

Interagency code of practice

investigation of suspected child abuse or neglect



Government
of South Australia

Title:

Interagency code of practice: Investigation of suspected child abuse or neglect

Produced by:

Families SA, Department for Education and Child Development (DECD)
Attorney-General's Department
Department for Communities and Social Inclusion
South Australia Police (SAPOL)
Crown Solicitor's Office
Office of the Director of Public Prosecutions
SA Health
Commissioner for Victims' Rights
The Guardian for Children and Young People
Child Protection Services (Adelaide Women's and Children's Hospital and Flinders Medical Centre)

Publication date:

August 2013

Requested updates and amendments to this document should be directed to Department for Education and Child Development, Families SA, Tel: 8214 4185.

Preface from participating agencies

The Government of South Australia takes seriously its responsibility in not only dealing with child abuse and its consequences, but also in assisting in its prevention.

The first edition of the *Interagency code of practice: Investigation of suspected child abuse or neglect* was produced in 2001.

In 2009, this *Interagency code of practice* was revised. That edition put the operating principles and philosophies of related agencies into a single point of reference so that personnel from one agency can better understand the operations of another, resulting in improved services for the community.

In 2013, minor amendments were made to agency names and a specific protocol involving SAPOL and education sectors (See 14 Appendix G).

More efficient partnerships through ongoing combined agency training will lead to best practice in the management of child abuse and neglect, focusing on the best interests of the victim.

This document is the result of a significant co-operative effort by a range of agencies involved in the interviewing both of children suspected of having been abused and of their caregivers.

Given the dynamic environment to which it relates, the *Interagency code of practice* will be subject to regular review to ensure that the information and operating protocols it contains are both timely and relevant, contributing to enhanced professionalism in each of the partnership agencies.

A major review of the *Interagency code of practice* is scheduled for 2014 and will involve all participating agencies.

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Section 1

INTRODUCTION

1.1.

Purpose

This code of practice provides the framework for timely, efficient and effective interagency processes to provide each agency with accurate information on which to base sound assessments regarding a child and their family's circumstances.

The intention is to give guidance about the investigation, by the several agencies that may be involved, of suspected child abuse or neglect. While the information provides practice guidelines, the document itself should not be read as a case flow of events. Rather, its value is in identifying those issues that are pertinent to the needs of the practitioner and the welfare of clients during the course of interagency work. Where used, references appear at the end of each section.

While the principles and strategies discussed within this code of practice can be applied to physical abuse, a cautionary note needs to be added.

Different dynamics operate within families, requiring a careful and planned intervention often sustained over a long period of time. Protection for the child is as complex and difficult to achieve when the child is the subject of physical abuse and neglect as it is in the case of sexual abuse. This is especially so when Families SA and health agencies try to engage with a dysfunctional family to restore a healthier environment for the child. SAPOL and the criminal justice system involvement need to be seen as part of this restorative process, as well as providing a timely and appropriate criminal justice response at the higher end of the scale.

Moreover, even though in some sexual abuse matters threats are made against the child's life (usually to do with the disclosure of the abuse), it is more often the case that when a child is subjected to serious or repeated physical abuse they can form the reasonable view that they are in an immediate life-threatening situation. In these circumstances it is important that the child is provided the support needed to deal with this threat, or perception of a threat, before any attempt is made to interview or assess the child. That is, a different response may be required when the child has been subjected to either acute or chronic abuse.

Interviews of children against whom any form of abuse is suspected should always be carefully planned, and conducted so as to minimise the potential for further trauma to the child; the interview and investigation process should not be delayed longer than necessary.

1.2.

Scope

The *Interagency code of practice* provides:

- an understanding of the values, goals, principles and philosophies underpinning the practices and procedures for all agencies involved in the investigation, assessment and treatment of victims of child abuse and neglect and their caregivers
- recognition that the problem of child abuse is a shared responsibility across agencies (that is, the problem cannot be tackled by working alone)
- information about procedures and guidelines, without being too prescriptive, which help practitioners to understand what is expected of each other
- the basis for interagency training
- a process for quality assurance with regard to its implementation, monitoring and review.

1.3.

Aims

The *Interagency code of practice* aims to:

- minimise any trauma for children and their caregivers from their involvement in the interagency process
- minimise the number of interviews of the child
- ensure that interviewing has regard to the child's welfare as well as legal and evidential requirements
- be mindful of the impact of investigations on family dynamics and relationships.

1.4. Explanation of terms

The following definitions are relevant to this document and offer guidance to practitioners operating within the South Australian child protection system.

Aboriginal and Torres Strait Islander

According to Section 6 of the *Children's Protection Act 1993*, 'Aboriginal child' means a child:

- who is a descendant of the indigenous inhabitants of Australia, and
- who regards himself or herself as an Aboriginal or, if he or she is a young child, is regarded as an Aboriginal by a least one of his or her parents.

'Torres Strait Islander child' means a child:

- who is a descendant of the indigenous inhabitants of the Torres Strait Islands, and
- who regards himself or herself as a Torres Strait Islander or, if he or she is a young child, is regarded as a Torres Strait Islander by a least one of his or her parents.

Arrest

This means that a police officer, who has reasonable cause to suspect that an alleged perpetrator has committed an offence, takes that person into custody.

Burden of proof

'Balance of probability' is the civil standard of proof. This is a lesser standard than the criminal standard of 'beyond reasonable doubt'. It is the standard of proof applicable to applications under Sections 20 and 37 of the *Children's Protection Act*. It involves a concept of "a finding on the basis of the preponderance of probability" (Latham, C J, in *Briginshaw v Briginshaw* 1938, 60 *Commonwealth Law Reports* 336–343).

Beyond reasonable doubt – in criminal cases the onus is on the prosecution to establish each element of the offence beyond reasonable doubt.

Reasonable cause to suspect – this means 'suspicion based on facts which create a reasonable suspicion in the mind of a reasonable man. The expression must be given an objective and not subjective construction, ie, facts must be such as would, in the view of the court, render the person's suspicion an objectively reasonable one' (Connor, J, in *McIntosh v Webster*, 1980 in *Giles, Beames and McDonald*, 1990 p. 232).

Child

In South Australia, as defined by the *Children's Protection Act 1993*, a child means a person under 18 years of age.

Child abuse and neglect

The abuse or neglect of a child, according to Section 6(1) of the *Children's Protection Act*, means:

- sexual abuse of the child; or
- physical or emotional abuse of the child or neglect of the child to the extent that:
 - » the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's well-being; or
 - » the child's physical or psychological development is in jeopardy.

Descriptors of abuse and neglect

Physical abuse – any non-accidental act inflicted upon a child that results in physical injury to the child.

Sexual abuse – any sexual behaviour imposed on a child.

Emotional abuse – a chronic attitude or behaviour directed at a child, or the creation of an emotional environment, which adversely impacts on a child's development.

Neglect – any serious omission or commission by a person which jeopardises or impairs a child's psychological, intellectual or physical development.

Whilst the aforementioned definitions are defined by child protection policy, there are difficulties in translating these – eg, emotional abuse – into criminal statutes.

Child 'at risk'

For the purposes of the *Children's Protection Act*, s. 6(2), a child is 'at risk' if there is significant risk that the child will suffer serious harm to his or her physical, psychological or emotional wellbeing against which he or she should have, but does not have, proper protection; or

- the child has been, or is being, abused or neglected; or
- a person with whom the child resides (whether a guardian of the child or not):
 - » has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or
 - » has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
- the guardians of the child:
 - » are unable to care for and protect the child, or are unable to exercise adequate supervision and control over the child; or
 - » are unwilling to care for and protect the child, or are unwilling to exercise adequate supervision and control over the child; or
 - » are dead, have abandoned the child, or cannot, after reasonable inquiry, be found; or
 - » the child is of the compulsory school age but has been persistently absent from school without satisfactory explanation of the absence; or
 - » the child is under 15 years of age and is of no fixed address.

Corroborative evidence

"... provided that the evidence ... comes from a source independent of the witness of whose evidence corroboration is sought, and meets the technical requirement laid down in *R v Baskerville* that it tends to show not merely that the crime was committed but that the accused was the perpetrator, such evidence may be admitted as corroboration ..." (*R v Kalajzaich and Orrock*, 1989 in *Aronson and Hunter*, 1995, p. 709).

Evidence

In the criminal jurisdiction, evidence means "anything that tends to prove the existence of a fact." (*Marantelli and Tikotin*, 1985, p. 91).

Extra-familial

All those matters that do not fall within the definition of intra-familial (see below) are considered 'extra-familial'. This includes matters in which the alleged perpetrator of abuse/neglect is a friend, visitor, stranger etc, and anyone who may live in the house who is not a relative and who does not have responsibility for the care of the child (eg, a boarder). It also includes persons who may stand *in loco parentis* (in the place of the parent) to the child as part of their employment or service delivery role (eg, teachers, child care staff, family daycare providers, school boarding house supervisors).

Intra-familial

For the purposes of this *Interagency code of practice*, 'family' is defined as those persons who have a biological and/or legal relationship to the child, or who are a member of the household and have responsibility for care and supervision of the child. This includes a natural, adoptive (where a legal adoption order has been granted), or step-parent of the child, a person (other than the Minister) who is the legal guardian of the child or has the legal custody of the child, or any other person who stands *in loco parentis* (in the place of the parent) to the child (other than those described as extra-familial) and has done so for a significant length of time. It also includes a relative of the child (such as uncles, cousins), whether or not that relative lives in the household and whether that relative has the responsibility for care and supervision of the child.

