

**THE DEPARTMENT OF COMMUNITIES AND  
COMMUNITY SERVICE ORGANISATIONS  
PROTOCOL FOR STANDARD OF CARE AND ALLEGATIONS OF ABUSE  
IN CARE FOR CHILDREN IN THE CEO'S CARE  
JANUARY 2020**

The primary objective of the Department of Communities (the Department) and Community Service Organisations (CSOs) as those with responsibility for children in the Chief Executive Officer's (CEO's) care, is to act in the child's best interest, for the child's benefit, and with the child's safety and well-being as paramount considerations. This objective is supported by the *Children and Community Services Act 2004*.

To further this objective, the Department and the CSOs have agreed to work together, through the use of these protocols whenever a concern arises of harm to a child or young person or in relation to the standard of care they receive in the care of a CSO. The protocols establish a joint understanding of the processes, procedures, roles and responsibilities of both the Department and CSOs.

The Department, and in some instances the Police, has the statutory responsibility for investigating and assessing any allegation of abuse or suspicion of harm.<sup>1</sup> This can include a range of situations where the harm may have occurred, including in placement, outside of the home, at school or on contact visits with family; as well as harm by another child or young person; or an approved carer or other agency worker. The concerns may relate to harm which has occurred recently or which occurred some time ago and the child has since left care.

If concerns involve CSO carers, members of the carer's household, staff or volunteers, the CSO will contribute to and support any Departmental assessment process; provide support to the carer through the process; and assist to ensure the safety of that child and any other children in their care.

In addition to the development of these protocols and their own internal policies, CSOs will endeavour to minimise the risk to children in their care. This will occur through practices such as developing the CSO as a child safe organisation; conducting assessment and training of carers, staff and volunteers; maintaining appropriate levels of criminal recording checking, Working with Children requirements; ensure all carers are registered through the Foster Carer Directory and providing quality support to carers in their role.

The Department will ensure sound processes for the identification and assessment of standard of care concerns and allegations of abuse in care for children in the care of the CEO, ensuring children are safe and protected. The Department will ensure children subject to harm are referred for appropriate legal advice and representation.

**GUIDING PRINCIPLES:**

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<sup>1</sup> See Appendix 1 for Department of Communities' definitions of abuse and neglect.

- The safety and well-being of the child or young person is the paramount consideration at all times.
- The working relationship between CSOs, carers and Departmental staff is characterised by mutual respect, honesty, and fairness.
- Any concern that a child has been or is likely to be harmed whilst in care must be assessed by the Department.
- The Department has final decision-making authority with regard to the placement of children.
- Carers are entitled to support and guidance when issues or concerns arise about the care they provide.
- A commitment to collaboration, teamwork, and problem solving are essential conditions for resolving differences.
- There is a commitment to clear communication by all parties.
- All actions under these protocols are carried out in an objective and timely manner.
- There is an awareness of and responsiveness to cultural issues where a child is Aboriginal or Torres Strait Islander, or is from a Culturally and Linguistically Diverse Background.

## **IMPLEMENTATION**

- These protocols will be made known to all relevant CSO staff, carers and volunteers on commencement with the CSO.
- These protocols will be referred to in the Department's Casework Practice Manual.
- These protocols form a part of the Better Care Better Services Standards, which CSOs meet as part of their Service Agreement requirements.
- The Department and CSOs will apply these protocols within their procedures for staff.

## **PROCEDURES**

The following processes provide guidance for the agreed procedures for managing Standard of Care Concerns and Allegations of Abuse in Care for children in the CEO's care.

The Department has implemented a Two Tier approach to concerns in relation to the safety and wellbeing of children in the CEO's care:

- Tier One – Standard of Care Concerns and Carer Standard of Care Assessment by CSO.
- Tier Two – Allegation of Abuse in Care and Carer Investigation by the Department's Duty of Care Unit (DOCU) (for approved carers) or Child Safety Investigation by the District (for CSO employees).

If the concern involves Aboriginal or Torres Strait Islander people, the Aboriginal Practice Leader will be consulted. In complex situations, and if a child is from a Culturally and Linguistically Diverse (CALD) background the Department's Senior CALD Advisors may be consulted if necessary.

## **Disclosures or allegations of harm**

A child may disclose information about harm directly to a CSO carer or other staff. Where this occurs basic processes include: listening without asking clarifying or follow-up questions, believing the child and acting on the information. It is not the role of the CSO to determine if the disclosure is 'true'. The child should be reassured and supported throughout, but is not to be questioned further by the CSO staff. CSO staff must immediately advise the Department of the disclosure. The Departmental Case Manager is the first point of contact.

