

# **Memorandum of Understanding**

**relating to the exchange of information for the purposes of  
assessing the suitability of individuals to engage in child-  
related work under the *Working with Children Act 2005***

**between the**

**Working with Children Check Unit  
Department of Justice**

**and**

**Child Protection  
Placement and Family Services Branch  
Department of Human Services**

**THIS AGREEMENT is made on the 9<sup>TH</sup> day of DECEMBER 2011.**

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## 1 INTRODUCTION

This Memorandum of Understanding (MOU) describes the roles and statutory responsibilities of the Department of Justice (DOJ) through the Working with Children Check Unit (WWCCU) and the Department of Human Services (DHS),<sup>1</sup> through Child Protection (CP). The document describes how the two Department's will work together, in accordance with the relevant legislation, to facilitate the appropriate and timely information exchange for the purpose of the WWCCU assessing the suitability of individuals to engage in child-related work (CRW) under the *Working with Children Act 2005* (the WWC Act).

The organisational environments of CP and the WWCCU are set out in Schedule 1. Schedule 1 includes descriptions of the roles and responsibilities of each.

## 2 PURPOSE

The aims and objectives of this MOU are to:

- enhance the protection of children<sup>2</sup>
- promote a best practice approach
- describe how the WWCCU and CP will cooperate to work within the relevant legislation
- establish clear guidelines and procedures regarding requests for information from CP client files about an applicant for a Working with Children Check (WWCC)<sup>3</sup>
- establish clear guidelines and procedures for the management of communication, confidentiality and privacy responsibilities
- ensure clear lines of communication between the WWCCU and CP in the exchange of information for the purpose of assessing an application for a (WWCC).

## 3 REQUESTS FOR INFORMATION TO ASSESS SUITABILITY TO ENGAGE IN CHILD-RELATED WORK.

In order for the Secretary, DOJ, to carry out the Secretary's obligations under the WWC Act and for CP to provide information upon a request pursuant to section 11(1)(c) of this Act, CP, where possible, will provide in writing to the WWCCU the information requested pursuant to clause 3.1 of this MOU.

### 3.1 Request and Referral Process

When requesting information pursuant to section 11(1)(c) of the WWC Act, the WWCCU, as per the Secretary's delegation, will –

- a. email an information request<sup>4</sup> to [Queries.ChildProtection@dhs.vic.gov.au](mailto:Queries.ChildProtection@dhs.vic.gov.au), pursuant to clause 3.2 (c) of this MOU
- b. upon receipt of the request, CP will conduct a record search of the CP electronic database Client Relationship Information System (CRIS)
- c. the search of CRIS will be based on the information provided by the WWCCU in the WWCC applicant/card holder's consent to release of information<sup>5</sup>

<sup>1</sup> See Schedule 1, clause 1.3, for relevant DHS unit.

<sup>2</sup> See Schedule 2 for list of definitions of child abuse.

<sup>3</sup> See Schedules 3 and 4 for an overview and flowchart relating to the child protection process.

<sup>4</sup> See Schedule 5 for an example of the proforma request including the WWC Check applicant/card holder consent for DHS to release information.

<sup>5</sup> See Schedule 6 for an example of the WWC check applicant's consent to release of information.



- d. CP will advise the WWCCU in writing of the outcome of the record search, pursuant to clause 3.1 (e) of this MOU
- e. CP will provide the required information within 21 days, unless the WWCCU has been notified otherwise, pursuant to clause 3.1 (f) of this MOU
- f. only information relevant to the individual will be provided to the WWCCU. Information provided by CP will be deidentified to protect the identity of other parties subject to CP intervention
- g. should there be any queries or further information required in relation to the provision of information, a CP or WWCCU Officer may contact a nominated liaison officer, established in Schedule 7 to this MOU.

### **3.2 Searching and Access to Child Protection Information Records**

- a. Information collected and recorded by CP is subject to the relevant provisions of the *Children, Youth and Families Act 2005* (CYF Act), the *Information Privacy Act 2000* (IP Act), *Health Records Act 2001* (HR Act) and departmental guidelines. Most information collected and recorded in respect of CP is stored electronically on the database, CRIS. CP files are constructed and catalogued such that the child is identified as the primary client. Information gathered, including the details of family members and/or professionals, is categorised and stored electronically in the relevant child's file.
- b. The 'people' search function on the CP database is configured to search the data base in two categories, 'clients only' or 'clients and those who are known to clients either professionally or personally (significant other)'. Searches in either category can only be made using the parameters of name and/or address or combination of both.
- c. To assist the CP search process and to enable an increased capacity for matching to a CP file, WWCCU will provide the name, date of birth, current address and past address history (if known) of each individual<sup>6</sup>.

## **4 SCOPE OF MEMORANDUM OF UNDERSTANDING**

This MOU is not intended to be a legally binding agreement, rather a statement of common principles, operational expectations and explanations of the processes. This MOU cannot be enforced and has no standing before any court.

## **5 TERM OF MEMORANDUM OF UNDERSTANDING**

This MOU will commence on the date it is signed by both parties, and continue, subject to a review, until dissolved by the agreement of the parties or by termination in accordance with clause 10.

This MOU will be reviewed after 12 months of operation, including a focus on the relevance, nature and extent of requests for information transfer.

## **6 CONFIDENTIALITY AND PRIVACY**

When using or disclosing information relating to a child protection matter, CP must comply with the provisions of the CYF Act<sup>7</sup>, IP Act, HR Act and the Child Protection Practice Advice (Manual and Practice Instructions), as they relate to privacy issues<sup>8</sup>.

<sup>6</sup> 'Individual' includes both WWC Check applicants and WWC Check cardholders.

<sup>7</sup> See Schedule 8.

<sup>8</sup> To any extent that the HRA or IPA is inconsistent with the CYF Act, the CYF Act prevails to the extent of the inconsistency.