Cultural consideration: For Aboriginal and Torres Strait Islander families, *intra familial* includes any person who has the cultural responsibility to care for the child according to kinship rules. 'Intra-familial' includes other persons who live in the household or spend a substantial amount of time in the household who are not relatives of the child and who have responsibility for the care and supervision of the child (ie, act in a parenting capacity), such as a parent's live-in partner or a nanny, a parent's partner or a child's boy/girlfriend who does not reside in the household but spends more than 50% of his/her time there and who has responsibility for the care of the child. It does not include foster carers, staff of residential institutions, or part-time carers such as day-care providers or baby-sitters.

Nolle prosequi

A '*nolle prosequi*' is formal notification by the Crown that it does not intend to proceed with specific charges.

Notification

Notification is defined by the *Children's Protection Act* at Sections 11, 12 and 13 as a legally binding process that requires defined classes of persons to notify Families SA when they have suspicions of neglect.

Proofing

Proofing is a meeting before trial between the prosecutor and witness for assessment and clarification of the evidence to be given by the witness.

Report

This means that a police officer who has a reasonable suspicion that a person has committed an offence compiles a brief of evidence and forwards that to prosecution authorities so that a decision can be made to summons the person to court.

Social worker

In Families SA, a social worker undertakes the initial investigation and assessment of the child's immediate safety and ongoing risk. In some Families SA district centres, especially those in the country, this work is undertaken by generic social workers.

Strategy discussion

This is a discussion between Families SA, SAPOL, health professionals and other agencies such as education, when appropriate, to exchange information relevant to the notification, and to plan and co-ordinate the most effective investigation of the alleged abuse and neglect.

Urgent

This means that a child is in need of immediate protection from current and serious harm (priority response).

Serious

This is when a child is at risk of significant harm, or is considered to have suffered significant physical or psychological trauma.

References

Aronson, M & Hunter, J 1995, *Litigation evidence and procedure* (5th ed.) Butterworths, Sydney.

Giles, J B 1990, Beames, J & McDonald, A (Eds.), *Summary Offences Act Handbook* SAPOL, Adelaide

Marantelli, S E & Tikotin, C 1985, *The Australian Legal Dictionary* (2nd ed.), Edward Arnold Australia, Caulfield East, Victoria.

1.5. Relevant government departments, agencies and non-government bodies

The following is a brief explanation of the agencies that are involved. For a more detailed description of agencies please refer to Appendix D – *Agency profiles*, which includes roles and responsibilities and specific agency guidelines.

1.5.1. Families SA (DECD)

Families SA is an agency within the Department for Education and Child Development. It has the statutory authority for responding to child abuse and neglect under the *Children's Protection Act*. The role of Families SA is:

- responding to allegations of abuse and neglect by initiating investigations into such allegations
- protecting children from abuse and harm
- supporting families to reduce risk to children
- providing alternative care for children and young people when home is no longer an option
- case-managing children under the guardianship of the Minister
- working with young people who break the law
- managing adoption processes
- caring for refugee children who are unaccompanied minors
- delivering services to address poverty
- helping communities affected by disaster to rebuild.

Families SA is committed to reconciliation and to providing culturally appropriate services, including services specifically for Aboriginal people.

Office locations and numbers are available from www.families.sa.gov.au.

Crisis Response Unit

The Crisis Response Unit (CRU) provides a 24-hour child abuse report line (CARL) and all after-hours Families SA services. The CARL contact number is 13 14 78, and after-hours Families SA services can be contacted on 13 16 11.

Yaitya Tirramangkotti

A central Aboriginal team, Yaitya Tirramangkotti operates alongside CARL. This team is involved when matters relate to an Aboriginal child or family. Yaitya Tirramangkotti operates during normal business hours to provide consultation and advice on culturally appropriate departmental intervention.

Tel. 8203 0470 Fax. 8362 3977 AH. 131 478

1.5.2. Families SA: Care Concern Investigations Unit (CCIU)

The CCIU was established under the South Australian Government's *Keeping them safe* agenda because of an increased concern regarding allegations of harm, inadequate care and improper conduct towards children and young people placed in alternative care.

The CCIU is responsible for investigating and assessing allegations and notifications of harm or abuse of a child or young person under the guardianship of the Minister by a foster carer, a staff member or a volunteer.

Tel. 8226 8441 Fax 8226 8440

1.5.3. The Guardian for Children and Young People

The Guardian for Children and Young People is appointed by the SA Government to advocate for the best interests of children and young people in out of home care and to advise the Minister for Education and Child Development on the quality of their care.

Tel. 8226 8570

1.5.4. South Australia Police (SAPOL)

South Australia Police (SAPOL) provides a timely investigational response to detected or reported criminal offences, and safety and support for victims. SAPOL actively participates in state-wide crime prevention strategies. The service to victims of child abuse and neglect is delivered in partnership with other relevant agencies to ensure that the best interests of the child remain a priority.

1.5.5. Office of the Director of Public Prosecutions

The Office of the Director of Public Prosecutions (DPP) is a division of the Attorney-General's Department and was established in 1992 to provide an effective, fair and independent criminal prosecution service for the people of South Australia. The office is committed to the highest ethical and professional standards and strives to achieve the most effective and appropriate criminal prosecutions.

The DPP is responsible for conducting all major indictable matters prior to committal in the metropolitan area. SAPOL conducts committals in non-metropolitan courts. In addition to matters that are formally charged as major indictable offences, the DPP also has the responsibility for providing early advice to the SAPOL in relation to offences that may be resolved summarily, or for which it is appropriate that no charge be laid.

1.5.6. AGD: Crown Solicitor's Office

The Crown Solicitor's Office (CSO) is a division of the Attorney-General's Department and is the principal provider of legal services to government agencies, Cabinet and the Attorney-General. Solicitors from the Administrative and Environment Section of this office appear in the Adelaide Youth Court, and occasionally in country magistrates' courts before judges or magistrates from the Adelaide Youth Court, on behalf of either the Chief Executive of the Department for Families and Communities in relation to investigation and assessment applications, or the Minister for Families and Communities in relation to care and protection, variation and discharge applications.

1.5.7. Legal Services Commission of South Australia

The Legal Services Commission of South Australia is an independent agency established to make sure that all South Australians have access to legal help.

Tel. 8463 3555 Fax 8463 3599

1.5.8. Commissioner for Victims' Rights

The Commissioner for Victims' Rights is an independent, statutory officer appointed by the Governor to perform functions intended to strengthen victims' rights. These functions include reporting on the implementation of the Declaration of Principles Governing Treatment of Victims of Crime, (when appropriate) consulting prosecutors on charge decisions and the use of victims' impact statements and monitoring the effects of court procedures and practices on victims, as witnesses. As well, the Commissioner provides a voice for victims across the whole of the government sector.

The Commissioner can also consult a public official or public agency on an alleged breach of a principle under the Declaration and, if in the Commissioner's opinion, the breach is substantiated, he or she can recommend the public official or a representative for a public agency make a written apology to the aggrieved victim. The Commissioner is required to make an annual report to the Parliament and that report can include information on breaches, apologies and refusals by public officials and public agencies to apologise to victims of crime.

Furthermore, under the *Victims of Crime Act 2001*, the Commissioner can appear in court as provided for in that Act and other Acts of Parliament.

Tel. 8207 1723 Fax 8207 1736

1.5.9. AGD: Multicultural SA

This is a State Government organisation whose role is to provide assistance with respect to multicultural issues. The main branches of this organisation are:

Community Relations Branch

Interpreting and Translating Services – tel. 8226 1990

Policy and Co-ordination Branch – Tel. 8226 1944

1.5.10. Department for Education and Child Development (DECD)

DECD is responsible for ensuring the provision of children's services and public education in South Australia. Its key function is to set the directions for high quality education and care in South Australia.

Adults working in DECD have daily contact with children and young people and often regular contact with parents and care providers. Consequently they play a very significant role in:

- recognising and reporting child abuse and neglect
- information exchange and liaison with other agencies
- on-going support and advocacy for children and families
- identifying opportunities for early intervention with vulnerable children, young people and their families.

Knowing how to respond to children and young people when they display behaviours of concern or disclose adverse experiences is an integral part of mandatory pre and in service training for all people working in DECD. Through this training, adults are expected to respond to children and young people in a manner that:

- shows unqualified care for the child's wellbeing
- assumes the integrity of the child's concerns
- provides the child with appropriate opportunity to describe their concerns
- is non-investigative
- includes documentation of their discussions/ observations.

The quality of the responses and documentation gathered by adults in these circumstances can help limit the length and number of interviews children and young people face.

DECD Investigations Unit

This unit addresses more serious complaints against DECD employees and service providers that can come via notifications made to Families SA and/ or SAPOL. This unit liaises with SAPOL when they conduct criminal investigations.

Tel. 8226 1604 Fax 8226 1708

Education and Early Childhood Services Registration and Standards Board of SA

This regulatory board is responsible for regulation and registration of schools, care and early childhood services. This unit addresses complaints which can come via notifications made by Families SA and/or SAPOL, and liaises with SAPOL when they conduct criminal investigations.

For child care centres, baby-sitting agencies and Outside School Hours Care contact the Manager, Licensing and Standards:

Tel. 8226 2518 or 8226 0077 Fax 8226 1815

1.5.11. The Association of Independent Schools of SA

The Association of Independent Schools of SA (AISSA) is an association of non-government, non-Catholic independent schools; it represents and promotes the interests of these schools to state and national governments and within education and business communities.

AISSA provides a forum where the views of member schools on critical issues can be discussed and debated, and where sector-wide policies, positions and viewpoints can be formulated. It is a focal point for governments and other organisations in their dealings with the independent education sector, and is recognised by the key educational agencies, government and the media as the credible advocate for independent schools in South Australia.