The CSO may become aware of or suspect that harm has occurred without the child having made a disclosure. In such circumstances the CSO will advise the child's Departmental Case Manager and consult on the best way to proceed. If the Departmental Case Manager is not available the CSO can contact the Team Leader.

If the child concerned is not a child in the CEO's care, but is in a placement for other reasons, the CSO will advise and consult with the Department's Central Intake Team in the metropolitan area or the local district office in the country, on how the situation will be managed.

Concerns that a child may be subject to harm may come from a range of sources. These may be brought to the attention of the carer or other CSO staff, or may come to the Case Manager or others in the Department.

## **Advising the Department**

The CSO will develop internal processes to manage when the CSO becomes aware of or holds concerns about harm of a child or the standard of care provided to a child and will, on request, make these available to the Department.

The CSO will immediately advise the Department of the concern via the child's Case Manager. If the Case Manager is not available or the concern involves a child without a current Case Manager, the CSO will advise the Team Leader or the District Director. If the CSO becomes aware of a concern after hours, the agency will inform the Crisis Care Unit.

The Department will assess the concern and will advise the CSO on what information can be provided to the carer and or employee as soon as practicable.

Where the Department receives information of concern about a CSO's carer, they will immediately inform a senior officer of the CSO, and advise what information about the concern can be provided to the carer. Where criminal offences may have occurred, the Police will be informed.

It is not the role of the CSO to raise concerns with the carer or the child prior to consultation with the Department, as this could compromise the assessment and could lead to a contamination of evidence. This may leave a child unsafe, or a carer unable to have a process of natural justice. Whilst supporting the carer, agencies will remain open and objective.

## **Ensure the child is safe and supported**

The CSO, in consultation with the Department, will endeavour to ensure that the child does not remain in a situation of risk pending further assessment. Where harm is alleged to have occurred between children living in the same house, the children may need to be placed separately. There may also be instances which involve removing all the children in a Family Group Home or Residential Care Setting or the carer, rather than the removal of one child.

The child may have feelings of ambivalence, anxiety, fear, depression, mistrust or marginalisation after having made a disclosure or having been subject to harm. It is important for the child to feel protected, valued and nurtured. The Departmental Case Manager will take the role of supporting the child.

## **Support to carers**

Support processes for the carer(s) are put into place by the CSO as soon as the matter is referred to the Department and are to continue throughout the process. Support will be provided to the carer whether the alleged harm relates to the carer, relates to alleged harm between children, or to harm which has occurred outside of the care setting.

The main support that can be given to the carer is to keep them as informed as possible. However, the assessment may require that certain information is withheld from the carer. The carer needs to understand that the amount and timing of release of information to them will depend upon the nature of the allegation, the police assessment if there is one, and any other relevant factors.

The CSO may consider it appropriate to involve others in the provision of support, such as the Foster Care Association of Western Australia.

## **Departmental Response in Relation to Approved Carers**

### *Tier One: Standard of Care Concerns*

Standard of care concerns are acts or situations that indicate that a carer has failed to meet the carer competencies<sup>2</sup>, but harm or the likelihood of harm has not occurred. The focus should be on addressing the concern, rather than investigating it. Standard of care concerns may include:

- Inappropriate discipline where there is no physical injury e.g. smacking a child with an open hand on the bottom.
- Inadequate supervision of the child or young person.
- Inappropriate behaviour modelling by the carer including substance abuse.
- Physical environment in the carer's home that is potentially unsafe or unhygienic.
- Verbal interaction with the child or young person that is offensive, intimidating or degrading.

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<sup>2</sup> The carer competencies are described in Appendix 3.

- Measures used to restrain or contain a child or young person outside guidelines for best practice.
- Preventing the child or young person from participating in specialised care and treatment that is recommended for adequate developmental progress.
- Restricting a child or young person's connections to cultural or kinship ties, derogatory comments relating to race, culture, ethnicity, religion, sexual preference, gender.
- Carer not working cooperatively with Departmental staff.
- Carer actively undermining contact between the child and biological family.

