

STATUTORY CHILD PROTECTION

A Policy for the Wellbeing and Safety of the Maltreated Child

**DEPARTMENT FOR COMMUNITY
DEVELOPMENT**

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**Department for Community Development
Government of Western Australia**

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INTRODUCTION

Through its administration of the *Child Welfare Act 1947* the Department for Community Development has a major responsibility for the protection, guidance and maintenance of children and young people under 18 years of age in need of protection and care.

Through the *Child Welfare Act 1947*, *Welfare and Assistance Act 1961* and the *Community Services Act 1972*, the Department also has broader statutory responsibilities for:

- promoting the wellbeing of children, young people, families and communities
- assessing and responding to concerns for the wellbeing of children and young people and families
- developing frameworks and responses and the provision of services that strengthen families and build the capacity of communities to care well for children and young people.

A new Bill, the *Children and Community Development Bill 2003* has been introduced into the Parliament. This contemporary legislation will consolidate the objects of the *Child Welfare Act 1947*, *Welfare and Assistance Act 1961* and the *Community Services Act 1972*. This Statutory Child Protection Policy statement is complementary to the Bill.

The focus of this policy is upon children and young people under 18 years of age who are in need of protection and care because of maltreatment. Maltreatment refers to when a child or young person has been subjected to physical, sexual, emotional, psychological abuse and/or neglect, the severity and/or persistence of which has resulted in, or is likely to result in, significant harm.

PURPOSE

This policy statement presents the Department's approach to the exercise of its statutory mandate for the protection of children and young people who have been or are likely to be maltreated. This approach is presented within the framework of the Department's broader statutory responsibilities for promoting and building the safety and wellbeing of children and young people, their families and communities.

The policy provides a foundation for the Department's engagement with other agencies that have responsibilities for the protection of children and young people who have been or are likely to be maltreated and are the Department's partners in the development of strategies and the provision of services.

Western Australia is socially, culturally, linguistically and geographically diverse and flexible responses to local needs can be required to best meet the needs of children and young people. This policy statement is the reference point for the development of local responses that promote the wellbeing and protection of children and young people for whom there are safety concerns.

STATUTORY CHILD PROTECTION RESPONSIBILITY OF THE DEPARTMENT

Providing for the wellbeing and protection of children and young people is a whole of community responsibility. The Department provides leadership to the development and maintenance of systems that support collaboration and partnerships in the delivery of services that engage, strengthen and support children, young people and families in need. These include agreed frameworks and protocols that clarify responsibilities for the provision of services when children and young people have been harmed through maltreatment and are in need of protection, or for whom there are concerns.

The Department has a statutory responsibility to receive and assess reports of children and young people being maltreated through the actions, in-actions or inability of people who have a parental responsibility to protect and care for them. This includes situations where mature minors or independent young people have been, or are likely to be harmed through their own behaviour, and there is no adult who is able to support and assist them. According to the circumstances of each child or young person, the Department works with other agencies to ensure appropriate assessments and responses.

The Department may also receive reports concerning the maltreatment of children or young people by people who do not have a parental responsibility for them. In such cases the Department has a responsibility to ensure an assessment of the report occurs and appropriate action is taken. In most cases this will be through referral to the Western Australian Police Service and/or advice and support to those with parental responsibility.

When there are concerns for children or young people, the Department is empowered to work with them, their families and communities to build safety and promote their wellbeing. Where harm from maltreatment has occurred, the Department provides information, support, referral and counselling services in conjunction with other responsible agencies.

The Department's preferred way of ensuring the wellbeing of children and young people and, where necessary their protection from maltreatment, is to support and strengthen their family and community to provide a nurturing living environment and safe care.

If a child or young person cannot be made safe within their family then the Department brings the matter before the Children's Court for determination and makes arrangements for his or her safe care and continued development in or out-of-home. Wherever possible, care arrangements are sought within a child or young person's family and community. The Department works to enable children and young people to live with their families or to maintain contact with them, when it is safe to do so.

MANDATE

The *Child Welfare Act (1947)* empowers the Department for Community Development and the Western Australian Police Service to take action to ensure the immediate wellbeing and safety of children and young people suspected to be in need of care and protection. The *Act* also enables medical officers in charge of hospitals to hold

children under the age of 6 years for 48 hours for the purposes of observation, assessment and treatment. This Act empowers the Department to remove children and young people deemed in need of protection and care, to arrange care and maintain them out of the home.

The Department administers other Acts that enable the development and provision of services to children, young people and families for their wellbeing.