For matters relating to employees of a particular school, initial contact can be made either with the principal of the particular school or with AISSA.

Tel. 8179 1400 Fax 8373 1116

1.5.12. Catholic education

Catholic education in South Australia operates within the Archdiocese of Adelaide and the Diocese of Port Pirie to meet the needs of families who choose an education based on Christian principles in the Catholic tradition.

Founded in the Catholic tradition, and strengthened by their ethos, Catholic schools in South Australia are committed to providing excellent education for students from a broad cross-section of communities.

For matters relating to Catholic education,

Tel. 8301 6600

For matters not relating to education contact the Professional Standards Office:

Tel. 8223 5890 Fax 8223 1572

1.5.13. SA Health

SA Health is the South Australian Government entity comprising the Department of Health and public health system services and agencies. Regional and other public health agencies responsible for service delivery include:

- Central Northern Adelaide Health Service (CNAHS)
- Country Health SA (CHSA)
- Children, Youth and Women's Health Service (CYWHS)
- Southern Adelaide Health Service (SAHS)
- South Australian Ambulance Service (SAAS).

With the exception of SAAS, these agencies provide public hospitals, specialist, community and primary health care services (such as GP Plus). These health services serve children, young people and their families and health workers working in these services play an important role in child protection by:

- recognising and reporting child abuse and neglect
- information exchange and liaison with other agencies on child protection matters
- support and advocacy for children, young people and families
- providing early intervention services for children who have been abused and neglected.

In addition, a number of specialist services are funded to provide assessment, treatment, counselling and other therapeutic support to children and young people who have been abused or neglected. Services also liaise with general practitioners and other specialist medical practitioners who also play a key role in recognising and reporting child abuse and neglect.

1.5.14. SA Health: Child Protection Services – Children, Youth and Women's Health Service and Southern Adelaide Health Service

The Child Protection Services (CPS) operates from the Women's and Children's Hospital and Flinders Medical Centre. Each service provides specialist forensic expertise in psychosocial and medical assessments for children (aged 0–18 years) in whom abuse or neglect is suspected, as well as longer-term interventions for children who have suffered abuse or neglect.

The CPS accepts referrals of children from Families SA and SAPOL when the possibility that they have suffered abuse or neglect needs to be investigated.

Women's and Children's Hospital CPS:
Tel. 8161 7346 Fax 8161 6062

Flinders Medical Centre CPS:
Tel. 8204 5485 Fax 8204 5612

1.5.15. SA Health: Owenia House – Central Northern Adelaide Health Service

Owenia House, formerly known as the Sexual Offenders Treatment and Assessment Program (SOTAP), offers a comprehensive intervention service for adults who sexually offend against children. Clients may be referred to the program as voluntary or mandated attendees.

For men and women 18 years and over who have sexually offended against children, the service offers a comprehensive intervention service, including assessment, group and individual therapy and follow-up. Counselling and support services are also provided to partners and families of offenders. Services include:

- therapeutic intervention, counselling and follow-up support
- individual and group therapy
- individual therapy for partners and families
- training for professionals in issues involving sex offender assessment and treatment.

Tel. 8362 3022 Fax 8362 3031

1.5.16.**SA Health: Yarrow Place Rape and Sexual Assault Service – Children, Youth and Women’s Health Service**

Yarrow Place offers 24-hour crisis response for recent rape or sexual assault when the victim is aged 16 years or over. Its services can include the collection of forensic evidence if the victim wishes to pursue legal action. Yarrow Place also provides counselling, specialised medical follow-up, training for workers, prevention projects and systems advocacy.

Yarrow Place has an Aboriginal sexual assault worker and provides counselling for Aboriginal clients who have experienced a sexual assault. Services are free and confidential.

Tel. 8226 8777 After hours: 8226 8787
Toll free: 1800 817 421 Fax 8226 8778

The Youth Sexual Assault/Abuse Counselling Service (YSAACS) is a specialised youth service within Yarrow Place that provides therapeutic counselling and support to young people (both male and female from 12-18 years of age) who have been sexually assaulted or abused, either recently or in the past. The service is free and confidential. YSAACS uses an outreach model. Counsellors are based at youth health service sites such as the Second Story, Shopfront youth health, Marion youth and CAMHS (Mt Barker) to ensure better access for young people. Aboriginal and Torres Straight Islander young people and young people under the Guardianship of the Minister are the service priority client groups.

Tel. YSAACS: 1800 351 700

1.5.17.**SA Health: Mary Street – Adolescent Sexual Abuse Prevention Program – Children, Youth and Women’s Health Service**

Mary Street is a prevention program that promotes safety in families and communities by helping young people to stop sexual abuse and sexual harassment of others.

Mary Street is for young people aged 12 - 18 years who:

- have committed a sexual offence
- have engaged in inappropriate or offensive sexual behaviour
- have sexually harassed others.

Mary Street provides counseling and help for adolescents and their families or care givers to assist young people to:

- take responsibility to stop sexual abuse and sexual harassment
- make restitution to help heal the harm caused by sexual abuse and sexual harassment
- respect others and develop appropriate relationships
- build self respect and confidence
- make sexuality respectful and positive.

Tel. 8340 4422 Fax 8346 6115

1.5.18.**SA Health: The Second Story – Children, Youth and Women’s Health Service**

The Second Story is a free, confidential, therapeutic counselling group and outreach health service for young people aged 12–25 years.

Tel. (toll free) 1300 13 17 19

The Second Story South: 8326 6053

The Second Story City: 8232 0233

The Second Story North: 8225 3477

The Second Story West: 8268 1225

1.5.19.**SA Health: Shopfront Youth Health and Information Service – Central Northern Adelaide Health Service**

Shopfront can provide pregnancy testing as well as a counselling service. Shopfront also offers counselling groups, community development projects, free pregnancy testing and free condoms to young people aged 12–25 years. There is also a Clean Needle Program and visiting services such as Shine SA, a youth lawyer, and an alternative education program.

Tel. 8281 1775 Fax 8285 7159

1.5.20.**SA Health: Southern Primary Health – Southern Adelaide Health Service**

Southern Primary Health – Marion Youth provides general and sexual health clinics, counselling and social work services, groups and programs for young people from 12-25 years including those who have experienced abuse. Staff and peer educators also provide workshops in secondary schools on relationship violence. While staff members are not formally involved in the investigatory process, they do provide reports of suspected abuse and assault to the CARL. In addition, an outreach worker from the Youth Sexual Assault and Abuse Counselling team based at Yarrow Place provides services from Marion Youth one day per week.

Tel. 7425 8300

10 Milham Street, Oaklands Park

1.5.21.**SA Health: Child and Adolescent Mental Health Services – Children, Youth and Women’s Health Service (CYWHS-CAMHS) and Child and Adolescent Mental Health Service – Southern Adelaide Health Service (SAHS-CAMHS)**

CYWHS-CAMHS (Northern areas) and SAHS-CAMHS (Southern areas) provide therapeutic support services for children and young people of any age up to 18 years with social, emotional, or behavioural wellbeing issues including those where abuse of any kind has occurred. CAMHS service philosophy is to work within the family context wherever possible to engage and support children and young people to remain safely within their family where it is appropriate.

CYWHS-CAMHS (Northern areas)

Tel. 8161 7198 Fax 8161 7371

Metropolitan services

- Eastern Region (Paradise)
Tel. 8207 8999 Fax 8365 2221
- Western Region (Port Adelaide)
Tel. 8341 1222 Fax 8341 2495
- Northern Region (Elizabeth)
Tel. 8252 0133 Fax 8287 0308

Country Services

For referrals to any country service

- Client free call: Tel. 1800 819 089
- Agency referrals: Tel. 8632 5304

Country Service Locations

- Port Augusta
Tel. 8648 5800 Fax 8642 2750
- Port Pirie
Tel. 8632 0693 Fax 8633 2489
- Port Lincoln
Tel. 8683 2077 Fax 8682 2005
- Whyalla
Tel. 8648 8930 Fax 8645 1113
- Barossa and Lower North
Tel. 8563 8544 Fax 8564 3434
- Yorke Peninsula
Tel. 8632 0693 Fax 8633 2489

SAHS-CAMHS (Southern areas)

Metropolitan services

- Noarlunga Regional Service
Tel. 8326 1234 Fax 8326 3340
- Marion
Tel. 8298 7744 Fax 8298 7232
- Seaford Outreach
Tel. 8326 1234 Fax 8326 3340

Country Services

- South East
Tel. 8724 7055 Fax 8723 2610
- Riverland
Tel. 8582 4290 Fax 8582 4295
- Mt Barker
Tel. 8391 3922 Fax 8391 3304
- Murray Bridge
Tel. 8531 3901 Fax 8535 6788
- Victor Harbor
Tel. 8552 0600 Fax 8552 0616
- Kangaroo Island
Tel. 8553 2037 Fax 8553 2437

1.5.22.

UnitingCare Wesley

UnitingCare Wesley provides the SideStreet counselling service, a free service for young people under 16 years of age. The SideStreet Counselling team works towards fostering:

- stability in the lives of young, homeless people who have been sexually abused
- reduction in the effects of abuse, such as guilt, shame and self-blame
- increased equity, accessibility and relevance of services for young homeless people
- increased awareness among the community and service providers about the prevalence and effects of sexual abuse and its link to homelessness.

As well as providing counselling the service is involved in advocacy, group work, and training and resource development concerning the issue of sexual abuse. Consultancy will be provided to workers and agencies in the metropolitan and country regions on issues such as making referrals, accessing resources and dealing with disclosures. The consultancy service can also assist workers in other agencies to provide initial or ongoing support to young homeless people who have experienced sexual abuse.

Tel. 8202 5871 Fax 8202 5869

1.6.