The following action is undertaken by the Child Protection Worker identifying the concern and the CSO:

- Consultation should occur between the Child Protection Worker and the Duty Officer DOCU.
- A Carer Standard of Care Incident notification is recorded for the carer by the Child Protection Worker and quality assured by DOCU.
- A Critical Incident: Standard of Care Issue notification is recorded for the child(ren) by the Child Protection Worker and quality assured by DOCU.
- A meeting is convened by the Child Protection Worker with the CSO Director or their delegate and the concerns are outlined. Relevant documentation, including the notification, is provided to the CSO.
- The CSO undertakes an assessment, advises the carer of the care concern and gives the carer an opportunity to respond to the concern.
- The Child Protection Worker will complete a Duty of Care Outcome Report.
- The CSO develops, implements and documents an appropriate response including carer supports, monitoring, supervision or training.
- The CSO advises the carer and the Child Protection Worker of the assessment outcome, the recommendations, including how, when and by whom they will be implemented.
- The CSO completes an Outcome Report and forwards to the Child Protection Worker. The Child Protection Worker includes their comments and recommendations and provides a copy of the final report to the CSO.

### *Tier Two: Allegation of Abuse in Care and Carer Investigation*

Where there are concerns about a child in the CEO's care that meet the Department's threshold for harm then the Department's District Office will undertake a Child Safety Investigation (CSI). If an allegation of abuse is made in relation to an approved carer<sup>3</sup> then a carer investigation will be undertaken by DOCU. In these situations the District must immediately consult with the DOCU. The CSI and Carer Investigation are undertaken concurrently but each has a different purpose and outcome. The CSI determines if harm has occurred and who is responsible for the harm. The Carer Investigation assesses the carer's compliance with the carer competencies and makes recommendations regarding the carer's approval.

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<sup>3</sup> An approved carer is any person approved under Regulation 4(1) of the Children and Community Services Regulations 2006. Approved carers are recorded on the Foster Carer Directory.

The DOCU will record Carer Investigation notifications in relation to the carers. The CSO will liaise with the Custodian of the Foster Carer Directory to ensure that the carers are placed under review and an alert is recorded to this effect on Assist. The child's Case Worker will record an Allegation of Abuse in Care notification in relation to the child(ren).

As soon as possible after being advised, DOCU will hold an Initial Planning Meeting which will determine processes, roles, responsibilities and timeframes. This will involve Team Leader, Case Manager, DOCU, CSO Representative and on occasion, the District Director. Given the tight response timeframes a teleconference may be preferred.

It is important to recognise CSOs form a partnership with the Department in caring for children in the CEO's care and should be consulted and advised accordingly.

The Initial Planning Meeting will consider:

- Immediate safety of child and or children.
- Clarification and summary of the concerns.
- What information is provided to the carer and by whom.
- What information is provided to the parents or significant others.
- Police involvement if required<sup>4</sup>.
- Status of approval on the Foster Care Directory, depending on the nature of the allegation and until the assessment of the carer is complete the carer's status is recorded as under review.
- Safety of any other children with the carer, including their own children.
- Support to carer(s) and or agency.
- Who is to be provided with the plan.
- What reports or other information will be forthcoming.
- The carer interview.
- Progress reporting.
- Allocation of tasks.
- Timeframe for actions and review meeting.

This process provides an opportunity for carers and if appropriate, the CSO, to give their account in relation to any concerns. The carer may prefer a CSO representative be present for support at interviews with the Department however this is the carer's choice.

Both the CSI and the Carer Investigation should be completed within 30 days. The CSO will be informed if there are any delays with this process. Both the CSO and the carers will be advised of the outcome of the CSI and the Carer Investigation in writing.

At the conclusion of the assessment any future action should be discussed. This may include:

- Decisions and plans for the subject child or children.
- CSO decisions in relation to the carer(s) or others concerned, based on the Department's recommendations.

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<sup>4</sup> See Appendix 2: Western Australia Police Service Responsibilities regarding Child Protection Matters.

- Status of approval on the Foster Carer Directory.
- Planning for any other children placed with the carer.
- Supports and training put in place for the carer.
- Other recommendations for the CSO and/or the Department.

In the case of any disagreement, the Department's Complaints Management System will be followed. Details of this can be found at:

<http://www.dcp.wa.gov.au/ComplaintsAndCompliments/Pages/ComplaintsManagementUnit.aspx>

### **Departmental Response in Relation to Carers who are Employees of the CSO**

The use of employees to support children in care is the preferred model of operation for a number of CSOs. Employees of CSOs who are not approved under the *Children and Community Services Regulations 2006 Reg. 4(1)* are not included on the Foster Carer Directory.

