

# The Children, Youth and Families Act 2005

## The Child Wellbeing and Safety Act 2005

# A framework to promote children's safety, wellbeing and development

## Introduction

Welcome to the first fact sheet of what will be a series on the Children, Youth and Families Act 2005. This initial fact sheet provides a global overview of the new legislation, and will be followed by others that will be topic-focused providing greater detail of both the specific provisions and operation issues to consider.

Importantly the directions in the Act apply equally to community service organisations providing family services and out-of-home care placement services as well Child Protection and the courts. The provisions for stability planning and best interests principles must be considered and applied from the moment services are approached to provide assistance to vulnerable families through to any involvement Child Protection may have. The new legislation is a key building block to support the reform strategy to promote children's safety, wellbeing and development.

The blue boxes contain references to the Sections in the relevant Act so you can refer to them for more detail.

**every child  
every chance**  
a good childhood is in everyone's  
best interests

## The Children, Youth and Families Act 2005

### What are the policy objectives supported by the Children, Youth and Families Act 2005?

- To promote children's best interests, including a new focus on children's development
- To support a more integrated system of effective and accessible child and family services, with a focus on prevention and early intervention
- To improve outcomes for children and young people in the Child Protection and out of home care service system

### What are the key features of the Act?

The Act updates and replaces the previous *Children and Young Persons Act 1989* (CYPA) and *Community Services Act 1970*. In particular it is founded on a requirement to promote children's best interests. Aside from the aspects covered in this fact sheet, it also legislates the field of youth justice.

With regard to the safety and wellbeing of children, the Act contains many features that are entirely new or significantly changed. These can be summarised as:

1. Common principles to guide practice and decision making
2. Pathways to connect vulnerable children and families to the prevention and early intervention services they may need
3. More flexible Child Protection responses to reports
4. A new focus on cumulative harm
5. Maintaining vulnerable Aboriginal children within their communities
6. Promoting stability in care arrangements and beyond
7. A capacity to intervene in cases where children aged over 10 but under 15 years are engaging in sexually abusive behaviours
8. Powers and orders of the Children's Court
9. A framework for registration and quality assurance of community services and carers
10. Clearly authorised information sharing to promote children's safety, wellbeing and development

S.10 Best interests principles  
S.11 Decision making principles  
S.12 Additional decision making principles  
S.13 Aboriginal Child Placement Principle

## 1. Principles to guide practice and decision making

The foundation of the Act, and the basis for all decision making and actions taken under the Act, is the best interests principle. All practitioners in child and family services, Child Protection, out-of-home care services and the Children's Court must take account of the best interests principle, and the matters to be considered under that principle in their practice and decision making.

In particular, the best interests principle states that in determining a child's best interests, the need to protect a child from harm, protect his or her rights and promote his or her development must always be considered. The focus on the child's development is new and signifies a clearer focus on the longer term and wider ranging impacts of harm on a child. The best interests principle also describes many other factors that may be relevant considerations in taking action or making decisions.

The Act also contains decision making principles which apply equally to Child Protection and community services (but not the Court which has its own decision making processes) and which emphasise the importance of involving children and families in the decision making processes of Child Protection and community-based child and family services, and of providing them with assistance and support to do so in a meaningful way.

In providing a common set of principles for the Court, Child Protection and community services, the new Act creates the foundation for an integrated service system and consistency in decision making.

The new Act also provides additional principles to provide a framework for decision making in relation to Aboriginal children and families. These provide a stronger basis for ensuring that Aboriginal children remain within, or connected to, their community and include the nationally agreed Aboriginal Child Placement Principle.

## 2. Pathways to connect vulnerable children and families to the prevention and early intervention services they may need

S.31 Referral to community-based child and family service about child (S.32 unborn child)

S.36 Who may the community-based child and family service consult?

S.29 Report to Secretary about unborn child

S.28 Report to Secretary about child (wellbeing)

A key strategy to promote children's best interests is the creation of pathways to ensure that prevention and early intervention services are provided to vulnerable children and families. A person who has a significant concern for the wellbeing of a child can refer to a community-based intake (CBI) run by a community-based child and family service.