Monitoring the ongoing implementation of the *Interagency code of practice*

This *Interagency code of practice* has been developed to provide best practice in the investigation of sexual and other abuse of children.

It is acknowledged that practice in this area continues to evolve as research and experience modify thinking.

The following people will be responsible for monitoring the implementation of this code of practice, and for liaising and making recommendations regarding any implications for practice and/or policy change.

1.6.1.

SAPOL

The officer in charge, Sexual Crime Investigation Branch (SCIB) or that person's delegate will be responsible for the state-wide working standards relating to the SAPOL evidential interviewing process for children who allege sexual abuse.

Review of interviews

A periodic review of the evidential interviewing techniques and standards will be undertaken.

The method of evaluation will be at the discretion of the officer in charge, SCIB, and may incorporate a randomised selection of statements from both the metropolitan and country areas.

Sexual crime and child abuse co-ordinator (SAPOL)

The sexual crime and child abuse co-ordinator is attached to SCIB and provides research into key areas of sexual offences and child abuse and protection.

Feedback and support

Regular feedback will be provided to the interviewers, with a view to either reinforcing and/or improving the best practice approach.

A network will also be established within the country region to enable the development of a peer review process and the improvement of service delivery (subject to approval by the officer in charge, SCIB).

Training needs

The officer in charge, SCIB, will also be responsible for the training of nominated SAPOL officers in 'best practice' in interviewing abused children, and in being the SAPOL interagency representatives and undertaking duties concerning interview training across agencies.

1.6.2. Families SA

The Families SA executive director or their delegate will be responsible for:

- Families SA social work practice and standards with respect to this *Interagency code of practice*
- reviewing the practice standards for communicating with children
- providing feedback and support for staff
- providing for training needs.

1.6.3. CPS

The Director of CPS will be responsible for:

- the agency's practice and standards with respect to the *Interagency code of practice*
- reviewing interviews
- providing feedback and support for staff
- providing for training needs.

1.6.4. DPP

The Director of Public Prosecutions (DPP) (or delegate) will be responsible for:

- the implementation of the *Interagency code of practice* within the DPP
- provision of training where appropriate for staff members
- feedback to the legal staff and the Witness Assistance Service in the performance appraisal scheme that has been implemented in the office

The *Interagency code of practice* offers the framework for the legal staff and the Witness Assistance Service to provide timely and efficient prosecutions. It will ensure that victims and their carers are kept informed and advised of proceedings.

1.6.5. Crown Solicitor

The Crown Solicitor is responsible for the overall practice, performance and further education of solicitors employed in the Office. This person is assisted by Assistant Crown Solicitors who manage each section of the Crown Solicitor's Office.

The Assistant Crown Solicitor of the Administrative and Environment Section is responsible for the practice and standards of the solicitors performing legal work, including representation provided in court for the Minister for Education and Child Development or Chief Executive of the Department for Education and Child Development, under the *Children's Protection Act*.

Section 2

PRINCIPLES AND PHILOSOPHICAL ISSUES

This section provides a policy and legislative framework for the *Interagency code of practice*. It outlines the core values and principles that underpin the work of agencies involved in the investigation of suspected child abuse and neglect.

2.1. Policy and legislative context

At the international and national level:

- United Nation's Convention on the Rights of the Child (1989), to which Australia is a signatory
- United Nation's Declaration of Victims Rights (1987), to which Australia is a signatory.

At the state level:

- *Children's Protection Act 1993*
- *Criminal Law (Forensic Procedures) Act 2007*
- *Interagency guidelines in child protection* (SA Government, 1997)
- *Victims of Crime Act 2001*
- *Keeping Them Safe, 2004*
- *Charter of Rights for Children and Young People in Care.*

2.2. Principles

The following principles, along with those contained within the *Children's Protection Act 1993*, underpin the *Interagency code of practice*.

These principles are designed as a set of minimum standards which need to be observed as far as possible if child abuse and neglect enquiries are to be conducted in a manner most likely to ensure the protection of children and minimise the trauma of investigation for innocent parties.

> The voice of the child

The needs and wishes of the child should be established in all situations where decisions are to be made that will affect them. If age, developmental status or other factors make it difficult to determine the needs and wishes of the child, an advocate should speak on their behalf. In all cases when decisions are made concerning a child, the child's best interests must be paramount. This reflects the principles outlined in Section 4 of the *Children's Protection Act*.

> A focus on prevention of child abuse and neglect and the minimisation of further harm

Prevention is a vital system response to child abuse. A focus on prevention promotes social change so that abuse is less likely to occur, provides appropriate services, facilitates effective intervention to reduce the risk of further harm, and promotes recovery and healing.

> Appropriate, supportive and accessible services for children who may have been abused, and for their families

Services for children who may have experienced abuse or neglect and for their families should be appropriate, supportive and accessible. Access to services and support is essential to the healing process. In responding to this issue all services should ensure that workers are adequately trained and supported.

> Promotion of inter-sectorial co-operation and communication

Co-ordinated responses from health, welfare, educational, law enforcement, legal and community services are essential to ensure best outcomes for the child and their family. This involves interagency cooperation and collaboration with regard to investigations into suspected child abuse and neglect, as well as clear communication and information sharing systems.

> Best practice

Strive for best practice, with a specific focus on ensuring that:

- the responsibility for the abuse or neglect lies with the person who commits the abuse. The child should never bear, or be left to develop, a sense of responsibility for their involvement, regardless of the time or the circumstances
- practitioners take appropriate steps to make sure that the child is protected from additional abuse or intimidation by the alleged perpetrator
- the investigation involves full consultation, information exchange and co-ordination with the relevant agencies.

2.3. Information sharing principles

A significant contribution to the prevention of child abuse and neglect is the extent to which government and non-government agencies coordinate their support of vulnerable children, young people and families.

The South Australian Cabinet has approved the framework, *Information sharing: Guidelines for promoting the safety and wellbeing of children, young people and their families* (ISGs) to assist interagency collaboration. The ISGs guide the way information is shared across agencies and organisations to prevent immediate and anticipated serious threats to the safety and wellbeing of children and young people.

The specific process and practice for exchange of information by agencies involved in the statutory investigation of child abuse and neglect is provided in Section 6. Those processes, the ISGs and the Families SA / Health protocol, share these important common principles of practice.

- Carefully consider at the first opportunity the appropriateness of obtaining consent (preferably in writing) when working with children and families, but only if safe to do so.
- If consent is sought and refused, explain that information may be released if it concerns the safety of the child or young person (*Children's Protection Act*).
- If consent is obtained, openly and honestly explain what, how and why information will or could be released.
- Respect the wishes of the children, young people or families who do not consent. However, override this when the facts of the case indicate that the child or young person is at risk.
- Consult within your agency if you are not sure, and record the details of the consultation.
- Ensure that information is accurate, up to date, necessary for the purpose for which it is being released, released only to the appropriate people and released securely.
- Only release what relates to the risk to the child.
- Record the reasons for your decision to provide or not provide information.
- Record the details of what information you have released.

Additional references on information sharing are in the Department of Premier and Cabinet Circular PC012, *Information Privacy Principles Instruction* (1992), and the *Code of Fair Information Practice*, with which the Department of Health and the Department for Education and Child Development comply.

2.4. Intervention in child abuse

Additional principles are laid down under the *Children's Protection Act* which underpin all child abuse and neglect inquiries, irrespective of the agency involved or the service delivery system in operation.

Section 4 of the Act specifically requires the following principles to be exercised when using any of the powers:

- Every child has the right to be safe from harm.
- Every child has a right to care in a safe and stable family environment or, if such a family environment cannot for some reason be provided, in some alternative form of care in which the child has every opportunity that can reasonably be provided to develop his or her full potential.
- The child's wellbeing and best interest are to be the paramount considerations.
- In determining a child's best interest, consideration must be given to the following:
 - » the desirability of keeping the child within the child's own family and the undesirability of withdrawing the child unnecessarily from a neighbourhood or environment with which the child has an established sense of connection
 - » the need to preserve and strengthen relationships between the child, the child's parents and grandparents and other members of the child's family (whether or not the child is to reside with those parents, grandparents or other family members)
 - » the need to encourage, preserve and enhance the child's sense of racial, ethnic, religious, spiritual and cultural identity and to respect traditions and values of the community into which the child was born
 - » whether the child is able to form and express his or her own views as to his or her best interests
 - » the undesirability of interrupting the child's education or employment unnecessarily.
- In relation to an Aboriginal child, the *Aboriginal Child Placement Principle* is to be observed.
- A child who is placed in alternative care:
 - » must be provided with a nurturing, safe and stable living environment and care that is, as far as practicable, appropriate to the child's needs and culture

- » must be allowed to maintain relationships with the child's family (including the child's grandparents) and community, to the extent that such relationships can be maintained without serious risk of harm
 - » must be consulted about and, if the child is reasonably able to do so, take part in making decisions affecting the child's life, particularly decisions about the child's ongoing care, where the child is to live, contact with the child's family and the child's health and schooling
 - » must be given information that is appropriate, having regard to the child's age and ability to understand, about plans and decisions concerning the child's future
 - » is entitled to have his or her privacy respected
 - » if under the guardianship, or in the custody of the Minister, is entitled to regular review of their circumstances and the arrangements for their care.
- to the general principal that an Aboriginal child should be kept within the Aboriginal community and a Torres Strait Islander child should be kept within the Torres Strait Islander community.
 - For the purposes of the Act, a recognised Aboriginal or Torres Strait Islander organisation is an organisation that the Minister, after consultation with the Aboriginal community or a section of the Aboriginal community, or the Torres Strait Islander community or a section of the Torres Strait Islander community, as the case may require, declares by notice in the Gazette to be a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation, for the purposes of that Act.
 - All reasonable endeavours should be made when conducting consultations, negotiations, meetings, or proceedings of any kind involving an Aboriginal or a Torres Strait Islander person (whether a child or not), to do so in a manner and in a venue that is as sympathetic to Aboriginal or Torres Strait Islander traditions as is reasonably practicable.