Where there are concerns about a child in the CEO's care that meet the Department's threshold for harm the Department's District Office will undertake a CSI inclusive of interviewing the carers.

CSO employees are not subject to a carer investigation by the DOCU. Assessment or review of the employee's competency to perform their duties is the responsibility of the employing CSO<sup>5</sup> and should take into consideration the outcome and recommendations of the CSI.

Key points of the process where an allegation of abuse has been made against a CSO employee are detailed below:

- The decision about how to classify the concerns (either as standard of care concern or allegation of abuse in care) remains with the Department but the views of the CSO workers should be taken into consideration as part of the decision making.
- Regardless of how the District intends to classify the concerns they must organise an Initial Planning Meeting involving:
  - The Case Managers and Team Leaders for all of the children in the placement.
  - A representative from the CSO (the CSO will nominate an appropriate person).
  - Any other relevant staff such as psychologists, education officers and so on.
- The purpose of the meeting is to ensure;
  - All parties are aware of, and have the same information about, the concerns.
  - The views of all parties are considered.
  - Clear plans are developed to respond to the concerns.
  - Appropriate plans are in place to keep the children safe and the carers safe from further allegations (including the perception that they have had the opportunity to influence the children in their disclosures).
  - The plan should also address how information will be shared with all of the key stakeholders.
- In relation to an Allegation of Abuse in Care the District will undertake a CSI, inclusive of interviewing the CSO employees.

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<sup>5</sup> The CSO's assessment or review of the employee's competency to perform their duties is analogous to the DOCU carer investigation applied to foster carers on the Foster Carer Directory.

- The CSI is the Department's investigation of the concerns and should be completed within 30 days. The CSO must **not** be asked to conduct its' own investigation of an Allegation of Abuse in Care.
- Where multiple Districts are involved one District must take responsibility for co-ordinating the Department's response (inclusive of communication with the CSO and interviewing the carers). Generally this would be the District that is first advised of the concern or disclosure.
- The CSO may decide to instruct the employee to remain absent from the workplace as a result of the concerns. The Department must maximise its' effort to complete the CSI earlier than 30 days to minimise the impact on the employee and the CSO.
- The Department must advise the CSO of any decision to extend this timeframe.
- The outcome of all CSIs must be provided to the CSO employee and the CSO in writing.

Whether the CSO operates a model using carers placed on the Foster Care Directory, employees or a combination of both the Department has final decision-making authority with regard to the placement of children in the CEOs care.

## **APPENDICES**

### **Appendix 1**

#### **Definitions<sup>6</sup>**

##### **Physical Abuse**

Physical abuse occurs when a child has experienced severe and/or persistent ill-treatment through behaviours such as beating, shaking, inappropriate administration of alcohol and drugs, attempted suffocation or excessive discipline or physical punishment.

The harm experienced by a child as a result of these behaviours needs to be, or likely to be, detrimental in effect and significant in nature on the child's wellbeing. Harm that a child may experience as a result of physical abuse can include, but is not limited to, injuries such as cuts, bruises, burns, bites and fractures. The injury resulting from physical abuse is considered to be non-accidental.

##### **Sexual Abuse**

Sexual abuse occurs when a child has been exposed or subjected to sexual behaviours that are exploitative and/or inappropriate to his/her age and developmental level. Examples include sexual penetration, inappropriate touching, exposure to sexual acts or pornographic materials, using the internet for grooming and soliciting children for sexual exploitation.

Harm which may result from sexual abuse includes significant emotional trauma, physical injury, infections and impaired emotional and psychological development.

Consideration is given to contextual elements in determining if a situation is abusive, such as parental behaviours that enable child sexual abuse to occur or the role of coercion or unequal power in a relationship. This is particularly important in relation to sexual behaviour between children, where the children's respective ages, developmental level and the nature of the relationship are important considerations.

Sexual activities between young people are not considered as sexual abuse unless:

- it is non-consensual or there are concerns about the young person's capacity to give consent or
- there are factors such as bribery, coercion, threats, exploitation or violence; the child has less power than the other person; there is significant disparity in the developmental function or maturity.

Child sexual abuse can be broadly categorised as 'intra-familial' or 'extra-familial' child sexual abuse.

- Intra-familial child sexual abuse is described by the Department as abuse that is perpetrated by a person who is a relative of the child or has a kinship relationship with the child. This applies to any child under 18.

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<sup>6</sup> Department of Communities' Casework Practice Manual.