However, CP may respond to an enquiry or request for advice or information from the Secretary of DOJ under section 11(1)<sup>9</sup> of the WWC Act without contravening any duty of confidentiality imposed by any Act or agreement, pursuant to section 11(3) of the WWC Act.

Both parties acknowledge the sensitive and confidential nature of the information which may be shared, and agree to the following:

In the release and transfer of information between the parties, the parties must:

- a. ensure the information is used solely for the purpose of assessing the suitability of the WWC Check applicant or cardholder
- b. ensure that recipients of the information must not divulge or communicate to any person, any confidential information insofar as may be reasonably necessary for the purpose as stated in clause 6.1(a)
- c. ensure all responsible precautions are taken including, but not limited to, physical security, as may be reasonably necessary to maintain confidentiality
- d. ensure the other party is immediately notified of any suspected or actual unauthorised use, copying or disclosure of the information supplied.

## **7 CONFLICT OF INTEREST**

The parties to this MOU will ensure that they (and their departmental officers) comply with the proper standards of probity and do not improperly or unfairly obtain any financial or other advantage from their position or information at their disposal and do not misuse any such information.

## **8 DISPUTE RESOLUTION**

In the event of any dispute arising between the parties in relation to this MOU, the parties must ensure that:

- a. differences of opinion are addressed as soon as practicable after they arise
- b. differences of opinion pertaining to the transfer of information or in respect of this MOU will in the first instance be negotiated and resolved within the shortest time practicable by contact between senior officers within CP and the WWCCU
- c. if the dispute is not resolved under clause 8(b), the parties will attempt to resolve the dispute within the shortest time practicable by contact between the Director, WWCCU and the Director, Child Protection, Placement and Family Services.

The safety and wellbeing of children is to be considered paramount.

## **9 AMENDMENT OR VARIATION OF THIS MEMORANDUM OF UNDERSTANDING**

From time to time, circumstances or policy adjustments may result in required amendments or variations to this MOU. Should amendments or variations be required:

- a. any amendment or variation to the terms of this MOU must be in writing and agreed to by the parties
- b. variations to this MOU must be approved by the parties and will be attached to this MOU.

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<sup>9</sup> Schedule 9 – relevant sections of the *Working with Children Act 2005*



## 10 TERMINATION OF MEMORANDUM OF UNDERSTANDING

Either party may terminate this agreement by giving three months written notice of the termination to the other Party –

- a. to the effect that the terminating Party wishes to terminate the MOU
- b. providing reasons for the termination
- c. nominating a date of termination at least three months after the date of that notice (that is, the terminating Party must give the other Party at least three months notice of the termination).

### Signed by the parties:

SIGNED for and on behalf of


**Department of Human Services** by

Elizabeth Armitage

A/Director Child Protection

Placement and Family Services Branch

Date: .....

  
29 November 2011

SIGNED for and on behalf of


**Department of Justice** by

PER Mick Boyle

A/Director

Working with Children Check Unit

Date: .....

  
9.12.11

## **SCHEDULE 1. BACKGROUND AND COLLATERAL INFORMATION**

### **1. Department of Human Services**

The Department of Human Services provides, funds and regulates a range of services to people throughout Victoria including disability services, housing and community building, children, youth and families (including child protection) and emergency management. Three metropolitan and five rural regions deliver the direct services as well as funding and regulating services provided by agencies within the department's portfolio. It is the largest Victorian government department, directly employing over 11,000 staff.

#### **1.2 Children Youth and Families Division**

The Children Youth and Families Division works to improve the outcomes for all Victorian children 0-18 years, through research, policy development and outcomes monitoring, coordinating the effort of all Victorian departments and collaborating with local and national governments.

Children, Youth and Families focuses on the health, safety, development and wellbeing of children, young people and families in Victoria. The division plays a key role in the planning and provision of services to Victorian children and their families. Services include child protection, youth justice, youth services, and child and family support

#### **1.3 Child Protection, Placement and Family Services Branch**

The Child Protection, Placement & Family Services Branch provides directions and priorities in service delivery across the state for statutory child protection services, family support and parenting services, adoption and placement care services, and specialist support services to ensure the safety and wellbeing of adolescents and children at risk of harm, abuse and neglect. The Branch undertakes this role in partnership with eight regions, community service organisations and other key stakeholders.

#### **1.4 Child Protection, Quality & Compliance Unit**

The Quality and Compliance Unit has a lead role in promoting and developing the Child Protection program quality and monitoring compliance with current policies and standards. The Unit's purpose is to inform, review and update the Child Protection Program's continuous improvement approach to quality and compliance.

The Unit has specific responsibility for management, analysis and resolution of adverse events that have broader programmatic implications including complex complaints, child death inquiries, coronial inquests, and critical incidents. The Unit also has responsibility for responding to authorised information requests from other state and territory jurisdictions, from the Department of Justice, processing Subpoenas and supporting the Freedom of Information function.

### **2. Department of Justice**

The Department of Justice encompasses police, courts, prisons, emergency services, regulation of gaming, racing, liquor licensing and trade measurement, and victims' services. The department is comprised of over 5,000 staff, across more than 50 business units, within eight divisions, all of which work together with the combined aim of providing better protection for the Victorian community.

On 1 July 2009, DOJ introduced a regional service delivery model, aimed at improving access to Justice services throughout Victoria. As part of this structure, Justice Service Centres have been established across the eight regions, offering a range of targeted, local services. The WWC Check Unit is based in the Eastern region.



## **2.1 Working with Children Check Unit**

The WWC Check Unit, established in 2005, introduced a new checking system to help protect children under 18 years of age from physical or sexual harm. It creates a minimum checking standard across Victoria, helping to keep children safe by preventing those who pose a risk to the safety of children from working with them, in either paid or voluntary work. Those who engage in child-related work, as defined by the *Working with Children Act 2005* (the WWC Act) are required to apply for a WWC Check, whereby a check of their criminal history, a review of findings by specified professional disciplinary bodies is conducted to ascertain their suitability to work with children. As part of this checking process, the Secretary to DOJ may seek information from DHS relating to an applicant's history within the context of the child protection sphere.