2.5. Provisions to be considered when working with Aboriginal or Torres Strait Islander children

The following points should be considered when working with Aboriginal or Torres Strait Islander children, people or organisations.

- No decision or order may be made under the *Children's Protection Act* as to where or with whom an Aboriginal or Torres Strait Islander child will reside unless prior consultation has occurred with a recognised Aboriginal or Torres Strait Islander organisation.
- A person or court, in making any decision or order under the Act in relation to an Aboriginal or Torres Strait Islander child, must, in addition to complying with the requirements of Section 4 of that Act, have regard:
 - to the submissions made by or on behalf of a recognised Aboriginal or Torres Strait Islander organisation consulted in relation to the child
 - if there has been no such consultation, to Aboriginal traditions and cultural values (including kinship rules) as generally expressed by the Aboriginal community, or to Torres Strait Islander traditions and cultural values (including kinship rules) as generally expressed by the Torres Strait Islander community, as the case may require

2.6. Engaging children and their families

Families that are subject to a child protection investigation by Families SA or by SAPOL often object to this intrusion in their lives. It is usually difficult, therefore, for child protection professionals to engage families that are under investigation. The level of engagement achieved is often poor, in spite of the best efforts of the child protection professional. In such a situation the best that can be achieved is clarity concerning the processes that need to be followed in the investigation, and then openness and honesty about the actions which need to be taken to ensure the safety of the child.

Engagement is an important goal for any professional involved with parents of a child who is suspected of having been abused or neglected, or in whom abuse or neglect has been established. It is most likely to be successful when it is clear to the parents/caregivers that the child protection professional is being open, honest and respectful in their dealings with them. It may also be assisted by parents being encouraged, whenever it is appropriate and possible, to be involved in the decisions that are considered necessary for the protection of their child.

Adequate engagement is most likely to lead to a co-operative working relationship between parents and child protection professionals, whether Health, Families SA or the SAPOL. Strong engagement between child protection professionals and parents is a helpful strategy for addressing the future safety of the child. The following principles underpin service and communication processes with children and their families.

- All family members should be treated courteously, with dignity and respect, by each of the professionals involved in the investigation and the ensuing assessments.
- Ensure that family members know that in a child protection investigation the child's safety and welfare is given first priority.
- Throughout the investigation and assessments the parents and, when appropriate, the child must be informed about the role and responsibility of each of the professionals.
- While professional confidentiality must always be respected, it is appropriate for information to be exchanged between child protection professionals involved in the investigation and assessment. This exchange of information is authorised under the *Children's Protection Act*, s.58.
- In all other circumstances, except for evidentiary purposes, consent for release of information should be sought from a parent or guardian. If consent is sought and refused, information may be released if it concerns the safety of the child or young person (*Children's Protection Act*).
- Listen to the concerns of the children and their families to establish their level of understanding. When understanding is confused or incorrect, further attempts must be made to clarify the issues.
- Ensure that parents, other carers and children (when developmentally appropriate) know and understand their rights and responsibilities in relation to the role of each professional and each agency that is involved in a child protection investigation.
- It is desirable, whenever and wherever possible, that a family be engaged with a therapeutic service or provider that is independent of the statutory agency investigating the child abuse and neglect so that the child and family may benefit from therapy during investigative processes and procedures.

2.7.

Principles governing the treatment of victims of crime

The *Victims Of Crime Act 2001* lays down principles to govern the treatment of victims of crime in the criminal justice system. While the principles are not enforceable in criminal or civil proceedings, do not give rise to any right to damages for breach, and do not affect the conduct of criminal proceedings, they do act as a guide to public agencies and officials when working with victims of crime.

The principles articulated under the Act state that victims of crime are entitled to:

- fair and dignified treatment
- the right to have a perceived need for protection taken into account in bail proceedings
- the right to information
- be advised on their role as witness
- be consulted in relation to certain decisions in instances of serious offences
- be present in court
- have the impact of the offence considered by sentencing court and to make submissions on parole
- request consideration of appeal
- be informed about access to health and welfare services
- compensation and restitution
- return of property
- protection of privacy.

The full text of the principles is provided in Appendix I.

2.8.

Charter of Rights for Children and Young People in Care

This is a charter for children and young people who are placed away from their families in care. *The Charter of Rights for Children and Young People in Care* stipulates that children and young people have the right to;

- feel good about themselves
- live in a place where they are safe and cared for
- get the help they want or need
- understand and have a say in the decision that affect them.

The *Charter of Rights for Children and Young People in Care* is available at; <http://www.gcyp.sa.gov.au>.

2.9.

Access and equity

When working with children and their families, practitioners from all agencies must make every attempt to accommodate any specific needs of individuals in order to ensure access and equity throughout the child protection process. This will ensure that individuals:

- fully understand the reasons for agency intervention
- have every opportunity to engage with those professionals involved in the investigation and assessment and, where appropriate, the criminal justice processes
- are able to make informed choices regarding acceptance of responsibility and changes in behaviour.

The following offers some guidance in ensuring that all families with whom agencies work are dealt with in a socially just and appropriate manner.

2.9.1.

Disability issues

An interagency protocol has been established and is contained within the *Child Protection Interagency Guidelines* (2nd edition) 1997, at page 44 of that document.

2.9.2.

Cultural issues

South Australia is a multicultural society and it is beyond the scope of this document to deal with each of the many cultural and general life experiences of its people. The following information is intended to provide some key points for practitioners when dealing with people who are Aboriginal or from culturally and linguistically diverse backgrounds.

It is, however, important to note that culture is not always the determining factor in the way in which people respond to issues of child abuse and neglect. Family ties and relationships within the community can dramatically affect the way in which an individual or family responds to the abuse.

Aboriginal people

When engaging Aboriginal people, practitioners from statutory agencies should have empathy with regard to historical issues and past injustices as this will enhance the establishment of trust. It is that trust which is fundamentally important when inquiring into child abuse matters.

Appendix B provides detailed information regarding considerations when communicating with Aboriginal people.

Culturally and linguistically diverse (CALD)

Broad knowledge and a variety of skills are required to work in a culturally diverse environment. Multicultural SA has experience in dealing with all cultures represented in South Australia and it is recommended that their assistance and advice be sought in cases involving people from CALD backgrounds. In many instances people from CALD backgrounds have a fear of, and reluctance to deal with, government authorities. Multicultural SA can provide advice on the best way of addressing these issues. Tel. 8226 1944

2.9.3.

Further references

Beitchman, J H, Zucker, K J, Hood, J E, daCosta, G A, & Akman, D 1991, *A review of the short-term effects of child sexual abuse*, *Child Abuse & Neglect*, 15, 537–556.

Beitchman, J H, Zucker, K J, Hood, J E, daCosta, G A, & Cassavia, E 1992, *A review of the long-term effects of child sexual abuse*, *Child Abuse & Neglect*, 16, 101–118.

Everstine, D S, & Everstine, L 1989, *Sexual trauma in children and adolescents*, Dynamics and treatment, Brunner/Mazel, New York.

Prins, H 1991, *Some aspects of sex offending – causes and cures?*, *Medical Science Law*, 31(4), 329–337.

Families SA 2006, *Reporting child abuse and neglect – child safe environments*,

Families SA *Keeping them safe: Health and Families SA: OR Child protection information sharing protocol: Practice guidelines*, 2004 Department for Education and Child Development

Section 3

NOTIFICATIONS OF CHILD ABUSE AND NEGLECT

The child protection process begins with a notification relating to a person's concerns regarding a situation of child abuse and/or neglect.

Early identification of ongoing abuse and neglect can ensure that relevant agencies and workers provide appropriate intervention and services to a family to assist them in their responsibility for the child or young person's safety. The intervention and services offered by each agency will be detailed in the ensuing sections.

Families SA is the agency with the authority and mandate to respond to notifications.

3.1. Who should notify?

The *Children's Protection Act 1993* establishes a process to enable people who suspect, on reasonable grounds, that a child has been or is being abused or neglected, or is in danger of being abused or neglected, to provide information to Families SA so that action can be taken to protect the child.

Any person can notify Families SA regarding their concerns; however, s. 11 (1) and (2) of the Act obligates certain professionals to notify Families SA of their suspicions that a child is being or has been abused or neglected. These mandated notifiers include professionals such as:

- medical practitioners
- pharmacists
- registered or enrolled nurses
- dentists
- psychologists
- police officers
- community corrections officers
- social workers
- ministers of religion
- employees of, or volunteers in, an organisation formed for religious or spiritual purposes
- teachers in an educational institution (including a kindergarten)

- approved family day care providers
- any other person who is an employee of, or volunteer in, a government department, agency or instrumentality, or a local government or non-government organisation, that provides health, welfare, education, sporting or recreational child care or residential services wholly or partly for children, being a person who:
 - » is engaged in the actual delivery of those services to children, or
 - » holds a management position in the relevant organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children.

3.2. Details of the notifier

Identifying details concerning the notifier will be removed from intake records being forwarded to SAPOL or CPS.

Information concerning the notifier will be provided to SAPOL or CPS only if this information is required for the proper conduct of the investigation. It should not be documented in records that may subsequently be subpoenaed.