These CBIs will operate in sub-regional areas and their contact number will be publicised and well known in the community. It is planned to phase in these new CBIs during late 2006 and 2007. In areas where a CBI is not yet established, a significant concern about the wellbeing of a child can be reported to Child Protection.

Community-based child and family services will be able to consult with other services about assessment and outreach to the child and family. Information collection and disclosure is authorised for these purposes.

This provides a strengthened prevention and early intervention capacity within the system to connect vulnerable children and families to the services that they may need.

A referral can also be made to a CBI or Child Protection about an unborn child where the concern relates to the child's wellbeing after the child is born, and this will enable the provision of assistance to the unborn child's mother.

Strong collaborative relationships and processes will be developed to enable CBI and Child Protection intakes to ensure better responses to children and families to achieve better outcomes.

S.183 Report to protective intervener

S.182 Who is a mandatory reporter?

S.184 Mandatory reporting

S.35 Who may the Secretary consult?

S.36 Who may the community-based child and family service consult?

S.30 Response by Secretary to report

S.34 Is the report about a child in need of protection?

S.187 Determination by Secretary about report

S205 Investigation

S.228 Application for temporary assessment order

S.231 Temporary assessment order

S.162 When is a child in need of protection?

S.12 Additional decision making principles (for Aboriginal children)

S.13 Aboriginal Child Placement Principle

S.14 Further principles for placement of Aboriginal child

### 3. Flexible Child Protection responses to reports

There is a significant change in the language used in the legislation—the change from “notifications” under the Children and Young Persons Act 1989 to “reports” and “referrals” under the Children, Youth and Families Act 2005 is deliberate. The new Act enables a wide range of responses to reports and referrals not available under the Children and Young Persons Act 1989 (which only clearly authorises investigation or closure).

As noted in the previous section, community-based intakes and Child Protection intake can be contacted regarding child wellbeing concerns. These are called referrals when made to a CBI and a report when made to Child Protection.

When Child Protection receives a report, it will assess which response is most appropriate and can consult with a range of other professionals to assist in making such assessments. Advice, referral and offers of assistance are all permissible responses to child wellbeing reports, as well as investigative responses to those reports deemed to be a Child Protection report.

This flexibility is an important aspect of Child Protection’s role as a specialist service within the broader service network, and also allows Child Protection to focus its efforts on those matters that require investigation.

Where a child is at risk of significant harm, reports continue to be made to Child Protection, as has been the case for many years. Mandatory reporting arrangements remain unchanged in the new Act.

Where an investigation is necessary, children and families will be informed of their rights and of the purpose and potential outcomes of the investigation. When it is suspected that a child is in need of protection and the family refuses to cooperate with the investigation, Child Protection can apply to the Children’s Court for a Temporary Assessment Order to enable the investigation to be completed. This is a new order that addresses Child Protection’s lack of investigative powers under the Children and Young Persons Act 1989.

### 4. A new focus on cumulative harm

The definition of when a child is in need of protection has been broadened to specifically incorporate the concept of cumulative harm. This is related to the new focus on children’s developmental outcomes promoted by the best interests principle.

Child Protection has been criticised for responding in an episodic manner to specific incidents of harm causing behaviour. This new provision will allow and require Child Protection and the broader service system to consider the potential cumulative harm caused by patterns of family behaviour over a period of time.

### 5. Maintaining vulnerable Aboriginal children within their communities

The intent of the Act with regard to Aboriginal children, families and communities is to maintain Aboriginal children within their families and communities and, where this is not possible, to ensure an ongoing connection with their families, communities and culture.

New additional principles apply when making decisions about Aboriginal children who are referred or reported to community based child and family services or Child Protection. These require:

- compliance with the Aboriginal Child Placement Principle
- involvement of the child, their family and community in the decision making process
- significant decisions to be made at a meeting convened by an Aboriginal convener.

