



# CHILD PROTECTION, CHILD FIRST AND THE LAW

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# WORKSHOP OVERVIEW

- Introductions and learning aims
- Child Protection: case study
- Child Protection System: key roles of DHHS, Child FIRST, lawyers and the Children's Court
- Reporting and referring
- What does the law say?
  
- Break (11.05 – 11.15am)
  
- A report/referral has been made - what next?
- Child Protection System: non court and court processes
- Case Management
- Q & A Panel discussion
- Close and Evaluation survey (12.30pm)

# INTRODUCTIONS

## **Large group discussion**

- what is your name and role?

# GROUP AGREEMENT

- Safe learning environment
- Uphold the dignity and privacy of people we work with
- Actively listen to one another
- Commitment to participation and choice to respond- right to pass
- Permission for facilitators to move the group along

# AIMS OF THE WORKSHOP

To increase participants knowledge, to be able to describe:

- The role of Child Protection/DHHS in regards to protective and wellbeing concerns for children
- The role of Child FIRST in relation to protective and wellbeing concerns for children
- The role of lawyers when families come into contact with the Child Protection system
- The role of the Children's Court in relation to protective concerns for children
- What the law says
- How to report or refer to Child Protection, Child FIRST, legal services
- How participants can support families who may come into contact with the Child Protection system

# CHILD PROTECTION CASE STUDY

## **Small group discussion:**

- What are the issues in the story?
- What might be some support/next step options that could be useful for the family?



# KEY ROLES IN THE SYSTEM

## KEY ROLES IN THE SYSTEM: CHILD PROTECTION/DHHS

The role of Child Protection Services is to:

- **Receive reports** from people who believe on reasonable grounds that a child is in need of protection because of abuse or neglect
- **Provide advice** where people report such concerns
- **Investigate** matters where it is believed that a child is at risk of significant harm, as a result of abuse or neglect
- Ensure the **support** is offered to the family to minimise the risk of harm to the child
- Take matters before the **Children's Court** if the child's safety cannot be ensured within the family
- **Supervise children on legal orders** granted by the Children's Court



# KEY ROLES IN THE SYSTEM: COMMUNITY BASED CHILD PROTECTION

- Work with mothers of unborn children (when there are no other children in the mother's care)
- Community Education
- Provide consultation to South East Family Services Alliance Agencies (Uniting - including Child First), Windermere, Catholic Care , Hampton Park Community House, VACCA, Aboriginal Co-op, QEC -Cradle to Kinder, City of Greater Dandenong and Child Protection), when there is no active involvement with Child Protection. If there is, then Alliance agencies consult with the Child Protection worker involved.
- Process all the Child First referrals from Child Protection
- Go out with Child First on enhanced visits to families to promote engagement
- Go out with Family Services agencies to families/Care Team Meeting or Professional meetings where Family Services have sought consultation with Community Based

## KEY ROLES IN THE SYSTEM: CHILD FIRST

Child FIRST is a **voluntary** short-term service that aims to support families where there are **significant concerns** for the wellbeing of a child through:

- Identifying and understanding family needs
- Providing information and advice
- Assisting families to work towards their goals and meet their needs

## KEY ROLES IN THE SYSTEM: CHILD FIRST

- Conducting a cycle of assessment with families: assess, plan and action
- Connect children, young people and their families to community services
- Work closely with Community Based Child Protection
- Provide secondary consultations for professionals and community members
- Child First is replaced by The Orange Door in regions where The Orange Door is operating

# KEY ROLES IN THE SYSTEM: LAWYERS

## Lawyers

- Advice pre and during court processes
- Negotiate pre and during court processes
- Represent parties at a court hearing
  - Child Protection
  - Parents
  - Third parties (occasionally), including carers
  - Children over 10
  - Children under 10 if an Independent Children's Lawyer (ICL) is appointed

# KEY ROLES IN THE SYSTEM: THE CHILDREN'S COURT

## Children's Court

- Listens to all parties
  - Children (10 and over), or under 10 with an ICL
  - Parents
  - Other interested parties – relatives and carers
  - Child Protection
- Determines Child Protection involvement, Contact issues, Conditions for child safety and welfare



# REPORTING

# REPORTING

Anyone can report serious concerns to Child Protection

Some people are mandated to report if they form the reasonable belief that a child has experienced physical injury or sexual abuse to Child Protection

- Teachers, School Principals
- Doctors, Nurses
- Police
- Psychologists
- Youth Justice Officers, Parole Officers, Custodial Workers
- Childcare Proprietors, workers
- Out of Home Care workers

Two levels of action:

- Well being – Child FIRST
- Protection - Child Protection

# REPORTING TO CHILD PROTECTION: PROCESS

When making a report, people will be asked:

- Child / young person's name, DOB, Address
- Siblings
- Parents names, phone numbers
- Details of what occurred, when, where, how, how often, last time it occurred
- Indicators and source of harm
- Description of disclosure made by the child / young person



# REPORTING TO CHILD PROTECTION: PROCESS

## Further details:

- Description of injury (i.e. size / colour / where is the injury)
- How safe does the child / young person feel?
- Safety plan?
- Any other support involvement for the family?
- Extended family network
- Child / young person's behavior
- Cultural background / Aboriginal and Torres Strait Islander
- Issues within the family – mental health, domestic violence, disability, drug and alcohol use

# REFERRING TO CHILD FIRST: PROCESS

Child FIRST will generally ask you for the following information:

- General family details (names, dates of births, address, phone number, etc)
- Child's age and stage of life (including health and development)
- Culture
- Family relationship and dynamics
- Parenting capacity (strengths/vulnerabilities)
- Risk factors (e.g. family violence, mental health, substance use, conflict, isolation, disabilities, intergenerational issues)
- Formal and informal support networks, including professionals involved
- Family routines and behaviour management strategies

# A REFERENCE GUIDE: CHILD PROTECTION OR CHILD FIRST?

Report to Child Protection if:

- The child is in need of protection, meaning:
  - the child has been or is likely to be abused and
  - the abuse is significant in that it has or may jeopardise the child's safety, wellbeing and development and
  - the parents have not protected or are unlikely to protect the child
- you have formed a reasonable belief
- does the child require child protection statutory intervention to be safe

Referrals to Child FIRST are made where concerns for families could be alleviated with support from services



# WHAT DOES THE LAW SAY?

# COURTS AND COURT ORDERS: WHO DOES WHAT?

## STATE COURTS AND LEGISLATION

Magistrates  
Court/Children's  
Court

Children's Court

Family Violence  
Intervention Orders

Protection Orders

*Purpose: immediate  
protection of family  
members from violent  
behaviour*

*Purpose: immediate  
and long term  
protection of children  
from significant harm*

## COMMONWEALTH COURTS AND LEGISLATION

Family Court/  
Federal Circuit  
Court

Parenting orders

*Purpose: long term  
parenting arrangements  
of children, no Child  
Protection involvement*

# CHILDREN, YOUTH AND FAMILIES ACT (VIC) 2005

## Legislation

- Children, Youth and Families Act (Vic) 2005 is state-based legislation

*Each state and territory in Australia has its own different legislation and names of orders*

- CYFA gives authority to DHHS to intervene in certain circumstances
- CYFA sets out the 'grounds' for a 'protection application'

## Child

- The CYFA defines a 'child' as being under the age of **17 years** when a report is made (or case is brought to court)
- If an order exists, it can be extended until a child turns **18**

# PROTECTION APPLICATIONS

## What is a protection application?

- Application by Child Protection for a child to be made subject to a court order. It is not a type of court order.
- It can normally only be brought in the first instance by Child Protection

## Grounds for a protection application

*Two part test*

- Has the child been harmed or are they at significant risk of harm?
- Have the parents failed to protect them from that harm?

# GROUNDS FOR A PROTECTION APPLICATION

- **A)** abandonment
- **B)** parents dead or incapacitated
- **C)** child suffered or likely to suffer significant harm as a result of physical injury
- **D)** child suffered or likely to suffer significant harm as a result of sexual abuse
- **E)** child suffered or likely to suffer emotional or psychological harm
- **F)** neglect

This can be through one act or cumulative harm

‘Significant’ harm: ‘... *harm to the child’s ... development ... [which is] more than trivial or insignificant but ... not as high as serious.*’



# ABANDONMENT

## Examples

- children left unsupervised/unattended for very lengthy periods whilst parent/s go elsewhere (casino, interstate)
- children left with babysitters and parent/s do not return after long period
- children left in respite care and parent/s refuse to pick them up
- children taken to Department of Health and Human Services and handed over with a request to keep them.

# DEAD OR INCAPACITATED

## Incapacity not necessarily long term

- Parent 'incapable' at the time Child Protection intervenes.
  - Examples
    - parent/s who are unconscious due to accident, illness (mental or physical) or overdose
    - parent/s have died and no relatives within Victoria are immediately able to take over care.