Section 13 (2) and (3) of the *Children's Protection Act* provides confidentiality to the person who notifies their suspicion of abuse or neglect. Section 13 (2) of the Act does, however, allow the exchange of information concerning the notifier in the following circumstances:

- in the course of official duties to another person acting in the course of official duties –for example, SAPOL investigating the alleged abuse, or
- with the consent of the notifier, or
- by way of evidence presented in proceedings before a court.

3.3. How to notify

The **Child Abuse Report Line** (CARL, Families SA) is the central point for all notifications of child abuse and operates 24 hours a day, 7 days a week – phone 13 14 78.

When making a notification, SAPOL officers should use the Police departmental form PD26 – *Child Protection Notification – Child Safe Environments – Reporting Child Abuse/Neglect*, and follow procedural instructions.

Identifying details concerning the notifier will be removed from intake records being forwarded to SAPOL or CPS.

3.4. What to notify

A child protection notification relates to a suspicion that a child has been or is being abused. This relates to suspected physical, sexual and emotional abuse and neglect.

In making a notification, a person must give the name of the child and the grounds on which the person formed the belief that the child is being, or has been, or is in danger of being abused or neglected.

It is not necessary for a notifier to know the identity of the person believed responsible for the abuse or neglect, or that person's relationship to the child or young person, to make a notification.

When making a notification, CARL will request the following information:

- the child or young person's name, age and address
- the notifier's reason for suspecting that the injury to, or behaviour of, or the condition of the child or young person is the result of abuse or neglect
- the notifier's assessment of immediate danger to the child or young person (information may be asked about the whereabouts of the suspected perpetrator/s)
- what arrangements, if any, exist for the care and protection of the child or young person
- what involvement, if any, other agencies have in dealing with the abuse or neglect issues
- a description of the injury, the behaviour or condition observed
- the current whereabouts of the child or young person

- ethnic identity (if possible)
- when and where the incident occurred
- the identity of the suspected perpetrator, if known.

Even if the notifier does not have this information their suspicions must be reported.

3.5. Child Abuse Report Line (CARL) assessment

The CARL worker will assess the information provided by the notifier to determine whether there are reasonable grounds to suspect that the child concerned has been or is being abused or neglected.

If the matter is one where the notifier is concerned and believes it to be a situation where there is a suspicion on reasonable grounds, but the intake worker assesses that the matter does not meet the criteria for child abuse or neglect, the matter will be recorded as 'Notifier Concern' rather than as a child protection matter. No action will be taken by the DECD on a Notifier Concern, but it may be given consideration if future reports are made on the same child or young person.

If the CARL worker believes that there is a suspicion on reasonable grounds, the information will be recorded by Families SA on the client information system as a child protection matter, either physical, sexual, emotional or neglect.

When a notification of concern is received in relation to an Aboriginal or Torres Strait Islander child, the Yaitya Tirramangkotti team is responsible for making the assessment. The workers in this team are also available for cultural consultation during normal business hours. There are Aboriginal or Torres Strait Islander workers on each team based within the Crisis Response Unit. These workers are able to assist with appropriate cultural information for individual cases.

3.6. Process after recording a child protection notification

The CARL worker determines the initial response classification on all notifications which are recorded on the client information system as child protection matters.

In the cases where a child who is under the Guardianship of the Minister is alleged to have been abused by a foster carer, a staff member or a volunteer will generate a Notification Referral and forward to the Families SA Care Concern Investigation Unit.

A safety assessment instrument is used to identify those children who are in current and serious danger. When safety factors are identified, an immediate referral is made to the Families SA's office nearest to the child's residence for their urgent attention.

If no current or serious danger to the child or young person is apparent, the CARL worker will determine if there are grounds for state intervention, based on the:

- alleged severity of the abuse or neglect
- harm inflicted upon the child or young person
- age and vulnerability of the child or young person
- characteristics of the parent or caregiver
- ability of the parent or caregiver to protect the child
- access the alleged perpetrator has to the child or young person.

CARL will classify the notification and pass it on to the appropriate Families SA office, whose staff will implement one of the following courses of action:

- Respond immediately to reports of children in current or serious danger through a co-ordinated investigation with other key agencies (**Urgent**). Crisis Response Unit will respond immediately to Urgent notifications received after hours.
- Investigate thoroughly reports of children or young people at risk (**Serious**).
- Respond in a less intrusive manner and engage the family in a shared approach where risks are low though the needs are significant.

All notifications are referred to the Families SA District Centre by the start of the next working day, although Urgent classifications will be referred to the Families SA office immediately.

Notifications of abuse or neglect of a child or young person who is under the guardianship, or in custody, of the Minister are simultaneously referred to the Families SA Care Concern Investigation Unit. If the allegation requires SAPOL involvement and has not already been referred to SAPOL the Families SA Care Concern Investigation Unit will liaise with SAPOL within 24 hours of receiving the notification. Where the allegation is of sexual abuse and is to be referred to SAPOL for investigation, the Families SA Care Concern Investigation Unit will also notify the Guardian for Children and Young People who, from that point, will monitor the progress of the investigation and prosecution.

Following classification and transfer of the information to the Families SA office, the case will be allocated to a social worker who will co-ordinate the interagency intervention, from investigation and assessment to case closure.

If a strategy discussion is indicated, this will be called as soon as practicable and will usually involve the Families SA Supervisor and the allocated caseworker.

Strategy discussions on all cases of serious sexual or physical abuse or neglect are important to ensure a co-ordinated, timely response from the relevant agencies. At this discussion decisions should be made about how the investigation should be conducted, including the advisability of joint visiting, and medical and/or forensic assessment. The respective roles and responsibilities for each party should be specified and recorded on the case file. The decisions made should be based on the best interests of the child and family.

In some matters, a Families SA visit to the family to conduct an initial assessment of the allegations will have occurred before a strategy discussion or referrals to SAPOL and the relevant child protection service. This may have occurred if information provided by the notifier was imprecise and required clarification, or when Families SA initial investigation uncovered further harm to the child.

3.7.

Action – post-notification

Once a notification has been assessed by the Families SA CARL worker and it is decided that further action needs to be taken, CARL will refer the notification to the Families SA office. The Families SA supervisor will in turn refer the matter to the appropriate agencies.

At the earliest opportunity, CPS or SAPOL will require, whenever possible, the following information:

- A statement from the first person complained to, or the person who notified Families SA
- Background information regarding the family relationships
- The circumstances of the alleged offence
- Any prior involvement with SAPOL and/or Families SA.

This information will assist SAPOL and CPS when deciding to allocate the file for follow-up and/or interviewing process.

3.8.

Making a referral to CPS

3.8.1.

Office hours

All referrals or consultations are initially dealt with by the intake worker rostered on that day. The normal daily roster is between 0900 and 1700 hours.

If it is more appropriate for other members of the CPS staff to be involved then the intake worker will arrange this.

It is important that referring agents and individuals seeking consultation or referral respect that this is the initial stage in the process of service provision at the CPS.

Telephone referrals:

- Women's and Children's Hospital CPS: 8161 7346
- Flinders Medical Centre CPS: 8204 5485 & 8204 5484

Fax referrals – referrals may be expedited by faxing the referral information to the CPS intake worker on:

- Women's and Children's Hospital CPS: 8161 6062
- Flinders Medical Centre CPS: 8204 5612

The fax cover sheet should contain the referring person's name, their contact number and a time or times when they will be available for the CPS intake worker to telephone them.

When urgent referrals are faxed to CPS, particularly those that have a Tier 1 Urgent rating, they must be followed by an urgent phone call to the CPS intake worker by the appropriate Families SA staff person.

E-mail referrals may also be made to the CPS (WCH) intake worker. The e-mail address is CPSintakeworker@health.sa.gov.au.

3.8.2.

After hours

The CPS provides an emergency after-hours on-call service.

On-call staff can be contacted by telephoning the switchboard of the relevant hospital and asking for the Child Protection Service on-call clinician.

Flinders Medical Centre switchboard: 8204 5511

Women's and Children's Hospital switchboard: 8161 7000.

3.9.

Making a referral to SAPOL

Child abuse notifications are normally made direct to the relevant Sergeant in Charge, Family Violence Investigation Section (FVIS) in the metropolitan area, or the Officer in Charge, Investigation Section, in the country area.

3.9.1.

Extra-familial matters

Upon receipt of the notification SAPOL will determine urgency ratings in extra-familial matters. However, the Families SA supervisor, when referring the matter through, will include their assessment of the urgency of the response required. In extra-familial cases SAPOL will have the lead in determining further action.

3.9.2.

Police communications and urgent referrals

If the sergeant in charge (FVIS) or country Investigating Section officer cannot be contacted, Families SA may direct their enquiries to the Police Communications Centre, who will assist in locating an officer to deal with the matter.

3.9.3. Contacting SAPOL in dangerous situations

If a Families SA social worker believes that they need the assistance of SAPOL to ensure their safety when working with a particular family, that worker may, in the case of child protection matters, contact the relevant Police FVIS or country Investigation Section for advice on the best response or person to deal with the matter.

In non-urgent and non-child protection matters, if a breach of peace is anticipated when Families SA intervene, a patrol may be requested by phoning Police Communications 131 444, or in country regions the relevant local police station.

In life-threatening or urgent situations when a police patrol is required, phone 000.

3.10. Strategy discussion

The strategy discussion is the cornerstone of planning the initial interagency response. Strategy discussions involve those agencies and personnel who need to take part in the initial planning process; however, if personnel are not available, this does not preclude Families SA from initiating action to protect the child.

The Special Investigations Unit (DFC) is responsible for convening a separate strategy discussion for all special investigations involving a child or young person who is under the guardianship, or in custody, of the Minister.