- Extra-familial child sexual abuse is described by the Department as abuse that is perpetrated by a person who is not a relative of the child or by a person outside the child's or young person's kinship system.

The term, 'relative' in relation to a child is defined in section 3 of the *Children and Community Services Act 2004*. In the Department's policy, 'kinship' is a term specifically used to describe Aboriginal and Torres Strait Islander family relationships. This applies to traditional Aboriginal people who are familiar with their connections. Kinship also applies to other culturally and linguistically diverse families.

#### *Legislative inclusive definition of child sexual abuse*

- Section 124A of the Children and Community Services Act 2004 provides the following inclusive definition of 'sexual abuse' to be reported by mandatory reporters (doctors, nurses and midwives, teachers, boarding supervisors and police). 'Sexual abuse', in relation to a child, includes sexual behaviour in circumstances where:
  - The child is the subject of bribery, coercion, a threat, exploitation or violence or
  - The child has less power than another person involved in the behaviour or
  - There is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour

#### **Emotional Abuse (including family and domestic violence and psychological)**

Emotional abuse is the sustained, repetitive, inappropriate, ill treatment of a child or young person through behaviours including threatening, belittling, teasing, humiliating, bullying, confusing, ignoring and inappropriate encouragement.

The term 'emotional abuse' includes psychological abuse (the sustained, repetitive, inappropriate, ill treatment of a child or young person through behaviours including threatening, isolating, neglecting, discrediting, misleading, disregarding, ignoring and inappropriate encouragement) and exposure to family and domestic violence, which causes serious emotional, psychological, social and behavioural harm to children, as well as placing them at increased risk of abuse and neglect.

The harm experienced by a child as a result of these behaviours needs to be, or likely to be, detrimental in effect and significant in nature on the child's wellbeing. Children who have been emotionally abused are likely to have a reduced capacity to experience a range of emotions, to express emotion appropriately and to modulate their emotional experience. Children who have been emotionally abused are likely to be fearful, withdrawn and/or resentful, distressed and despairing. Children who have been psychologically abused are likely to feel worthless, flawed, unloved, unwanted, endangered or only of value in meeting another's needs.

## **Neglect**

### **Omission of care**

Neglect is when a child is not provided with adequate food or shelter, effective medical, therapeutic or remedial treatment, and/or care, nurturance or supervision to a severe and/or persistent extent where the health or development of the child is significantly impaired or placed at serious risk.

### **Cumulative harm**

The term 'cumulative harm' refers to the effects of patterns of circumstances and events in a child's life. The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child's sense of safety, stability and wellbeing. Cumulative harm may be caused by an accumulation of a single recurring adverse circumstance or event, or by multiple circumstances or events.

## Appendix 2

The Western Australia Police has the responsibility for investigating the following matters:

- Sexual abuse of a child in an intra familial setting.
- Sexual abuse of children by a person in authority (this includes teachers, police officers, foster carers, social workers, priests, youth workers, voluntary youth leaders, doctors, etc.).
- Physical abuse in an intra familial setting.
- Physical abuse of children by a person in authority (this includes teachers, police officers, foster carers, social workers, priests, youth workers, voluntary youth leaders, doctors, etc.).
- Criminal neglect of a child where there is a disregard for responsibility of a parent/caregiver to provide the necessities of life.
- Assessment of paedophile offenders (this includes multiple offender situations, paedophile networks and unknown offenders).
- Assessment of all matters involving child pornography.
- Assessment of child pornography matters in conjunction with other agencies.
- Assessment of offences pursuant to the Commonwealth Crimes (Child Sex Tourism) Amendment Act.
- Historic complaints relative to the above.
- Assessment of child abuse/paedophile matters as requested by an interstate or international law enforcement agency.

### Appendix 3

The carer competencies as described in the *Children and Community Services Regulations 2006*.

- a) The CEO must be satisfied that the individual:
- (i) Is able to provide care for a child in a way that promotes the wellbeing of the child, promotes the child's family and interpersonal relationships and protects the child from harm.
  - (ii) Is able to provide a safe living environment for a child.
  - (iii) Is able to work cooperatively with officers, a child's family and other people when providing care for a child.
  - (iv) Is able to take responsibility for the development of his or her competency and skills as a carer.
  - (v) Is a person of good character and repute

And

- (b) A negative notice or an interim negative notice has not been issued to the individual under the *Working with Children (Criminal Record Checking Act) 2004*.