- *Community Services Act 1972*, under which the Department's functions are defined to include the promoting of individual, family and community welfare (which includes the funding of non-government services).
- *Welfare and Assistance Act 1961*, which enables the granting of financial and other material assistance to people in need.
- *Adoption Act 1994*, which makes provision for the adoption of children.
- *Community Services (Outside School Hours Care) Regulations 2002*
- *Community Services (Child Care) Regulations 1988*

The Department also has varying roles, responsibilities and powers under other Acts.

- *Immigration (Guardianship of Children) Act 1946 (Commonwealth)*
- *Family Law Act 1975 and the Family Court Act 1997*
- *Restraining Orders Act 1997*

The mandate for protecting children from maltreatment, enabling the development and provision of services to children for their wellbeing and granting of financial and other material assistance is present in the new *Children and Community Development Bill 2003*.

PRINCIPLES

Every child and young person has a right to be cared for, protected from maltreatment and exploitation and to live without violence. The following principles inform the Department's response and approach to the exercise of its statutory responsibility for the protection of children and young people from maltreatment. They also inform its broader responses to concerns for the wellbeing of children, young people and families.

- 1. The best interests of the child or young person are the paramount consideration in any action taken by the Department.**

The best interests of a child or young person include the need for immediate protection from maltreatment as well as longer term needs for maintaining family and community relationships and cultural identity.

- 2. Parents, families and communities are responsible for the nurture, wellbeing and protection of children and young people.**

Parents and families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people. Government and non-government agencies and communities have a responsibility to support and strengthen them in their role.

Legal intervention to protect and make safe children and young people should only be taken when there is no other reasonable way to safeguard and promote their wellbeing.

3. Children and young people, individuals, families and communities should be engaged, included and enabled to participate to the maximum extent reasonable in matters that affect them.

The views of children and young people should be sought, considered and taken into account in determining their best interests. Their participation should be enabled in significant decisions that affect their lives, having regard to their age and understanding of the matters that affect them.

When statutory action is taken to protect a child or young person, parents and others significant in the life of the child or young person should be advised and their participation enabled, and their views sought and taken into account in assessment and decision making processes. Decisions that ultimately rest with the Department should be clearly presented as such.

4. Responses to child maltreatment should be sensitive and responsive to differences in culture, religion, language and the particular needs of Aboriginal people and Torres Strait Islanders.

Respectful and just relationships with individuals, families and communities are essential for the building of shared understandings and partnerships to secure the wellbeing of children and young people who have been maltreated or for whom there are concerns. Responses that seek to protect children and young people or promote their wellbeing should be informed by an understanding of the cultural contexts in which they and their families live.

There are overarching human values for the protection and care of children that are shared by all cultures. Claimed 'cultural practice' that results in a child or young person being harmed, or that is likely to cause significant harm must be assessed by the Department. A child or young person's wellbeing and his or her need for protection must take precedence in any assessment.

5. Prevention and early intervention responses and treatment services that positively engage with and strengthen the capacity of individuals, families and communities to care well for their children and young people are important for preventing maltreatment from occurring or re-occurring.

Timely responses that address the social, emotional and psychological harms experienced by children, young people and their families through maltreatment are important strategies to promote their wellbeing and resilience.

The promotion of strong communities with local networks that positively engage with individuals and families and link them to community supports, enhance the protection and wellbeing of children and young people.

6. The protection of children and young people who have been maltreated and the promotion of their wellbeing is best achieved when responsible agencies and key community people work collaboratively.

The safety and wellbeing of children and young people who have been or who are likely to be maltreated is most effectively advanced when the community, families, government and non-government agencies and individuals work together in a common understanding of their responsibilities and the rights of children and young people.

7. Services that respond to concerns for the wellbeing of children and young people and provide for their protection and care need to be effective, efficient and accountable.

A culture of openness, transparency, accountability and continuous quality improvement is important for the effective and efficient delivery of services to children, young people and their families and the credibility of service providers.

Organisational structures, policies, programs and strategies for the protection and care of children and young people should be evidence based and subject to ongoing evaluation, review and quality improvement.

A decision to exercise statutory authority for the protection of a child or young person cuts deeply into the lives of individuals, families and communities. Such decisions need to be based on a high level of competence, developed and maintained through supervision, training and other staff development processes.

Clear, accessible and credible means of review and appeal of decisions, appropriate to the circumstances and gravity of the decisions made, are fundamental to principles of natural justice and are essential components of participative processes that aim to be fully accountable.

POLICY GOALS

The Department is committed to improving its responses to the maltreatment of children and young people to ensure they work for them. The Policy Goals provide the direction for the continued development of an approach that achieves good outcomes for children and young people.