## **3. ORGANISATIONAL VALUES**

### **3.1 Department of Human Services**

The DHS Values outline what the department stands for, the way we expect to treat each other and the way we conduct our business. The Values provide a framework within which DHS staff should make decisions and take actions in their roles and guides individual and organisational behaviours across the department.

The DHS Values are:

- **Client focus** – we work towards improving the health and wellbeing of our clients and community
- **Professional integrity** – we act impartially, treating all people with dignity and respect
- **Quality** – we always strive to do our best and improve the things we do
- **Collaborative relationships** – we work together to achieve better results
- **Responsibility** – we commit to the actions we take to achieve the best possible outcomes for our clients and community.

### **4. Department of Justice**

The common purpose of DOJ is to assist the Government achieve its vision of a safe and just Victoria. Staff from across the department have worked together to develop a set of corporate values which capture the essence of what the department is and what it aspires to be.

The department's 'One Justice' Values are:

- **Serve the Community**
- **Work Together**
- **Act with Integrity**
- **Respect** other people
- **Make it Happen**

## **5 CHILD PROTECTION**

### **5.1 Description of Child Protection Service System**

The protection of children from harm is a whole-of-community responsibility that is shared between the family, the general community, community agencies, professionals working with children and their families, police and government. Each has a significant role to play in ensuring the safety, stability and development of children and in helping to prevent harm from occurring.

The Child Protection service system formally includes both secondary and tertiary services within the commonly recognised three-tier child welfare service system model. The Child Protection Program comprises the tertiary end of the service system, with community-based child and family services, as detailed in the *Children, Youth and Families Act 2005* (CYF Act) and other funded



services located in the secondary service system. Victoria Police are also an integral part of the formal Child Protection system.

DHS has the statutory responsibility, according to the provisions of the CYF Act, to provide Child Protection services for all children in Victoria under the age of 17 years or, if a protection order is in place, all children in Victoria under the age of 18 years. Child Protection is based on the principle that the best protection for children is usually within the family; however, in any circumstance, the paramount consideration is the child's safety and well being.

## **5.2 The Role And Mandate of the *Children, Youth and Families Act 2005***

The CYF Act establishes a common legal framework for Child Protection, family and placement services and creates a shared mandate for these services and the children's court to act in the best interests of the child<sup>10</sup>. Any decision or action must be taken after consideration of the need to protect the child from harm, protect their rights and promote their development.

## **5.3 The Role and Responsibilities of Child Protection**

Whilst the CYF Act establishes a shared mandate amongst Child Protection, placement and family services – and the 'every child every chance' strategy promotes a broad whole of community responsibility for protecting children – Child Protection retains distinct legislative responsibilities.

These responsibilities include:

- promoting the prevention of child abuse and neglect;
- assisting children who have suffered abuse and neglect;
- supporting families to prevent further abuse and neglect occurring;
- leading the on-going development of an integrated child and family service system; and,
- working with other government agencies and communities services to ensure that children in out of home care receive appropriate education, health and social opportunities.

Within the legislative framework of the CYF Act, Child Protection works to ensure that children are protected from significant harm when their parent or caregiver is unable or unwilling to provide that protection. Child Protection provides services to children and their families in order to protect children from significant harm resulting from abuse and neglect<sup>11</sup> within their families. A broad range of services are provided or funded by DHS, and these aim to strengthen families so that children and young people can develop within a safe physical and emotional environment. Services are based on the principle that, normally, the best protection for children is within the family. Where a child or young person is assessed as being 'at risk' within the family, Child Protection will – in the first instance and in accordance with the law – take every reasonable step to enable the child to remain in the care of their family by strengthening the family's capacity to protect them.

Where, even with support, a child is not safe within the family, Child Protection will intervene<sup>12</sup> to remove the child and bring the matter before the Children's Court. Until the parents are able to resume their custodial responsibilities, adequate care and protection will be provided as determined by the Children's Court<sup>13</sup>. Where the resumption of care by the parents is not possible, Child Protection will work towards an alternative permanent family care arrangement, or an independent living arrangement, depending on the age and circumstances of the child.

## **6. WORKING WITH CHILDREN CHECK**

### **6.1 Description of the WWC Check**

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<sup>10</sup> This mandate requires all three services to adopt an approach to practice, which is child-centred and family-sensitive.

<sup>11</sup> see Schedule 2 for Child Protection definitions of abuse and neglect

<sup>12</sup> A brief overview of the possible stages of intervention following the receipt of a report is described in Schedule 4.

<sup>13</sup> see Schedule 3 for description of applicable Court Orders



The WWC Check scheme is established by the WWC Act and contributes to the safety of Victoria's children when they are being cared for, or participating in a range of activities, by seeking to prevent those who pose a risk to the safety of children from working with them, in either paid or volunteer work,

Applicant's records are checked for any criminal offences that are specified in the WWC Act. They are also checked for findings by specified professional disciplinary bodies, the Victorian Institute of Teaching and the out of home carers Suitability Panel, and relevant determinations under the *Health Professions Registration Act 2005* by the Victoria Civil and Administrative Tribunal (VCAT). Criminal offences that are not specified in the WWC Act can also be considered if exceptional circumstances exist and there is a significant link between the offence and a risk to the safety of children.

The WWC Check differs from other criminal history record checks in that a system of ongoing checking occurs, whereby an applicant's Victorian criminal history is checked on a weekly basis. The WWC Check is valid for 5 years, and cardholders do not need to apply for a new WWC Check when they change employer or volunteer organisation, unless they are moving from volunteer to paid work.

