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# Abuse and harm - legal and practice definitions

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**This Advice is endorsed by the:** Director, Child Protection and Family Services Branch.

## Introduction and purpose

This Advice provides information for Child Protection practitioners on the legal and practice definitions associated with 'children in need of protection' due to harm from abuse or neglect, and includes a definition of 'significant harm'.

Whilst *the Children, Youth and Families Act 2005* (CYFA) 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.

## (1) Legislation



### Note:

Use the Legislation link on toolbar to access full text versions of the legislation.

Any sections of an Act noted in this Advice are partial references only and should not be relied on. Practitioners should refer to the Act for full details.

## Children, Youth and Families Act

*Children, Youth and Families Act 2005* (CYFA)

- s. 10 Best interests principles
- s. 162 When is a child in need of protection?
- s. 163 Effect of conduct outside Victoria
- s. 276 Restrictions on the making of protection orders

## (2) Standards and procedures

### Practice requirements

- For this Advice, there are no specific practice requirements.

### Practice guidance

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 CYFA, 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).

### Principles

Under the CYFA:

- Whenever the court, the Secretary or a community service is making a decision or taking action or (in the case of the Secretary or community service) providing a service to a child and their family, they must consider the best interest of the child, the need to protect the child from harm, to protect their rights and promote their development, s. 10(1)(2).
- Further, intervention into family life should be to the minimum extent that is necessary to secure the protection of the child (s. 10(3a)); and 'all reasonable steps (must be) taken by the Secretary to provide the services necessary to enable the child to remain in the custody of her or his parent(s)', (s. 276(b)).
- It is only when, even with the availability of supports, the child remains in need of protection and parents are unable or unwilling to protect the child, that Child Protection must make an application to the Children's Court for a protection order to ensure the child's safety. Such intervention is an option of last resort.

### Significant harm

Justice O'Brien in the Supreme Court, *Buckley vs CSV* 1992 identified significant as:

- 'more than trivial or insignificant, but need not be as high as serious...and
- (is) important or of consequence, to the child's development'...

- 'It is irrelevant that the evidence may not prove some lasting permanent effect or that the condition could be treated'.

The significance must be demonstrated in a way that is specific to the case. For example, the same level of bruising may be seen as causing significant harm for a three month old baby but not so if found on a 14 year old child.

For harm to be regarded as significant it must be 'of consequence' or be of 'considerable amount, or effect, or importance'.

## Practice definitions

Child abuse is any action, or lack of action, that significantly harms the child's physical, psychological or emotional health and development. The CYFA enables consideration of the pattern and history of harm and the impacts on a child's safety, stability and development. There is now an overwhelming body of evidence to indicate that chronic neglect, abuse and family violence are harmful and have a cumulative and detrimental effect on a child's development.

Although the abuse types are described separately below for the purposes of definition, in reality many of the following forms of harm may occur within one substantiated case.

### 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. Physical abuse also includes Fabricated Illness Syndrome (previously Munchausen's Syndrome by Proxy).

### 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.

### Sexual abuse

A child is sexually abused when any person uses their authority over the child to involve the child in sexual activity. Child sexual abuse involves a wide range of sexual activity including fondling genitals, masturbation, oral sex, vaginal or anal penetration by a 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.

### 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

As per the police protocol, Child Protection is required to inform the police where a child has been sexually or physically abused or is suffering serious neglect. The definition for serious neglect is provided below.

**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:

The child's home environment is filthy and/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/urine, decomposing food, syringes or other dangerous drug paraphernalia; or where the child is provided with consistently insufficient or inadequate food or nourishment for the child's healthy development; or where a child has a serious medical condition for which the parent has consistently failed to obtain treatment or dispense prescribed medication; or where a parent consistently leaves a 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.

## (3) Considerations for good practice



### Note:

Use the Practice Research link on the toolbar to access further Practice Guidance and Research.



### Protection by parents

In addition to assessing the presence or likelihood of harm, and the significance of the harm, the practitioner must assess whether the parents have protected or are likely to protect the child. The assessment should consider the parents' willingness to protect, and whether they are capable of protecting the child and putting the needs of the child ahead of their own.

The evidence that is used to substantiate abuse allegations is rarely unambiguous. Most Child Protection 'decisions are the result of case by case deliberations based on vague definitions and the personal discretion of professionals who are entrusted with these decisions', (Benbenishty et al, 2003, p. 138)

## (4) Contact for further procedural advice

- Supervisor/team leader
- Unit manager (CPW5)
- Court Advocacy Unit - regional legal officers
- Policy and Practice Unit - Child Protection and Family Services Branch
- Child Protection and Juvenile Justice Professional Development Unit

## (5) Related policy documents and procedures



### Note:

Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

### **Related Practice Advice:**

- Advice no. 1003 - Every child, every chance - Victoria's approach to child protection
- Advice no. 1004 – Interagency collaboration
- Advice no. 1005 – The purpose of protocols with other agencies
- Advice no. 1007 - Legal mandate for practice
- Advice no. 1481 - Best interests case practice model

### **Related Protocols:**

- For this Advice, there are no specific related protocols.

### **Other related procedural documents:**

- For this Advice, there are no specific other related procedural documents.

### **Related policy documents:**

- For this Advice, there are no specific related policy documents.

## **(6) Checklist of required standards**



### **Note:**

A checklist of the required standards follows. It can be utilised as a reference point for practitioners and supervisors or printed and utilised in supervision to assist in ensuring required tasks are undertaken.

- For this Advice, there is no checklist of required standards.