The Policy Goals are:

1. Maintain children and young people at the centre of concerns
2. Engage with and strengthen families and communities
3. Respond to diversity
4. Build a comprehensive and collaborative system of support, protection and care that encompasses prevention, early intervention and treatment
5. Strengthen the quality of Departmental responses through:
 - ⇒ ensuring openness, transparency and accountability
 - ⇒ building the competencies of workers
 - ⇒ evidence based continuous improvement.

1. Maintain children and young people at the centre of concerns

Ensuring that responses to individual cases of maltreatment are appropriate requires careful consideration of the best interests of the child or young person and the competing rights, duties and obligations of individuals, families and communities. A principal issue is ensuring that in all considerations taken by the Department, the needs of children and young people are placed at the centre of concerns.

The social and emotional relationships that have sustained children and young people may be weakened or lost following statutory interventions that secure their protection. The needs of children and young people include being personally recognised and acknowledged and being assured that competent adults are interested in and concerned for their wellbeing and continued development. Enabling the personnel of the Department and significant others to maintain relationships with these children and young people such that they know they are at the centre of adult concerns is a priority.

2. Engage with and strengthen families and communities

The best outcomes for the wellbeing and protection of most children and young people will be achieved within the context of their families and communities. Families, friends and the religious, cultural and geographic communities to which they belong are their resources. A principal issue is ensuring that the Department engages, mobilises and works in partnership with the networks of concern and support that surround children and young people.

Most families and communities have the capacity to nurture and protect their children and young people if enabled to do so. Ways of engaging and working with families that acknowledges and builds on their strengths will continue to be developed and supported in the interests of achieving the best outcomes for children and young people.

3. Respond to diversity

The Western Australian community is culturally, linguistically and geographically diverse. Making the Department's responses and services accessible and relevant to the needs of Aboriginal people and Torres Strait Islanders, and people from culturally and linguistically diverse backgrounds, is a priority. The actions that the Department takes to achieve protection for a child or young person will be respectful and appropriate to their culture and communities and have regard to the needs of children and young people to remain connected to them.

With particular regard to Aboriginal and Torres Strait Islander children, young people and families, the Department will endeavour to ensure appropriate family and community people and organisations are engaged, informed and participate in the planning for the wellbeing and safety of those who have been maltreated or for whom there are concerns.

4. Build a comprehensive and collaborative system of support, protection and care that encompasses prevention, early intervention and treatment

Co-operative and collaborative working relationships and the availability of prevention, early intervention and treatment services are fundamental to achieving best outcomes for all those involved when children or young people have been or are likely to be maltreated.

The Department will provide the leadership necessary for the building of the relationships and commitments. Key partners are health, mental health, alcohol and drug, disability, housing, family support and police agencies and services.

5. Strengthen the quality of Departmental responses through:

⇒ ensuring openness, transparency and accountability

Organisational and work practice protocols, guidelines and supervisory arrangements support efficient, effective and accountable services. These management systems will continue to be developed.

Feedback is essential for the continued development of the Department's systems. The development and maintenance of case grievance and review mechanisms, both internal and external to the Department, and strategies for receiving customer feedback will be progressed.

⇒ building the competencies of workers

The competency of its personnel is at the core of the Department's capacity to provide quality human services. These competencies include the ability to:

- ❖ engage and negotiate with customers
- ❖ maintain children at the centre of concern while working with responsible adults in relationships of trust
- ❖ accept responsibility and exercise authority.

The Department will promote a culture of competence and accountability, supported through feedback, supervision and training.

⇒ evidence based continuous improvement.

The credibility of the Department's approach is dependent upon information and research that demonstrates that it produces good outcomes for children, young people and families. The Department is committed to promoting a culture of research and evaluation to inform practice and innovation.

TERMS

Statutory Child Protection

Refers to those targeted assessments and responses to maltreatment in which the safety and wellbeing of the child or young person is the central focus. The statutory child protection response is initiated when there are reasonable grounds to believe that a child or young person has been or is likely to be significantly harmed through the actions, in-actions or inability of those people with parental responsibility for their protection and care.

Children and Young People

The Department's legislative responsibilities for statutory child protection apply to children and young people who are under 18 years of age.

Parental Responsibility

A person with parental responsibility means that they have all the duties, powers, responsibility and authority which by law parents have in relation to children.

Maltreatment

Maltreatment occurs when a child or young person has been subjected to physical, sexual, emotional, psychological abuse and/or neglect, the severity and/or persistence of which has resulted in, or is likely to result in, significant harm or injury to the child or young person.

