

Keep Them Safe

A shared approach to child wellbeing

Keep Them Safe Factsheet No. 3

Legislation Amendments

Keep Them Safe: A shared approach to child wellbeing is the NSW Government's response to the Report of the Special Commission of Inquiry into Child Protection Services in NSW, led by the Honourable James Wood, AO, QC, released in November 2008. Keep Them Safe recognises the importance of the wellbeing of all children and young people, with the aim of providing appropriate support to families earlier, to prevent children and young people requiring statutory child protection intervention. To achieve this, Keep Them Safe encourages families, communities, government agencies and non-government organisations to work together to support children, young people and families.

The legislation for the Keep Them Safe reforms passed through Parliament and was assented to on 7 April 2009. A staged approach to commencement of the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* has been taken to ensure that training and support tools are in place before the legislation takes effect.

Proclamation – what changes are in force now?

The main provisions of the *Children Legislation Amendment (Wood Recommendations) Act 2009* were proclaimed as amendments to the *Children and Young Persons (Care and Protection) Act 1998*. Provisions proclaimed on 24 January 2010 include:

- raising the mandatory reporting threshold from “risk of harm” to “risk of **significant** harm”
- two new grounds that indicate a child may be at risk of significant harm (cumulative impact)
- an alternative reporting process for mandatory reporters in major government reporting agencies (establishing Child Wellbeing Units in the agencies the Wood report found made over 60 per cent of all reports) and removal of penalties for not reporting
- allowing disclosure of reporter identity to a law enforcement agency investigating a serious offence against a child or young person, in limited circumstances
- simplifying and streamlining the Children’s Court process, making it more user-friendly
- clarifying the Court’s role regarding children in out-of-home care (OOHC)
- a new approach to out-of-home care based on children in statutory, supported and voluntary out-of-home care (VOOHC).

Also in force now are provisions proclaimed during 2009:

- provisions allowing agencies to exchange information relating to child safety, welfare or wellbeing (proclaimed on 30 October 2009)
- creating a new position of President of the Children’s Court
- changes to the reviewable deaths definition and the Ombudsman’s reporting period, implementing specific Wood recommendations (proclaimed July 2009).

Changes affecting mandatory reporters

One of the most important changes is the raising of the mandatory reporting threshold from “risk of harm” to “risk of **significant** harm”, which commenced 24 January 2010.

The legislation removes criminal penalties for not reporting and sets up an alternate reporting process. This includes Child Wellbeing Units in NSW Health, NSW Police, Department of Education and Training, and Department of Human Services (Juvenile Justice; Housing; and Ageing, Disability and Home Care).

Members of the public, non-government staff, and other government agencies continue to report to the Child Protection Helpline when they believe a child or young person is at risk of **significant** harm.

A shared approach to child protection means greater information sharing between agencies involved in the safety, welfare and wellbeing of children or young people. Therefore, under information exchange amendments, government agencies and non-government organisations can now share information relevant to the safety, welfare and wellbeing of a particular child or young person.



Other reforms include the addition of two new grounds that indicate a child may be at risk of significant harm:

1. Parents or carers have not made proper arrangements and are unable or unwilling for their child to receive an education.
2. A series of acts or omissions that, when viewed together, may establish a pattern of risk of significant harm (cumulative impact).

Other changes to the child protection system

The legal system

In an attempt to streamline the legal process and reduce the legalistic nature of proceedings, a number of changes have been made to processes in the Children's Court:

- Care applications filed within 72 hours following assumption of care.
- Initiating applications to be accompanied by a written report instead of an affidavit.
- Not all material to be relied upon in the care proceedings must be filed at the beginning of proceedings.
- The Children's Court can send parties to attend an Alternative Dispute Resolution service.
- The power to make contact orders is limited to making interim orders where it has approved a permanency plan involving restoration (note that this change will not be proclaimed until an Alternative Dispute Resolution scheme is in place).

Out-of-Home Care (OOHC)

The legislation strengthens the framework for the provision of out-of-home care by clarifying the legislative definitions and service classifications of statutory, supported and voluntary out-of-home care (VOOHC).

- **Statutory OOHC** consists of placements that are made following a court order where a family member no longer has parental responsibility.
- There are also placements which have been agreed to by family members but which are assisted by Community Services, because alternative

approaches to court action are being taken to address the needs of the children who are in need of care and protection.

- These are now called **supported OOHC**. The support provided by Community Services could include a range of things such as providing services, parenting courses, or financial assistance.
- Another type is **voluntary OOHC** arranged by the family without State intervention. This allows children in private arrangements made by their families without the knowledge, involvement or support of Community Services to continue with as little State interference as possible. The only involvement by Community Services will be as a safety net to stop children being forgotten, and to ensure their futures are properly planned.

Working with children checks

The following employment categories will require background checks once the legislative changes commence on 31 March 2010:

- people who manage and/or control prescribed children's services, including an authorised supervisor of a prescribed children's service
- Child Wellbeing Unit assessment officers
- principal officer of an accredited adoption service
- contractors whose work involves direct unsupervised contact with children
- high-risk volunteers.

Transfer of the Child Death Review Team

The Child Death Review Team will be transferred from the Commission for Children and Young People to the NSW Ombudsman in November 2010 after the next annual report is published. While the NSW Ombudsman will be the Convenor, the Commissioner for Children and Young People will remain as a member of the Team.

Visit the Keep Them Safe website for a full list of the legislative changes that have been enacted.