S.18 Secretary may authorise principal officer of Aboriginal agency to act

S.323 Restrictions on the making of a permanent care order in respect of an Aboriginal child

The Act extends the use of family decision making meetings to community-based and family services and out-of-home care services. These services are asked to consider, when making a significant decision or taking action in relation to an Aboriginal child, that a meeting be held convened by an Aboriginal convenor, and attended by the child and family where possible.

In order to further minimise the likelihood of Aboriginal children being permanently placed outside their community, an Aboriginal child is not to be placed on a Permanent Care Order in the sole care of non-Aboriginal caregivers unless:

- no suitable placement can be found with an Aboriginal caregiver
- the child has been consulted about the placement
- the Secretary is satisfied that the Aboriginal Child Placement Principle has been complied with
- the Court receives a report from an Aboriginal agency recommending the making of the Permanent Care Order
- a cultural plan has been made to ensure the ongoing connection of the child to their Aboriginal community as a requirement of the Court.

In order to promote the community connectedness of Aboriginal children in the child protection system, where an Aboriginal child is made the subject of a Protection order, the management of that order may be delegated to an Aboriginal agency, by agreement with that agency. This last provision will not come into effect until October 2007 and is a potentially significant application of the principles of self-determination and self-management.

The Department of Human Services is supporting Aboriginal agencies to develop the capacity to fulfil these and other responsibilities.

## 6. Promoting stability in care arrangements

The new Act will reduce harm caused by delays in decision making and instability in care arrangements.

This will require services to focus on stability through providing assistance to families that will minimise disruption to the child's connection to such things as family, caregivers, schooling and local community activities.

The emphasis on prevention and early intervention will minimise the number of children who are placed in out-of-home care. Where placement is necessary, children will be supported to maintain contact with their family, friends and community, while their families will be provided with supports and services to ensure that reunification occurs as soon as it is safe for the child to return home.

Tighter time lines will apply regarding decision making by Child Protection in relation to how long children should remain in care while reunification is pursued. Every effort will be made to ensure that, while the child is in care, placement changes do not occur or are kept to a minimum. Changes of placement and lengthy periods in care without a clear plan for the future can be very harmful and significantly impact on a child's development.

Child Protection is required to develop a stability plan as part of the child's case plan to minimise harm to the child resulting from uncertainty and instability in care arrangements.

Where reunification seems unlikely to be successful, a stability plan will be made for long term or permanent alternate care of the child or young person. This may initially be developed as a parallel plan so that timely decisions can be made in cases where reunification proves not be possible within timeframes that take account of the child's developmental needs.

S.169 What is a stability plan?

S.170 Preparation of a stability plan

S.171 When is a stability plan not required?

S.16(1)(g) and 16(4)  
Responsibilities of the Secretary

The stability plan must be made within specified maximum timeframes:

- for babies and infants under 2—the plan will be made within 12 months of them coming into care,
- for young children aged 2 to 6—within 18 months, and;
- for older children—within 2 years.

Child Protection is required to ensure that a plan is made to support young people after they leave care, and care leavers can be assisted after they have left care and up to the age of 21. This will require services to work in partnership with carers, Child Protection and young people in care.

## 7. New powers to act where children aged 10 to 14 years inclusive are engaging in sexually abusive behaviours

S.185 Report on child in need of therapeutic treatment

S.244 When is a child in need of therapeutic treatment?

S.249 Therapeutic treatment order

S.349.2 Referral from criminal division

There are entirely new provisions within the Act to provide for Child Protection to receive referrals from the Children's Court Criminal Division or reports from anyone in the community who is concerned about a child aged 10 to 14 years inclusive who is engaging in sexually abusive behaviours.

Therapeutic intervention for this group aims to address and change their behaviour and reduce future offending against others.

A new therapeutic treatment board will be established. Child Protection will be able to (and in the case of a police or Court report—must) refer the matter to the board for advice regarding whether to make an application to the Court for a Therapeutic Treatment Order.

A Therapeutic Treatment Order requires the child to participate in an appropriate therapeutic treatment program.

Child Protection can also apply to the Court for a Therapeutic Treatment (Placement) Order that provides for the child to be placed out of home where this is assessed as necessary for the purposes of treatment. These provisions do not come into effect until October 2007.