3.10.1. Purpose of the strategy discussion

The purpose of the strategy discussion is to co-ordinate a multi-agency approach to the child protection and criminal investigation and will:

- consider all the known information about the child and family
- determine the immediate response required
- in relation to a notification of the alleged abuse of a child, develop an effective and co-ordinated investigation plan that will best ensure the care and protection of the child
- review the progress of that plan periodically, making any necessary adjustments to that plan.

3.10.2. When will strategy discussions be convened?

A strategy discussion will take place:

- in most instances when a child protection notification has been assigned an Urgent rating
- whenever a child protection notification has been assigned a Serious rating, and either SAPOL, Families SA or CPS consider it necessary
- in extenuating circumstances – upon the request of other involved agencies (for example, owing to the size or nature of the incident or investigation).

3.10.3. Convening strategy discussions

Families SA is responsible for convening and conducting strategy discussions for *Urgent* and *Serious* classifications. If a notification received after hours is classified *Urgent*, Crisis Response Unit will initiate the strategy discussion. SAPOL will convene strategy discussions for notifications of extra-familial abuse when Families SA is not involved. Responsibilities include:

- setting up the meeting (time, date, venue)
- inviting participants
- ensuring participants understand the process, especially the related record keeping and confidentiality provisions
- providing details of the notification to all participants before the meeting
- chairing the strategy discussion
- recording the investigation plan which is developed
- promptly providing a copy of that plan to all participants.

Strategy discussions may be teleconferences or face-to-face meetings.

3.10.4.

Invited participants

The participants in strategy discussions will usually, but not always, include at least SAPOL, Families SA and the relevant Child Protection Service (Women's and Children's Hospital or Flinders Medical Centre).

The participants from SAPOL, Families SA and the CPS will be sufficiently senior persons able to make the necessary planning decisions and commitments (including about resources) likely to arise out of strategy discussions. For Families SA this means that a senior practitioner and/or supervisor will always be involved. For SAPOL, this means that either the supervisor or senior investigating officer will be involved whenever possible. In urgent cases, if SAPOL participation and/or direction is sought during periods where the relevant FVIS members are not on duty, the senior police officer of the relevant area will appoint a suitably qualified police officer to participate in a strategy discussion who will refer his/her decisions to the relevant investigation area. The on-call senior police officer can be sought through the Communications Centre.

In some cases when a child is aged between seven and 12 years a member from the Victim Management Section, SCIB, may be conducting the interview. In such cases it is appropriate for that member to be included in any strategy discussion relating to that child.

In cases involving Aboriginal or CALD children, consultation before the strategy discussion with appropriate cultural consultants, or an appropriate member of the child's ethnic community, will assist in devising the most appropriate investigation strategy.

In cases involving a child or young person under the guardianship, or in custody, of the Minister the DFC Special Investigation Unit will usually convene a separate strategy discussion to address care concern issues. In those cases of a serious sexual abuse allegation that are to be referred to SAPOL, the Guardian for Children and Young People, or delegate, will be included in the strategy discussion.

On occasions, representatives from other involved agencies (school, kindergarten, Family Day Care, Mental Health Services, DECD Investigations Unit) or other individuals (the notifier, a parent) may be invited to participate.

Contacts

Families SA: The supervisor or, if not available, the senior practitioner or, if not available, the duty worker will contact an appropriate Families SA person.

SAPOL: The following should be contacted (in order): the sergeant in charge of the relevant FVIS, a member of the FVIS, a senior police officer (inspector or above) (urgent only), or Police Communications who will contact the relevant on-duty or on-call member.

CPS: The intake worker.

3.10.5.

Preparation for strategy discussions

All agencies need to come to strategy discussions with relevant information and be prepared to share information. All participants need to come to the strategy discussion able to talk about their agency's current and/or prior contact with the family and/or alleged perpetrator, focusing on:

- any history of suspected or confirmed child abuse or neglect, either as victim or alleged perpetrator
- any history of violent or out-of-control behaviour.
- other relevant information.

This information will be used to inform the planning process.

3.10.6. Confidentiality of information

Information brought to strategy discussions about prior contact with the family and/or the alleged perpetrator is to be treated as strictly confidential. Without the consent of the participant (or their agency) the information brought to the strategy discussion should not be:

- recorded by any participant in their agency's official records
- used by other participants in other forums or for other purposes
- released or divulged by participants to other persons or organisations.

Similarly, information provided by Families SA to the strategy discussions regarding who notified the concerns about abuse of the child are to be treated as strictly confidential and not divulged to any other person or recorded in any agency's official records without prior discussion with Families SA.

Under the *State Records Act 1997* an official record is defined as information created, received, and maintained as evidence and information by an agency or person, in pursuance of legal obligations or in the transaction of business. Within this context official records can include emails, memos, hand written notes, pictorial matter and matter contained on a disk or tape.

Should a record be made by an employee of a department in their capacity as an employee, it must be retained and destroyed only in accordance with the *State Records Act 1997*.

Therefore, given the confidential nature of the information brought to the strategy discussion, careful thought should be given by participants to what matters, if any, need to be taken down in notes beyond a simple record of the strategy discussion.

3.10.7. Record of strategy discussion

The convenor of the strategy discussion will make the formal record of the strategy discussion in the appropriate agency format. The convenor will circulate an action plan to the meeting participants.

The record will include:

- details of participants (name, title or role, employing agency)
- details of the meeting (time, date, venue)
- brief point summary of key issues arising from discussion
- action plan (who, what, by when)
- details of any further review meetings, if planned.

3.10.8. Issues to be addressed within the strategy discussion

The initial meeting should cover all of the following:

- Introductions and reminders about process
- Discussion and clarification of the allegations
- Clarification of what is known about the immediate and continuing safety of the child in terms of the:
 - » need for immediate medical assessment
 - » access to the child by the alleged perpetrator
 - » presence of other secure protective persons or factors.
- Sharing of prior contact information about the family and/or alleged perpetrator
- Clarification of what needs to be done, how quickly, in what order, by whom and for what purpose in relation to the matters appearing below.

Please refer to Appendix F for a list of questions for strategy discussions.

3.10.9. Strategy discussions in extra-familial abuse

Care needs to be exercised in deciding that the extra-familial label is applicable.

For matters of extra-familial abuse which are investigated by Families SA, the SAPOL investigating officer or Families SA supervisor will have the responsibility of being involved in, and co-ordinating, the strategy discussion with CPS and/or other relevant agencies.

It is sometimes necessary for the extra-familial category to be reviewed if, during the course of the assessment by CPS, it becomes apparent that, for example, the sexual assault was contributed to by a poor standard of parental care, or the parent or carer knew of the sexual assault but did nothing to intervene. Alternatively, there may be a suspicion of parental or intra-familial abuse.

In the case of extra-familial abuse only, if Families SA is a participating agency it will co-ordinate the strategy discussion. If not, the SAPOL investigating officer or supervisor will have the responsibility of being involved in and co-ordinating the strategy discussion with CPS and/or other relevant agencies (eg, Department for Education and Child Development).

Whenever a child is under seven years of age, SAPOL will initiate a strategy discussion with CPS to determine the most appropriate action to gain the most benefit from the interview process. The strategy discussion process outlined above provides a guide.

Issues to be addressed within the strategy discussion are the same as those mentioned previously (investigations, medical aspects and interviewing).

Recording the strategy discussion involves the same processes as those mentioned previously; however, the information will be recorded in the police case management file.

Section 4

INVESTIGATION AND ASSESSMENT

The terms ‘investigation’ and ‘assessment’ have different meanings for different agencies.

- > For **Families SA** Care Concern Investigation Unit and the Investigations Unit of the Department for Education and Child Development, the investigation is part of the overall assessment regarding the safety of a child and the current and future risk of further abuse or neglect. The purpose of the investigation and assessment is to discover what, if anything, happened and to gather information about the child and the family’s circumstances in order to decide what, if any, action is required to protect the child.
- > For **SAPOL** the investigation involves the collation of evidence aimed at establishing whether or not there is a reasonable cause to suspect that a criminal offence has been committed, and who is reasonably suspected of having committed it. An assessment is made regarding the facts and a decision is then made as to whether or not to arrest or report the alleged perpetrator or simply file the matter.
- > The **CPS** refers to its process as “providing an assessment of the child and family’s circumstances” to enable a decision to be made about the safety of the child and the advisability of criminal charges against alleged perpetrators. The assessment incorporates the use of parent interviews, psychosocial assessment of the child, medical assessment of the child, and reports. Speaking to the child forms only part of the process.

The interviewing process – including how to conduct an interview, the CPS assessment and SAPOL interviewing guidelines, and aspects of the medical assessment – is dealt with in this section.

Whilst the following are considered appropriate practices, there needs to be a degree of flexibility in the way in which each agency responds to these issues. That is, deviation from the agreed protocol may be appropriate in some circumstances.

Moreover, the need for interagency communication and collaboration is extremely important and can never be underestimated. The greater part of the co-operative work between agencies occurs as a result of informal liaison and networks outside the structured process.

This section will use three terms to differentiate between interview types:

- **initial interview**, which refers to the communication process with the child in order to establish initial safety issues and/or whether an evidential interview is warranted
- **evidential interview**, which is obtained for the purpose of criminal court
- **assessment**, which is an ongoing process and involves all parties.

4.1. Consent

SAPOL will normally attempt to obtain the consent of a child’s guardians before interviewing the child concerning allegations of abuse or neglect. If consent is refused, a decision is made in consultation with Families SA as to whether or not there is a need to adopt an alternative strategy to interview the child. This may include considering the need to remove the child under section 16 of the *Children’s Protection Act*, in which case there are powers under section 26 of the Act enabling a child to be interviewed as part of assessment whilst under the custody of the Minister for Education and Child Development.

