.htm)

Mandatory Reporter Guide:

<http://sdm.community.nsw.gov.au/mrg/app/summary.page> or

[http://www.community.nsw.gov.au/kts/guidelines/documents/mandatory\\_reporter\\_guide.pdf](http://www.community.nsw.gov.au/kts/guidelines/documents/mandatory_reporter_guide.pdf)

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## **6 Voluntary reporting of children or young people at risk of significant harm**

*Anyone* who has reasonable grounds to suspect that a child (*under 16*) or young person (*aged 16 or 17*) is (or that a class of children or young persons are) at risk of significant harm *may* make a report to Community Services (s24).

A report may also be made about an unborn child who may be at risk of significant harm after birth (s25).

Reports are usually made by telephone. The contact number for the general public is 132 111. A report may be made anonymously (s26).

For general information about the reporting process, see

[http://www.community.nsw.gov.au/preventing\\_child\\_abuse\\_and\\_neglect/protecting\\_children.html](http://www.community.nsw.gov.au/preventing_child_abuse_and_neglect/protecting_children.html).

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## **7 Mandatory reporting of homelessness**

Anyone who provides residential accommodation for a person whom they have reasonable grounds to suspect is:

- (a) a child (under 16); and
- (b) living away from home without parental permission

must report the child's whereabouts to Community Services (s122).

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## **8 Confidentiality and legal protection for reporters**

Reports made to Community Services (whether voluntary or mandatory) are treated confidentially.

However, the identity of the reporter may be disclosed to law enforcement agencies (eg police) involved in investigating a serious offence against a child or young person (s29(4A)).

If the report is made in good faith, the reporter is protected from legal actions such as defamation and breach of professional ethics (s29).

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## **9 Investigation by Community Services**

Where Community Services has received a report that a child or a young person is at risk of significant harm, Community Services must make whatever further investigations it considers necessary. If Community Services is satisfied that a child or a young person is in need of care and protection it may:

- (a) arrange for support services to be provided to the family;
- (b) use alternative dispute resolution services to develop a 'care plan' with the family to meet the needs of the child or young person;
- (c) make a care application to the Children's Court (this may involve removing the child or young person from the home for protection); and/or
- (d) refer the matter to police, for them to assess whether there is sufficient evidence to charge the adult concerned.

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## **10 Emergency removal of children or young persons at risk**

Generally a Children's Court order must be obtained for the long-term removal of a child or young person from their usual home.

In the short-term, the Children's Court may make an emergency care and protection order (s46) or interim care order (s69). Alternatively, Community Services may make a temporary care arrangement (s151) (for a child under 16, this requires the consent of the child's parents if they can be located).

In an emergency, a child or young person may be removed by a police officer or Community Services worker:

- (a) with an order of the Children's Court, on the making of a care application (s48);
- (b) from any premises, if Community Services or the police are satisfied on reasonable grounds that the child or young person is at immediate risk of serious harm (s43(1));

- (c) from a public place, if Community Services or the police suspect on reasonable grounds that a child (*under 16 only*) is in need of care and protection, is not subject to the supervision or control of a responsible adult, and is living in or habitually frequenting a public place (s43(2));
- (d) from premises where there is child prostitution and/or child pornography (s43(3));  
or
- (e) with a search warrant which allows for the entry of premises and the removal of the child or young person (s233).

Community Services may assume the care of a child or young person who is at risk of serious harm but is currently safe (such as in hospital) without physically removing the child (s 44).

## 11 Placing children or young persons in care

A child or young person removed in any of the above circumstances may be placed in the care of the Director-General of Community Services (or in some cases returned home). The child or young person may not be kept in a police cell or a juvenile detention centre.

If the child or young person remains in the Director-General's care, Community Services must immediately make an application to the Children's Court for care orders, no later than the next sitting day of the Children's Court (s45(1)).

The Children's Court may make care orders including:

- Restoring the child to the parent(s), usually with the parent making undertakings (promises) about their behaviour; or
- Placing the child in the care of an extended family member; or
- Allocating parental responsibility to the Minister for Community Services.

## 12 Information sharing between agencies

Chapter 16A Act (which took effect on 30 October 2009) provides for government agencies and non-government agencies to exchange information relating to the safety, welfare and well-being of children (under 16) and young people (16 or 17). It also requires these agencies to take reasonable steps to co-ordinate decision-making and service delivery regarding children and young people.

Chapter 16A applies to "*prescribed bodies*" under the Act. This includes some courts and government departments, fostering and adoption agencies, and any organisation providing health care, welfare, education, child care, residential or law enforcement services to children.

A prescribed body:

- *must* pass on information if requested by another prescribed body
- *may* provide information to another prescribed body, even if not requested to

if the agency passing on the information reasonably believes it would assist the other agency:

- to make a decision or provide a service relating to the young person's safety, well-being or welfare; or

- to manage any potential risk to the young person that might arise in the agency's capacity as an employer or designated agency.

This information can be provided even though the agency would normally owe the client a duty of confidentiality.

However, a prescribed body *may refuse to provide information in certain circumstances*, for example: if it would prejudice the conduct of an investigation or inquiry, endanger a person's life or physical safety, or would not be in the public interest.

For further information, see

[http://www.community.nsw.gov.au/kts/guidelines/info\\_exchange/info\\_index.htm](http://www.community.nsw.gov.au/kts/guidelines/info_exchange/info_index.htm).

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### 13 Provision of information to Community Services

Under section 248 of the Act, Community Services may direct a "prescribed body" to furnish information about the safety, welfare and well-being of a particular child or young person (or a class of children or young persons)

Unlike Chapter 16A, section 248 does not allow a prescribed body to refuse to provide this information.

Section 248 overrides any confidentiality obligations that would otherwise exist. A person or body who provides information under section 248 is protected from legal actions for professional misconduct, defamation, malicious prosecution and the like.

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### 14 Further information and resources

The *Keep Them Safe* website is a good source of information about reporting and information exchange processes. You may also wish to subscribe to the *Keep Them Safe* newsletter: <http://www.keepthemsafe.nsw.gov.au/home>

The following resources from the Shopfront Youth Legal Centre may also be helpful:

[http://www.theshopfront.org/documents/Age\\_of\\_Consent\\_Issues\\_for\\_Youth\\_Workers.pdf](http://www.theshopfront.org/documents/Age_of_Consent_Issues_for_Youth_Workers.pdf)

[http://www.theshopfront.org/documents/Confidentiality\\_and\\_privacy\\_for\\_youth\\_workers.pdf](http://www.theshopfront.org/documents/Confidentiality_and_privacy_for_youth_workers.pdf)

#### Updated August 2012

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*The Shopfront Youth Legal Centre is a service provided by Herbert Smith Freehills, in association with Mission Australia and The Salvation Army.*

*This document was last updated in August 2012 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.*

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