## **6.2 The Purpose of the *Working with Children Act 2005***

The WWC Act establishes the WWC Check scheme and sets out the requirements and responsibilities of those people in the community who engage in paid or volunteer child-related work as defined by the Act. The chief and fundamental purpose of the Act is to assist in protecting children from sexual or physical harm by ensuring the people who work with, or care for, them have their suitability to do so checked by a government body.

The WWC Act is divided into 6 parts, of which parts 2, 3 and 4 establish the WWC Check, list the exemptions to the WWC Check and prescribe the relevant offences if sections of the WWC Act are breached.

## **6.3 The Role and Responsibilities of the Working with Children Check Unit**

The WWC Check Unit was established in 2005 to administer the WWC Act. The WWC Check Unit determines whether individuals are suitable to work or volunteer in child-related work by assessing and monitoring, on an ongoing basis, their relevant criminal history and professional disciplinary findings in a fair and consistent manner and with respect for the individual's privacy. An important function of the WWC Check Unit is to inform and educate the community as to their rights, responsibilities and obligations under the WWC Act.



## **SCHEDULE 2. DEFINITIONS OF CHILD ABUSE**

Child abuse is any action, or lack of action, that significantly harms the child's physical, psychological or emotional health and development. Although the abuse types are described separately below, in reality many of the following forms of harm occur concurrently. By definition child abuse is not an accident, but neither is it always the intention of the person to inflict harm or injury.

Child abuse '...may be constituted by a single act, omission or circumstance, or accumulated through a series of continuing acts, omissions or circumstances...' (CYF Act, s162(2)).

### **Definitions of child abuse**

The following definitions are not all-inclusive and are meant as a guide to inform practice.

#### **Physical abuse**

Physical abuse consists of any non-accidental form of injury or serious physical harm inflicted on a child by any person. Physical abuse does not mean reasonable discipline, though it may result from excessive or inappropriate discipline. Physical abuse can include beating, shaking, burning and assault with weapons.

Physical injury and significant harm to a child may also result from neglect by a parent or caregiver. The failure of a parent or caregiver to adequately ensure the safety of a child may expose the child to extremely dangerous or life-threatening situations, which result in physical injury and significant harm to the child. Exposure to extremely dangerous situations can exist where domestic violence is present. Physical abuse also includes fabricated illness syndrome (previously known as Munchausen's syndrome by proxy) and female genital mutilation (FGM). FGM comprises all procedures that involve partial or total removal of the female external genitalia and/or injury to the female organs for cultural or any non-therapeutic reasons.

#### **Sexual abuse**

A child is sexually abused when any person uses their authority or power over the child to engage in sexual activity. Child sexual abuse involves a wide range of sexual activity and may include fondling genitals, masturbation, oral sex, vaginal or anal penetration by finger, penis or any other object, voyeurism and exhibitionism. It can also include exploitation through pornography or prostitution.

Failure to protect a child from sexual abuse may occur from a parent's lack of sufficient capacity to protect the child from such abuse.

#### **Emotional abuse**

Emotional abuse occurs when a child is repeatedly rejected, isolated or frightened by threats or the witnessing of family violence. It also includes hostility, derogatory name calling and put-downs, or persistent coldness from a person, to the extent where the behaviour of the child is disturbed or their emotional development is at serious risk of being impaired.

## **Neglect**

Neglect includes a failure to provide the child with an adequate standard of nutrition, medical care, clothing, shelter or supervision to the extent where the health or development of the child is significantly impaired or placed at serious risk. A child is neglected if they are left uncared for over long periods of time or abandoned.

### **Serious neglect**

Serious neglect includes situations where a parent has consistently failed to meet the child's basic needs for food, shelter, hygiene or adequate supervision to the extent that the consequences for the child are severe. For example, where:

- the child's home environment is filthy or hazardous in the extreme and poses a threat to the child's immediate safety or development and is characterised by the presence of animal or human faeces or urine, decomposing food, syringes or other dangerous drug paraphernalia
- the child is provided with consistently insufficient or inadequate food or nourishment for the child's healthy development
- the child has a serious medical condition for which the parent has consistently failed to obtain treatment or dispense prescribed medication
- the parent consistently leaves the child unattended, exposed to or in the care of strangers who may harm the child.

### **Medical neglect**

Neglect of medical care refers to a situation where a parent's refusal of, or failure to seek, treatment or agree to a certain medical procedure leads to an unacceptable deprivation of the child's basic rights to life or health.



### **SCHEDULE 3. OVERVIEW OF THE CHILD PROTECTION PROCESS**

Child Protection services are based on the legal framework set out in the CYF Act. Child Protection intervention is child centred and family focussed, and is limited to only that action necessary to secure the safety and wellbeing of the child.

The main principle underpinning the CYF Act is that the best interests of the child must always be the paramount consideration. In determining whether any decision or action is in the best interests of the child, the need to protect the child from harm, to protect the child's rights and to promote the child's development must always be considered.

#### **Analysis and assessment**

Analysis and assessment, along with case planning, is a core process within all Child Protection interventions. This is the process through which a determination is made that a particular child, once reported to Child Protection, is a child 'in need of protection' as articulated in s162 of the CYF Act, or other intervention to ensure their wellbeing.

Child Protection practitioners use a professional judgement model, the Best Interests Case Practice Model, which involves the gathering of information, analysis and planning, action and review. Consideration is given to the vulnerability of the child, the likelihood of future harm if nothing changes and what is needed to ensure the safety, stability and healthy development of the child. Assessment of cumulative harm is critical to the overall analysis and planning in relation to the child's safety, stability and development.