# PHYSICAL HARM

## Examples

- Child has been exposed to family violence
- Another sibling has been physically abused or inappropriately disciplined
- Severe neglect, ie not sufficient food, clothing or shelter
- Inadequate household hygiene presents a risk of physical injury
- Severely inadequate supervision, especially for a young child

# EMOTIONAL HARM

Catch all:

*Alleged in the majority of protection applications*

Examples

- experiencing or witnessing family violence
- repeatedly rejected
- isolated (left alone for long periods of time)
- frightened by threats
- scapegoating - children made to bear the blame for others
- parentification - expecting children to take on parental care responsibilities

# NEGLECT

## Examples

- Failing to take children to medical appointments
- Not adhering to recommendations by medical practitioners eg. not providing child with asthma puffer or not following prescribed treatment regimes
- Failing to appropriately maintain personal hygiene eg. children may have severe lice

# A CLUSTER OF FACTORS

Family violence: parents not being able to respond to children needs?

Excessive family responsibilities?

Access to food?

Physical discipline?

## SIGNIFICANT EMOTIONAL HARM

## SIGNIFICANT PHYSICAL HARM

Absence from school?

Struggling at school?

Exposure to family violence?

Home environment?

Supervision?

# APPLYING THE CASE STUDY

## **Large group discussion:**

- Thinking about Bibigoul and Ashraf and their family, what do you think Child Protection might be concerned about?



# OVERVIEW CHILD PROTECTION PROCESS



# CHILD PROTECTION PROCESS





# CHILD PROTECTION: NON COURT PROCESS

# CHILD PROTECTION: NON COURT PROCESS

REPORT MADE

CHILD PROTECTION INVESTIGATES

NON COURT PROCESS

No  
Concerns

Child First

Child  
Protection  
Involved  
Voluntary  
Basis

# REPORT MADE TO CHILD PROTECTION: WHAT NEXT?

## **Intake:**

- Receive reports, assess risk of harm and determine appropriate level of service response by CP
- Gather further information, as allowed for in legislation by contacting support services where appropriate
- Refer families to support services in the community where appropriate
- Transfer cases for investigation where required
- Inform reporters on the outcome of the report
- Offer advice to the reporter

# REPORT MADE TO CHILD PROTECTION: WHAT NEXT?

## **The investigation phase in child protection involves:**

- investigating reports of abuse and neglect referred from Intake via direct contact with the family
- determining the extent and nature of reported concerns, or any other concerns
- determining if the child has suffered or is likely to suffer harm
- determining whether the parents have protected or are likely to protect the child from harm
- referring cases to support services in the community where appropriate ie. Child FIRST
- applying to the Children's Court for a protection order in cases of immediate and severe risk
- Possible outcomes – Protective concerns substantiated OR not substantiated

## REPORT MADE TO CHILD PROTECTION: WHAT NEXT?

- Report comes across from Intake as Urgent – 2 day response time, or Non-Urgent – 14 day response time
- Once investigation commences, Child Protection has 28 days to substantiate
- Child Protection can work with families up to 3 months on **voluntary basis** to address concerns and put supports in place.
- Initiates court action if the child's safety cannot be assured under voluntary involvement.
- A decision regarding court action can be made at any time.
- Child Protection will often refer to Integrated Family Services via Child First
- At times Child Protection and Child First collaborate in their work with families

## REFERRAL TO CHILD FIRST

- Information and support may be provided to assist you to respond to the families needs.

### **OR**

- Child FIRST may accept a referral. An assessment worker will then contact the family and often follow up with other services. The Child FIRST worker will complete an initial assessment and aim to link the family with the most appropriate services, i.e. Family Services, counselling, specialist services.
- Upon completing the assessment, the worker will send a letter to the referrer advising of the outcome of the Child FIRST involvement.
- Child FIRST involvement then ceases as it is a short-term service

# VOLUNTARY AGREEMENTS

Child Protection may seek agreement from parent/s to undertake a course of action without a Court order

- “Don’t let the father have contact with the kids” or
- “Put the children in the grand parent’s care while you address mental health issues”

**Seek legal advice**

Lawyers can

- advocate on parent’s behalf to clarify
- time frame
- requirements to ensure the return of children





# CHILD PROTECTION: COURT PROCESS

# COURT PROCESS

Multiple  
return dates

REPORT MADE	
CHILD PROTECTION INVESTIGATES	
Protective Application By Notice	Protective Application By Emergency Care Same day / next day Next working day
First Mention Date 5 -28 days	First Mention Date 3 weeks
Conciliation Conference	
Directions Hearings	
Final Contest	
Application Struck Out	Application Proved

# COURT PROCESS

## Each return to Court

- fresh consideration given to what has changed
- opportunities for negotiation and agreement
- legal advice and lawyers recommended

# FINAL HEARING

## Judge hears from

- Child Protection
- Parents, and
- Any witnesses: family members, doctors, support workers, contact supervisors, police

## Decides

- Are the grounds for a protection application made out?
- Type of protection order required
- Duration of order (if relevant)

# BEST INTERESTS OF THE CHILD

When determining action the Court considers the ‘best interests of the child’, including:

- protect child from harm
- protect child’s rights, and
- promote child’s development
- give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and
- ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child

**If the child is Aboriginal or Torres Strait Islander there are other specific considerations**

# AMENDMENTS TO THE CYFA 2016

In March 2016, amendments were made to the CYFA:

- Shift from stability to permanency planning
- Cumulative time with court ordered Out of Home Care
- Change in order names

# PROTECTION ORDERS – WHAT ARE THEY?

- Undertaking
- Interim Accommodation Order
- Family Preservation Order
- Family Reunification Order
- Care by Secretary Order
- Long Term Care Order
- Permanent Care Order

# COMMON CONDITIONS ON ORDERS

## Conditions will depend on the reason for the Protection Application

- Contact (supervised or unsupervised) – if child not in parental care, or to see the other parent
- Drug screens
- Engage in drug or alcohol counselling
- Engage with psychologist or psychiatrist
- Engage with family violence support service
- Complete Men's Behaviour Change program
- Not to commit family violence





# PROTECTION ORDER MADE – WHAT NEXT?

# PROTECTION ORDER: CASE MANAGEMENT

The aim of the protection order phase is to:

- reduce the level of risk to the child
- promote the safety, wellbeing and positive development of the child
- empower the family to function independently of statutory child protection intervention
- achieve permanency for the child
- prepare for the cessation of child protection involvement when the order expires

# PROTECTION ORDER: CASE MANAGEMENT

- where permanency objective is reunification, provide stable care for the child until the objective is achieved or changes
- where permanency objective is permanent or long term out-of-home care, arrange enduring home based care, or
- support a child in residential care whilst continuing to work towards arranging home based care wherever possible, or
- prepare the young person for independent living where the case plan is not for reunification with family.

# PROTECTION ORDER: CASE PLANNING

## Case planning

- A case plan is to be prepared for all children where protective concerns have been substantiated
- A case plan must be prepared (that is endorsed) within 21 days where protective concerns have been substantiated and provided to child and parents
- The case plan contains all significant decisions for a child that relate to their present and future care and wellbeing, including decisions about permanency, placement and contact
- Child, parents, carers and relevant professionals are to be involved in the development of case plans
- If a child or family member disagrees with a case plan they should seek legal advice
- Options for changing case plans include internal review as well as applications to the VCAT

# PROTECTION ORDER: CASE CONTRACTING

The objective of case contracting is to provide the most appropriate and effective case management to the child and their family by:

- minimising the number of professionals involved in the day to day life of the child and their family
- maximising the expertise and capability of the community service organisation (CSO) have developed in the provision of casework services to children and families
- maximising the effectiveness of established relationships that the child or family has with an agency or individual professionals
- preserving and strengthening a relationship that a child or family may have with an agency other than child protection
- promoting the use of community services with the capacity and competence to provide effective case management where this is consistent with the case plan, the role and function of the case management agency and where it is assessed that day to day case management by a child protection practitioner is not required to meet the best interests of the child.

When cases are contracted, child protection retains ultimate responsibility for the case.

# PROTECTION ORDER : OUT OF HOME CARE

- CP only remove children and young person when there is an immediate safety risk and there is no protective parent.
- CP assess kinship options first prior to looking at Out of Home Care (OOHC) If there are no appropriate kinship options, CP will need to locate OOHC placement options and this may take several hours during the day or night.
- CP organise carer payments and assessments of kinship carers including Police checks.
- Sometimes children and young people have many placement moves within OOHC e.g. foster care.
- Sometimes siblings are separated especially large sibling groups due to lack of capacity e.g. foster carer may not be able to have 4 children.
- Sometimes placements located far from children and young people's schools and networks.

## TIPS FOR WORKERS: SUPPORTING FAMILIES

- If unsure on reporting, can consult with Child FIRST and Child Protection without needing family details
- Child Protection involvement is a legal issue and families can get immediate legal advice
- Be really transparent as possible with families, including if you have been subpoenaed to attend court
- Court can be a big trigger point for stress - can you plan with families around this?
- Time ticking – there is often only a limited time to engage and address issues
- With families' consent, support workers can be involved in formal case plan meetings, court matters etc.
- Work collaboratively with Child FIRST and Child Protection



# QUESTIONS





## PANEL Q & A

## CONTACT DETAILS

### ***Child Protection***

165-169 Thomas street

Dandenong

Ph: 8765 5444

After Hours Ph: 13 12 78

### ***Child First***

55 Webb Street

Narre Warren

Ph: 9705 3939

### ***Victoria Legal Aid***

14 Mason Street

Dandenong

Legal Help: 1300 792 387

Ph: 9767 7111



# EVALUATION