## 8. Powers and orders of the Children's Court

Part 7.3 and 7.4  
Procedures and powers of the Children's Court

S.217 Referral of an application to dispute resolution conference

S.275 Types of protection order

The Children's Court hears matters in a less formal manner than other courts and decides cases on the balance of probabilities. Apart from being provided with a more comprehensive best interests principle to guide its decision making, the Court has been given some clearer powers by the new Act, for example in managing adjournments and in calling its own evidence and witnesses to better inform itself before making decisions.

The Children's Court orders under the Children and Young Persons Act 1989 have been retained with some important additions and modifications. The Court may make any of the following orders:

- an Interim Accommodation order (which is a temporary order while a matter awaits final resolution)
- an Interim Protection Order (where an application has been granted and a course of action is being tested)
- an undertaking (to comply with a direction to take a certain action)
- a Supervision Order (where a child lives at home and Child Protection develops and implements a case plan and monitors the child's and the family's progress)
- a Custody to Third Party Order (where a child is placed in the custody of another person without Child Protection supervising the placement)

- a Supervised Custody Order (where a child is placed in the custody of another person and Child Protection supervises the placement and is responsible for case planning)
- a Custody to the Secretary Order (where a child is placed in the care of the Secretary who arranges a foster care or other placement for the child, supervises the placement and is responsible for case planning)
- a Guardianship to the Secretary Order (where a child is placed in the care of the Secretary who arranges a foster care or other placement for the child, supervises the placement, is responsible for case planning and assumes parental responsibility for the child)
- a Long Term Guardianship to the Secretary Order (where a young person aged at least 12 consents to an order until they are 18 or until their long term placement ends)
- a Permanent Care Order (where a child is placed permanently in the care of specified people, who become the child's legal guardians until the child's 18th birthday)

## 9. A framework for registration and quality assurance of community services and carers

Part 3.3—Community Services

Sections 45–71

Part 3.4—Out-of-home carers

Sections 73–132

The Children, Youth and Families Act 2005 provides a strong framework to ensure the quality of services and care provided to children and families.

The Act allows the Department of Human Services to register a body as a community service if it meets the needs of children requiring care, support, protection or accommodation and of families requiring support, and if it can meet the relevant performance standards determined and published by the Minister.

Out-of-home care services and the department worked collaboratively to establish the quality assurance system (QAS) for measuring compliance with service standards. This system will form an intrinsic part of agency registration. The strong partnership approach evident to date will be supported to continue to strengthen services' capacity to address the quality improvement opportunities identified by the first QAS self assessment audit.

Agency registration will be for community services that are primarily either community-based child and family services or out-of-home care services, but the Governor in Council may also prescribe additional categories.

Registration is for a three-year period and performance will be reviewed during that period. Where standards are not met, assistance in meeting standards will be provided. Other options may apply if standards are still not met, including revoking the registration of the service or the appointment of an administrator to manage the service.

Foster carers and carers in residential facilities must be approved by an out-of-home care agency. The Secretary must keep a central register of all approved carers. Where a carer is alleged to have physically or sexually abused a child placed in their care, the Act enables the Secretary to initiate an independent investigation and for certain cases to be referred to an established suitability panel. Where the carer is found to have acted improperly, they will be placed on a list of disqualified carers. Out-of-home care agencies will not be able to employ carers on that list.

In improving the quality of services and of care provided to children and families, better outcomes will be achieved for children.

## 10. Clearly authorised information sharing to promote children's safety, wellbeing and development

It is recognised that no single person holds all of the available information that may help identify the level of risk to a child. The Act clearly sets out a range of provisions to enable the sharing of information to assist in assessing risk and determining which services or advice are needed to address the risk and developmental needs of children.

The Children, Youth and Families Act 2005 is designed to promote the voluntary exchange of information to ensure that professionals work together effectively where children are at risk. In specified circumstances, the provisions of the Children, Youth and Families Act 2005 authorise information exchange over and above what is permissible under the *Information Privacy Act 2000* in order to promote the best interests of a child.