#### **Best Interests planning process**

Decision making is defined in the CYF Act as the '...the process of decision making by the Secretary concerning a child, beginning when the Secretary receives a report under section 28, 33(2), 183, 184 or 185...' This happens through best interests planning which is underpinned by a set of principles articulated in sections 10–14 of the CYF Act, stating that any decision or action must be made with the best interests of the child being the paramount consideration. Analysis leading to assessment informs the best interests planning process throughout the life of a Child

#### **Stages of child protection intervention**

The five phases of the statutory child protection process are intake, investigation, protective intervention, protection order and case closure.

##### **1. Intake phase**

The function of Child Protection Intake is to receive reports and other statutory requests under the CYF Act and to make a determination, using the Best Interests Case Practice Model, to determine what action is required.

In general, Child Protection Intake receives reports related to a concern that '... a child is in need of protection ...' These are reports under ss183 and 184 (mandatory reporting) of the CYF Act. Child Protection may also receive a report under s28 and s29 of the CYF Act relating to a significant concern for the wellbeing of a child.

When a report is received, Child Protection makes an initial assessment as to the type of report (whether it is a wellbeing report under s28 or s29 of the CYF Act or a protective intervention report



under s183 or s184 CYF Act). For a report to be assessed as a protective intervention report, Child Protection must establish whether the child or young person's described circumstances may fall within the legal definition of 'a child in need of protection'. This process requires a detailed examination of the information and a realistic appraisal of the potential consequences of intervention and non-intervention.

Child Protection Intake's primary responsibility is to assess the risks to the child or young person and the level of urgency. During this process, Child Protection may contact other professionals, as 'information holders' under the CYF Act, to gain information to assist with the assessment process. Information holders are authorised to provide information in such circumstances..

## **2. Investigation and assessment phase**

In 'relation to the investigation of abuse and neglect, the CYF Act directs that:

A protective intervener must as soon as practicable after receiving a protective intervention report, investigate ...the subject matter of the report in a way that will be in the best interests of the child (CYF Act s205(1))

The decision as to whether protective investigation is required is dependent on the intake assessment – that is, do a child's prescribed circumstances mean that a child is in need of protection (as defined in s162 of the CYF Act) and that child protection concerns cannot be adequately determined or addressed without direct Child Protection involvement?

The purpose of a protective investigation is to assess the child's safety, ascertain the validity of the allegations, assess the child's needs and make a decision as to the appropriate course of action to promote the child's safety, stability and development. Where a Protective Intervention Report relates to concerns that a child has been physically or sexually abused, a joint investigation involving Child Protection and Victoria Police is indicated.

### **Temporary Assessment Order**

Child Protection may make an application for a Temporary Assessment Order (TAO), where (during the course of an investigation into a Child Protection report) Child Protection hold: ...a reasonable suspicion that a child is, or is likely to be, in need of protection; and, is of the opinion that further investigation and assessment of the (child's situation) is warranted; and, is of the opinion that the investigation and assessment cannot properly proceed unless a temporary assessment order is made... (CYF Act s228 & s229)

A Temporary Assessment Order will allow Child Protection to investigate reports more thoroughly, where a child's parents are unwilling to cooperate. An application for a TAO can only be made to the Children's Court and may be made by notice under CYF Act s228 for a period not exceeding 21 days or, without notice under CYF Act s229, for a period not exceeding 10 days.

An application for a TAO without notice can be made if Child Protection is satisfied that the giving of the notice is inappropriate, as would be the case when there is evidence that the family or child may abscond if notice were given or where there is information that evidence could be lost if the child is not immediately assessed.

### **Substantiation**

At the completion of the investigation process, the Child Protection practitioner – in consultation with their supervisor – must make a determination as to whether or not the subject child is 'a child in need of protection' as defined in s162 of the CYF Act. The substantiation decision is a best interests planning decision made on the basis of an assessment process that gathers case



information and facts, analyses this information and ultimately makes a professional judgement about the risk to the child. The substantiation decision links the reasons for report and investigation with the further decisions about how to ensure safety, stability and development of the child and address the impact of harm to the child. In considering the substantiation decision, there are four basic outcomes that may be applied.

### **No significant concern**

This outcome is applicable to a case that is not substantiated and where it is assessed that:

- the child has not experienced significant harm as defined in the CYF Act
- the child is not in need of protection.

### **Significant concern for wellbeing**

This outcome is also applicable to a case that is not substantiated, but where it is assessed that:

- the child is not in need of protection, as defined in the CYF Act
- however, there are significant concerns for the wellbeing of the child.

This type of outcome would result in a referral to Child FIRST.

### **No further risk of significant harm**

This outcome is applicable to a substantiated case where it is assessed that:

- harm has been experienced by the child that meets the threshold of harm as defined in the CYF Act
- there is a parent now willing, and with the capacity, to protect the child.

### **Significant risk of harm – child in need of protection**

This outcome is also applicable to a substantiated case, but where it is assessed that:

- harm has been experienced by the child that meets the threshold of significant harm as defined in the CYF Act
- there is an unacceptable risk of harm
- the child does not have a parent (or other suitable person) able and willing to protect them

OR

- no actual harm has occurred
- however, there is an unacceptable likelihood of harm
- the child does not have a parent (or other suitable person) able and willing to protect them.

This type of outcome would result in Child Protection issuing a Protection Application in order to ensure the safety and wellbeing of the child.

## **3. Protective intervention and assessment phase**

Child Protection is responsible for the provision of ongoing intervention where an allegation of child abuse or neglect is substantiated. The protective intervention phase therefore follows a child protection investigation.

The protective intervention and assessment phase has two distinct functions:

1. Where Child Protection has substantiated past harm (or current risk of harm) and issued a protection application, Child Protection will work with the family in the protective intervention phase until the court makes a protection order
2. Where child protection has substantiated past harm (or current risk of harm), but has not yet assessed future risk, Child Protection will work with the family in the protective intervention phase to:

- assess the likelihood of future harm and determine whether court action is required
- work with the family, where the family is willing to co-operate and it is assessed that there is a reasonable prospect of resolving protective concerns in a reasonable period of time. A court order is not required to support this intervention.