The description of child maltreatment includes situations where a child or young person has been exposed or subjected to exploitative or inappropriate sexual acts.

Attachment

CONSIDERATIONS THAT INFORM THE POLICY

The Department for Community Development's legislative mandate expresses the Western Australian community's expectation that children and young people whose wellbeing and safety is in jeopardy from maltreatment are protected and their needs addressed. The Department has as an obligation to exercise its statutory authority responsibly and be respectful of parents, families and communities.

How best to promote the wellbeing of children and young people, prevent maltreatment and protect them when they have been harmed through maltreatment is the subject of ongoing research and community debate. Contemporary approaches emphasise the protection of children and young people within a framework of universal and targeted services that support every child to develop their full potential.

The Department's statutory child protection services are concerned for children and young people who have been or are likely to be harmed through maltreatment arising from the actions or in-actions or inability of those people who have a parental responsibility for them. Within this framework it is also concerned for vulnerable and unsupported mature minors and young people who may be at risk from their own behaviour. Children and young people are the centre of concern in all statutory child protection policy, service development and service provision and decisions are made in their best interests. Their views and wishes are important considerations in determining their best interests.

Families and communities have the responsibility for the rearing of children and the provision of support and guidance to young people. The capacity of communities, families and individuals to nurture children and young people and protect them from maltreatment is affected by complex and dynamic personal, social and economic factors.

The issues of gender, family structure, ethnicity and poverty have a significant bearing on the likelihood of a child being reported as a child at risk. Single female households with young children and Aboriginal families are significantly over represented in allegations of child maltreatment. These families are more likely to experience material poverty, homelessness, social isolation and to be living in communities with few resources and weak formal and informal networks of support. Most communities, families and individuals have the capacity to care well for their children and young people and protect them from maltreatment, if enabled to do so.

Evidence based policy and services provide the foundation for justifiable and effective services. In recent years research into brain development has informed on the importance of children having safe care and good nurture in their early years. It has provided evidence of the developmental harm that arises in the first years of life from severe neglect and from living in environments characterised by severe and chronic abuse, conflict and violence between care givers.

Family and domestic violence witnessed or experienced by children and young people is a contemporary issue in statutory child protection policy and services. Exposure to family and domestic violence can affect children's, particularly very young children's, short and long term wellbeing and in some situations be very harmful and require a statutory child protection response. However, the wellbeing of

most children experiencing family and domestic violence will be achieved through the positive promotion and strengthening of the capacity of capable and protective parents, care givers and other members in the community. Where appropriate, supporting and protecting one of the parents to leave the violent relationship can be a child protection strategy. This is a whole of government and whole of community issue.

Many children and young people who have been maltreated or whose wellbeing is in jeopardy do not come to the attention of authorities. Protecting children is a responsibility shared by communities, government and non-government agencies and individuals. All have a responsibility and role to respond to children and young people for whom there are concerns and to engage and work with communities, families and individuals to strengthen their capacity to provide for the wellbeing of their children. Where families are experiencing difficulties, early and inclusive service delivery is the most effective way to change parental behaviour and circumstances and reverse or avoid negative consequences for children.

Of those children and young people who are alleged to have been, or are likely to be significantly harmed through maltreatment most do not require a statutory child protection response. From 1999-00 to 2002-03 significant harm or risk of harm was identified in approximately half of all investigated allegations of child maltreatment. However, in the same time period applications for Care and Protection Orders to the Children's Court were only made in approximately 10% of all investigations.

A Western Australian study in 2000 examined the cases of 251 children who were the subjects of Care and Protection applications to the Children's Court. A feature of many of these cases was the complexity of the issues affecting parental capacity to provide safe care and the very young age of many of the children. Alcohol and substance abuse featured in 71% of the Care and Protection applications, domestic violence in 55% and psychiatric illness in 28%. The Department for Community Development had provided financial assistance to 80% of these families within the previous year. Approximately 21% were children under one year of age and 37% were between one and five years of age¹.

The complexity of factors indicates the need for partnerships between agencies to provide joined-up responses that protect children and young people and support families to address issues that reduce their capacity to care for them safely.

When a child or young person has suffered, or is likely to suffer, significant harm through maltreatment their immediate protection can be achieved through care arrangements that make them safe. However, the best outcomes for most children will be realised within the care of their families.

Managing the uncertainty and complexity inherent in its statutory child protection responsibilities is a priority for the Department.

¹ Prevalence of Substance Abuse in Care and Protection Applications: A Western Australian Study, Department for Community Development, July 2001.