The following types of information exchange are authorised by the Children, Youth and Families Act 2005:

S.35 Who may the Secretary consult?

S.36 Who may the community-based child and family service consult?

S.205.3 and S.208 Authorised people may disclose information to Child Protection to assist an investigation

S.192 Secretary may request provision of information

1. Any person may refer a significant concern about a child's wellbeing (or about an unborn child where the concern relates to the child's wellbeing after it is born) to a CBI (community-based intake). This enables attempts to provide prevention and early intervention services to children and families before there is a need for Child Protection intervention.
2. Any person may report a significant concern about a child's wellbeing (or about an unborn child where the concern relates to the child's wellbeing after it is born).
3. Any person may report a belief that a child is in need of protection to Child Protection. Mandated reporters (doctors, nurses, teachers, police) *must* report a belief that a child is in need of protection as a result of physical injury or sexual abuse.
4. After receiving a referral from another source, the CBI may collect information about the child and the child's family from other professionals to complete an initial risk assessment and to assist in determining the most appropriate response to the referral, and those other professionals are authorised to disclose information to CBI for those purposes.
5. After receiving a report from another source, Child Protection may collect information about the child and the child's family from other professionals to complete an initial risk assessment and to assist in determining the most appropriate response to the report, and those other professionals are authorised to disclose information to Child Protection for those purposes.
6. When investigating a report, Child Protection may collect information relevant to the protection or development of a child from other professionals or any other person specifically authorised by Child Protection to assist in completing the investigation, and those requested to provide information are authorised to disclose information to Child Protection for that purpose.
7. After completing a Child Protection investigation, Child Protection may collect information relevant to the protection or development of a child from other professionals to assist in planning and arranging proper care of the child, and those other professionals are authorised to disclose information to Child Protection for that purpose.

S.196 Authorised officer may require disclosure of information

Where the Secretary of the Department of Human Services has responsibilities towards a child subject to a Protection order, and where information is required to enable appropriate planning for the child's care and protection, the Secretary may compel some other professionals to disclose information relevant to the protection and development of the child.

## S.5 Principles for children

S.8–12 Victorian Children’s Council  
S.13–16 Children’s Services  
Coordination Board  
S.17–23 Child Safety Commissioner

### Where can I get further information?

Information sessions are being scheduled in all regions over April/May for community services and Child Protection to jointly learn about implementation plans to support the new legislation and overall reform strategy. You are encouraged to attend one of these information sessions and to look out for training opportunities that will be progressively planned in the coming months. Further fact sheets will be produced and sent to all community service organisations along with regular bulletins containing updates on implementation planning.

## *The Child Wellbeing and Safety Act 2005*

The Child Wellbeing and Safety Act is a companion piece of legislation to the Children, Youth and Families Act 2005 and has the following purposes:

- To provide common principles for those child and family services provided to vulnerable children and families under the *Children, Youth and Families Act 2005* and other primary and universal services provided to children and families under other legislation, such as child care and maternal and child health services. These principles should be used for guidance in the development and provision of Government and community services for children.
- To provide for the establishment of bodies to oversee the child and family service system and to coordinate Government policy in this area:
  - A Victorian Children’s Council to provide independent and expert advice to the Premier and Minister for Children relating to policies and services that enhance the health, wellbeing, development and safety of children
  - A Children’s Services Coordination Board consisting of relevant Departmental Secretaries and the Chief Commissioner of Police:
    - to report on the outcomes of Government actions in relation to children, especially vulnerable children and
    - to monitor arrangements to coordinate Government actions relating to children at local and regional levels.
  - A Child Safety Commissioner
    - to advise the Minister for Children about child safety issues
    - to promote child-friendly and child-safe practices in the Victorian community
    - to inform the community about the *Working with Children Act 2005* and to review and report on its operations
    - to promote out-of-home care services for children which promote the participation of children in care in the making of decisions which affect them, and to advise the Minister and the Secretary of the Department of Human Services on the performance of out-of-home care services and, at the request of the Minister, to investigate and report on an out-of-home care service
    - to conduct an inquiry where a child who was, or was recently, a Child Protection client has died.