### **Court action**

If, during Child Protection intervention, it is assessed that there is an unacceptable level of risk to a child, Child Protection may issue a Protection Application in order to ensure the child's safety. A Protection Application may be issued:

- by notice
- by immediately taking the child into safe custody, with or without a warrant.

### **4. Protection order phase**

The protection order phase commences when the court has found the protection application (PA) proven and a protection order has been made in respect of a child. This means that the child has been found to be in need of protection in accordance with the provisions of the CYFA and that statutory departmental involvement is required to ensure the child's safety and ongoing wellbeing.

The CYF Act stipulates a number of restrictions on the making of a protection order. These include:

- s276(1)(b): 'The court ...is satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary in the best interests of the child.'
- s276(2)(b): "The court is satisfied ...that ...all reasonable steps have been taken by the Secretary to provide the services necessary to enable the child to remain in the custody of his or her parent.'

It is only when the conditions in s276 in the CYF Act are satisfied that a protection order through the Children's Court is made. Such intervention is an option of last resort. If the Children's Court is satisfied that the child is in need of protection, it may make one of the following orders:

- Interim Accommodation Order
- Undertaking
- Interim Protection Order
- Supervision Order
- Custody to Third Party Order
- Supervised Custody Order
- Custody to Secretary Order
- Guardianship to Secretary Order
- Long-term Guardianship to Secretary Order (in certain circumstances).

On all orders, except Guardianship, parents retain guardianship responsibility.

The type of order made will be related to the severity of the child protection concerns and whether there is a need for ongoing statutory intervention to protect the child.

In addition to protection orders, the Children's Court may also issue on application a:

- Temporary Assessment Order, under s231, CYF Act
- Permanent Care Order, under s321, CYF Act
- Intervention Order, under the *Crimes (Family Violence) Act 1987*
- Therapeutic Treatment Order, under s249, CYF Act
- Therapeutic Treatment (Placement) Order, under s253, CYF Act.

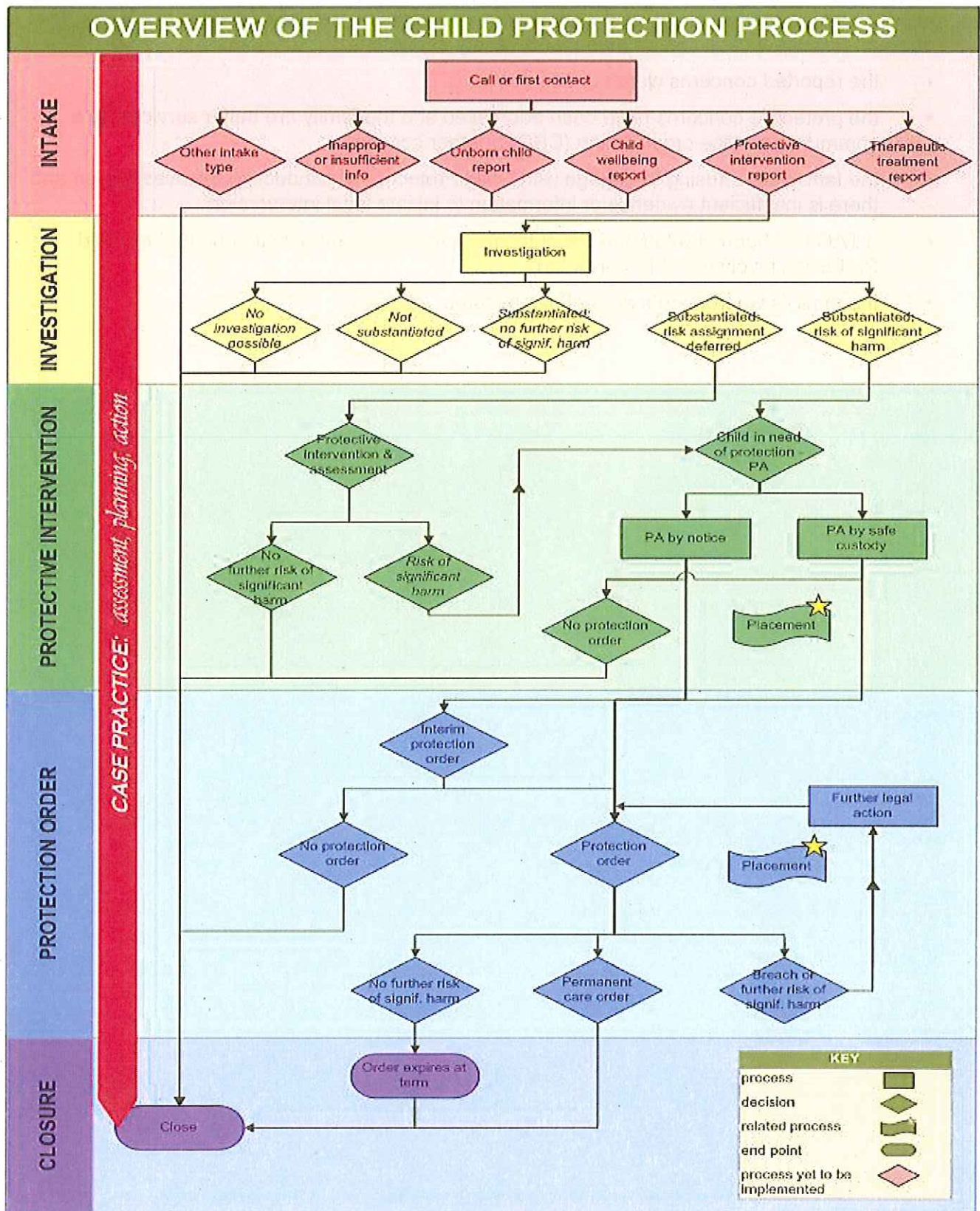


## **5. Case closure phase**

Case closure is the last phase of Child Protection involvement with a child and family and is an active phase in itself involving casework actions and tasks as well as administrative tasks. The decision to close a case can be made for a variety of reasons:

- the reported concerns were not substantiated
- the protective concerns have been addressed and the family are better serviced by a community service organisation (CSO) or other service
- the family are refusing to engage with Child Protection in conducting an investigation and there is insufficient evidence or information to initiate legal intervention
- a TAO has been granted and the outcome of the assessment is that no further Child Protection involvement is warranted
- the family's whereabouts are or have become unknown

**SCHEDULE 4. FLOWCHART OF CHILD PROTECTION PROCESS**





**SCHEDULE 5. LETTER OF REQUEST FOR INFORMATION IN RELATION TO THE ASSESMENT/RE-ASSESSMENT OF AN APPLICANT/CARD HOLDER FOR A WORKING WITH CHILDREN CHECK (CONSENT OBTAINED FOLLOWING LODGEMENT OF APPLICATION).**

Mr David Soanes  
Manager, Child Protection Operations  
Department of Human Services  
50 Lonsdale St  
MELBOURNE VIC 3000

**PRIVATE AND CONFIDENTIAL**

Dear Mr Soanes

**RE: REQUEST FOR INFORMATION IN RELATION TO THE ASSESMENT/RE-ASSESSMENT OF A WORKING WITH CHILDREN CHECK APPLICANT/CARD HOLDER**

I write in relation to **Title First Middle SURNAME** (the applicant) (**DOB: XX Month Year**) who submitted an application for a Working with Children Check (WWC Check) (Application Number **XXXXXXXX**) card holder (Assessment Notice No **XXXX** ) to the Department of Justice on **XX Month 20XX**.

The applicant/card holder is also known under the following alias names **[insert alias names]** and resided at **[insert address]** at the time of contact with DHS.

The purpose of this letter is to request certain information from you to assist the Secretary to the Department of Justice (the Secretary) to make a decision about the assessment of the applicant's WWC Check application/ card holders suitability to engage in child-related work.

Attached is a document provided by the applicant/card holder (dated **XX Month 20XX**) consenting to the release of information relating to any child protection matters, with which **s/he** is/was involved, from the Department of Human Services (DHS) and the provision of any such information to the WWC Check Unit.

Section 11(1)(c) of the *Working with Children Act 2005* (the Act) enables the Secretary to make enquiries, seek advice or seek information from any person or source she thinks fit in order to assist in determining the suitability of an applicant/card holder to engage in child-related work.

Section 11(3) of the Act provides that by responding to this request for information from the Secretary, you do not contravene any duty of confidentiality imposed on you by or under any Act or agreement.

I would be grateful if you could provide me with the following information about the applicant:

- a) How many reports were made involving the applicant that proceeded to investigation;
- b) Was the report/s regarding the applicant being the alleged perpetrator of the abuse;
- c) What were the circumstances of the reports;

- d) What were the abuse types on the reports;
- e) How many of these reports were substantiated and at what risk level;
- f) How many of these reports were not substantiated;
- g) Was/were the child/ren removed from the applicant's care or because of the applicant;
- h) Were there any Protection Applications issued in relation to the applicant's involvement with Child Protection;
- i) What court orders, if any, were issued and what were the conditions on these orders;
- j) Can you provide any details of any treatment/programs or counselling that the applicant may have had or was ordered to complete; and whether such treatment (if any) was satisfactorily completed;
- k) Did the applicant cooperate with Child Protection;
- l) Were the concerns addressed satisfactorily;
- m) Any other information that you believe may assist in the assessment of the applicant's suitability to engage in child-related work.

Please send this information (via email) to the Working with Children Check Unit as soon as possible. This information will be used only for the purpose of assisting with the determination of the applicant's/card holders suitability to engage in child-related work.

Please note that, under the *Freedom of Information Act 1982*, the applicant is entitled to seek access to any information you may provide to the Department of Justice in response to this letter. Furthermore, I am obliged under certain circumstances to provide the applicant with a statement of the information about her/him of which the Secretary is aware.

Your attention is drawn to the attached copy of section 40 of the Act, which makes it an offence for a person to give any other person any information acquired by the person from the carrying out of a WWC Check.

It would be most appreciated if you could give this request for information your urgent attention as the Department of Justice is keen to resolve the assessment of the applicant's/card holders WWC Check application/suitability to engage in child-related work as soon as possible.

If you have any questions in relation to this request for information, please contact me on (03) 8803 8585.

Yours sincerely

**TINA MCGURK**

Manager, Review & Assessment  
Working with Children Check Unit  
Department of Justice



**SCHEDULE 6. WORKING WITH CHILDREN CHECK APPLICANT'S/CARD HOLDER'S  
CONSENT TO RELEASE OF INFORMATION**

**PRIVATE AND CONFIDENTIAL  
CONSENT TO THE RELEASE OF INFORMATION**

Date: \_\_\_\_\_

TO WHOM IT MAY CONCERN

I (Name)

\_\_\_\_\_

of (Address)

\_\_\_\_\_

Date of Birth

\_\_\_\_\_

Working with Children Check Application/Assessment Number <<AppNo>>

Residential address at the time of contact with DHS

\_\_\_\_\_

confirm that I give the Victorian Department of Human Services permission to release any information that it may have about me regarding child protection issues to the Victorian Department of Justice, for the purpose of determining my Working with Children Check application/suitability to engage in child-related work.

If you have any further enquires please do not hesitate to contact me on telephone number

\_\_\_\_\_.

Yours sincerely,

SIGNATURE \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

**SCHEDULE 7. NOMINATED REPRESENTATIVE/S (LIAISON OFFICER/S)**

The addresses for the nominated representatives are as follows –

**Department of Human Services**

**Name:** Richard Bull

**Position:** Senior Program Advisor, Quality and Compliance Unit

**Telephone:** 03 9096-7019

**Fax:** 03 9096-1290

**Email:** richard.bull@dhs.vic.gov.au

**Address:** Level 9, 50 Lonsdale St. Melbourne 3000

**Department of Justice**

**Name:** Tina McGurk

**Position:** Manager, Review & Assessment

**Telephone:** 8803 8585

**Fax:**

**Email:** tina.mcgurk@justice.vic.gov.au

**Address:** 703 Station Street, Box Hill 3128



## **SCHEDULE 8. RELEVANT SECTIONS OF THE CHILDREN YOUTH AND FAMILIES ACT 2005**

The CYF Act clearly prescribes the elements which constitute a child 'in need of protection', an operational understanding of the actions or omissions (failure to act) which constitute the four abuse types is essential for effective practice.

The legal requirements in defining a child in need of protection in alleged cases of abuse or neglect are:

- the child must have suffered or be likely to suffer harm
- the harm must be significant
- the child's parents must not have protected the child, or are unlikely to protect the child, from harm of that type.

### **Legal definition**

Under s. 162(1) of the CYF Act, a child is considered to be in need of protection if any of the following grounds exist:

- a) The child has been abandoned by their parent(s) and after reasonable inquiries: the parent(s) cannot be found; and no other suitable person can be found who is willing and able to care for the child.
- b) The child's parent(s) are dead or incapacitated and there is no other suitable person willing and able to care for the child.
- c) The child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parent(s) have not protected, or are unlikely to protect, the child from harm of that type.
- d) The child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parent(s) have not protected, or are unlikely to protect, the child from harm of that type.
- e) The child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parent(s) have not protected, or are unlikely to protect, the child from harm of that type.
- f) The child's physical development or health has been, or is likely to be significantly harmed and the child's parent(s) have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or, allow the provision of, basic care or effective medical, surgical or other remedial care.

In relation to grounds c) to f), above, the harm may be constituted by a single act, omission (failure to act) or circumstance or accumulate through a series of acts, omissions or circumstances (cumulative harm) (s. 162(2)). It does not matter whether the conduct constituting any of the above grounds, occurred partly or wholly outside Victoria (s.163).

**SCHEDULE 9. RELEVANT SECTIONS OF THE WORKING WITH CHILDREN ACT 2005**

**Section 11(1)(c)** of the WWC Act enables the Secretary to make any other enquiries to, or seek information on the application from, any person or source that the Secretary thinks fit, including the Director of Public Prosecutions and any employee within the meaning of the *Public Administration Act 2004*. This provision permits the Secretary (or delegate) to make enquires of DHS in respect of an applicant..

**Section 11(3)** of the WWC Act provides that, in responding to an enquiry or request for advice or information from the Secretary under s.11(1)(c) does not contravene any duty of confidentiality imposed on the person by or under any Act (including the *Judicial Proceedings Reports Act 1958*) or agreement, despite anything to the contrary in that Act or agreement. This provision permits the disclosure by DHS to the Secretary of information relating to an applicant.

Under the *Freedom of Information Act 1982*, the applicant is entitled to seek access to any information DHS may provide to DOJ in response to the letter provided at Schedule 6.

Furthermore, there is an obligation under certain circumstances to provide the applicant with a statement of the information about her/him of which the Secretary is aware.

**Section 40** of the WWC Act provides for the confidentiality of information and reads as follows:

- (1) A person must not give to any other person, whether directly or indirectly, any information acquired by the person –
- (a) from, or in the carrying out of, a working with children check; or
  - (b) under section 18, 20(1), 22, 23(5), 30(2) or 31(2).

Penalty: Level 9 fine (60 penalty units maximum).

- (2) subsection (1) does not apply to the giving of information –
- (a) in good faith –
    - (i) for the purposes of this Act; or
    - (ii) for the purposes of a reference check being carried out on an applicant for work that is child-related work; or
    - (iii) for the purposes of making employment-related decisions in respect of child-related work; or
  - (b) with the written authority of the person to whom the information relates, or, if the person to whom the information relates is a child or a person with impaired mental functioning within the meaning of Subdivision (8D) of Division 1 of Part 1 of the Crimes Act 1958, with the written authority of a person authorised to act on that person's behalf; or
  - (c) to a court or tribunal in the course of legal proceedings; or
  - (d) pursuant to an order of a court or tribunal; or
  - (e) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth; or
  - (f) to an Australian legal practitioner for the purpose of obtaining legal advice or representation; or
  - (g) as required or authorised by or under any other Act.



*Working with Children Act 2005* (Extract)

**40. Confidentiality of information**

(1) A person must not give to any other person, whether directly or indirectly, any information acquired by the person—

- (a) from, or in the carrying out of, a working with children check; or
- (b) under section 18, 20(1), 22, 23(5), 30(2) or 31(2).

Penalty: Level 9 fine (60 penalty units maximum).

(2) Sub-section (1) does not apply to the giving of information—

(a) in good faith—

- (i) for the purposes of this Act; or
- (ii) for the purposes of a reference check being carried out on an applicant for work that is child-related work; or
- (iii) for the purpose of making employment-related decisions in respect of child-related work; or

(b) with the written authority of the person to whom the information relates or, if the person to whom the information relates is a child or a person with impaired mental functioning within the meaning of Subdivision (8D) of Division 1 of Part I of the **Crimes Act 1958**, with the written authority of a person authorised to act on that person's behalf; or

(c) to a court or tribunal in the course of legal proceedings; or

(d) pursuant to an order of a court or tribunal; or

(e) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth; or

(f) to an Australian legal practitioner for the purpose of obtaining legal advice or representation; or

(g) as required or authorised by or under any other Act.