Alternatively, an application may be filed in the Youth Court pursuant to section 20 of the Act, seeking orders which might include custody of the child and the examination and assessment of the child.

4.1.1. Informed consent

The principles of informed consent are similar to those contained within the interviewing protocols.

4.1.2.

Consent to Medical Treatment and Palliative Care Act 1995

A number of issues affect the ages at which a child is able to consent to an assessment and/or examination. The legislation under the *Consent to Medical Treatment and Palliative Care Act 1995* has a number of implications for practice. This is especially so for children who are in the 12-to-15-year age group.

Moreover, when matters relate to urgent forensic requests this does not always coincide with the medical need to consider 'imminent risk to life or health', as per the requirement under section 13 of the *Consent to Medical Treatment and Palliative Care Act*.

Section 12 of the Act states that a medical practitioner may administer medical treatment to a child if:

- a parent or guardian consents; or
- the child consents and the doctor who is to administer the treatment is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment and that the treatment is in the best interests of the child's health and well being; and
- that opinion is supported by the written opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced.

A child under the *Consent to Medical Treatment and Palliative Care Act* means a person under 16 years of age.

4.1.3.

Criminal Law (Forensic Procedures) Act 2007

Although the majority of the *Criminal Law (Forensic Procedures) Act 2007* deals mainly with forensic procedures applicable to people who are under suspicion of having committed a criminal offence, Part 2, Division 1 of the Act also applies to people who are not under suspicion, such as victims of crime or volunteers.

In child protection issues the *Criminal Law (Forensic Procedures) Act* is employed in furthering a criminal investigation. The intention of the Act is to provide for carrying out forensic procedures to obtain evidence relevant to the investigation of criminal offences. Consent for medical examinations or physical assessments on children in circumstances other than for the purpose of a criminal investigation will not be sought by SAPOL pursuant to this Act.

For a detailed description of what constitutes a forensic procedure see Part 1, s.3 of the Act. Part 2, Division 1, s.10 outlines provisions relating to withdrawal of consent.

4.2.

The initial response

4.2.1.

General issues

Before making initial contact with a child, interagency consultation – a strategy discussion – must occur to plan the process for the forthcoming investigation.

There is a real need to differentiate between non-urgent and urgent investigations – the latter may necessitate interviewing the child at their school or at another location away from the home.

When considering these issues, practitioners should be mindful of the child's need to have a degree of privacy and confidentiality to minimise any feelings of anxiety or embarrassment.

Allegations of abuse by foster parents or staff of the Department for Education and Child Development must be referred to the Families SA Care Concern Unit for investigation.

4.2.2. Engaging the supporting parent(s) or caregiver(s)

This could include grandparents, older children, siblings or members of the extended family.

It is extremely important that any decision made across agencies should not alienate the child's supporting parent, who should be kept fully informed. The interviewing of children without parental knowledge does not engage them in the process and has often been known to alienate them from working co-operatively with agencies.

If, however, a parent refuses to give consent to his or her child being interviewed then this must be regarded as a very serious matter. Appropriate action through the Youth Court should be considered.

It is crucial that the lead interviewer should be decided upon during the strategy discussion; however, there should also be the flexibility to take into account the wishes of the child – eg, the preferred gender of the interviewer.

4.2.3. Informed decision making

Children who have adequate developmental capacity, and their caregivers who are not under investigation of suspected child abuse or neglect, must be informed that they have a level of control throughout the investigation process, including having their wishes considered in decisions regarding the prosecution of the accused.

Each of the various child protection professionals has a responsibility to ensure that the child and their parent or caregiver (when appropriate) is fully informed of the progress of the investigation. At frequent intervals during the investigation, particularly at those times when decisions are being made in relation to its progress, the child and parent or caregiver should be given the opportunity to review the situation in relation to how they feel about the prospect of prosecution.

Also, lawyers and witness assistance officers from the DPP will ascertain the wishes of the child and caregiver during the assessment process.

4.2.4. Minimising false expectations

It is essential that victims of sexual abuse (and their carers) be advised of the nature of the criminal investigation and court process. It is important this is done at an early stage so that the victims (and their carers) have a clear and full appreciation of the process and the impact it may have on them – that is, it is important false expectations about what the criminal justice system may deliver are avoided. It is also important that victims appreciate that giving a statement will set in train a process of investigation, assessment and possibly prosecution. It is not appropriate to discourage victims from reporting information and making complaints, however it is important that victims have sufficient and realistic information about the process and experiences likely to be ahead of them to allow them to make an informed decision about whether they want action to be taken, and what that action might be. Who is to provide that information and when is a matter that should be agreed at the 'strategy discussion'.

4.2.5. The number of personnel

Minimising the number of personnel who initially respond to the allegations will not only alleviate the child's distress but may also help to minimise the number of interviews of the child.

4.2.6. Minimising the number of interviews

Keeping the number of interviews with the child to a minimum should be the goal of each agency. Therefore, when a clear disclosure of abuse or neglect has already occurred it may be better to obtain a detailed account from the person to whom the child initially spoke, such as the notifier or recent complaint witness. The conversation with the child should then centre more on safety needs, and on discussing with him or her any future issues, such as the need for an evidential interview.

Too many interviews (whether initial or evidential) can cause distress to a child. They may feel as if they are not taken seriously. Moreover, repeated interviews can give rise to inconsistencies in statements given by the child. These inconsistencies may lessen the credibility of the child's account within both the civil and criminal jurisdictions.

4.2.7. Venue for the initial interview

Whenever possible, conducting the initial interview or speaking to a child at their school, or any place other than the child's home, should be avoided unless there are very good grounds to do so. However, there may be occasions when it is important or necessary to interview the child away from the family home, such as when:

- the child has expressed a fear of going home
- the caregivers indicate that they will be unsupportive of the child
- the person suspected of being responsible may place pressure on the child not to disclose
- the alleged perpetrator may or will be present.

4.3. Initial assessment of the child for the criminal process

There is no simple rule of thumb that allows a Families SA worker or a police detective to reliably assess whether a child has achieved a sufficient developmental level to be able to participate in an interview that is likely to provide information of evidentiary value.

It is rare for children three years and less to be able to give, at an interview, sufficient information with the necessary contextual detail for the interview to have potential evidentiary value, unless they have exceptional developmental capabilities. Their verbal skills are not the best parameter to use in assessing their suitability for interviewing, but rather their ability to describe events in a reliable context.

Unless there are clear developmental problems, of which many parents or caregivers will be aware, children between three and four years may have the developmental capacity to provide information of evidentiary value and an interview should be attempted. Language problems, of themselves, should not preclude an interview being attempted as language difficulties can be worked around.

Children five years and older are generally able to provide information of evidentiary value at an interview.

4.3.1. Initial assessment

The main aim in the initial assessment is to:

- determine if the child is willing to take part in an evidential interview
- informally assess if the child is capable of being evidentially interviewed and competent to testify
- gather further information to inform the process
- assess the safety of the child.

The initial assessment should cover the following aspects:

- Introduce the interviewer(s)
- Explain why the interviewer is talking to the child (but unless absolutely necessary, do not interview the child about the alleged abuse).
- Assess any protective needs and take appropriate action to ensure the child's safety.
- Regardless of the type of interview (initial or evidential/assessment) which may follow, obtain permission from either the child or supporting caregiver(s) (where appropriate).

4.3.2. Speaking to the child's supporting caregiver(s)

When subsequently speaking to the child's supporting caregiver(s), explain the reason for and the type of interview to be undertaken. Discretion will be needed regarding the amount of detail that is conveyed to the caregiver(s) about the child's initial disclosure. Information from parents about the child's circumstances may also be obtained and an assessment made with regard to issues of safety. Ideally this will be done jointly, with Families SA taking the lead role, depending upon the circumstances.

4.4. Agency responsible for conducting the forensic interview or assessment

Families SA workers will not normally interview a child when sexual abuse has been alleged, but rather arrange for such interviews or assessment to be conducted by the relevant hospital-based Child Protection Service or SAPOL. Also, Families SA social workers will not conduct the evidential interview of a child in matters that are likely to proceed to criminal prosecution.

Information concerning the interviewer's knowledge, aims of the interview, method by which evidential interviews will be conducted, and type of information that can be given to caregivers following the evidential interview appears in Appendix A.

4.5. Agency guidelines

Refer to Section 12 – Appendix E for the *Agency guidelines in the conduct of forensic interviews and assessments*.

4.6. Ongoing case management

The term 'case management' has different meanings for different agencies.

- > **Families SA** will co-ordinate the investigation and assessment of an allegation of intra-familial abuse. They will continue to work with families where abuse or neglect has been confirmed and where there is an assessed risk of further abuse. Services provided to families aim to reduce the risk of re-abuse. Families SA case management responsibility is to co-ordinate their service provision with other agencies, ensuring that the level of child care is monitored, and evaluating the family's progress in meeting the objectives of the case plan.

- > For **SAPOL**, 'case management' involves the collection of evidence to assess whether or not criminal action should be taken against the person suspected of the abuse. Once having made a decision to arrest or report and if the matter goes to trial, any ensuing court case may take up to a year or more to conclude the criminal process. During this time SAPOL will have the task of keeping the child and family informed of progress, as well as the responsibility to ensure that all exhibits, statements and witnesses are ready and, when necessary, attend the ensuing court case.

During the time leading up to court, the accused may breach their bail conditions. These breaches may place the child's safety in jeopardy and appropriate action needs to be taken in these circumstances. In many instances, child abuse matters are either withdrawn prior to court or a *nolle prosequi* is entered during the trial. In these instances, the investigating police officer should advise Families SA of the withdrawal of these charges, especially where the only orders helping to secure the child's safety are provided for by SAPOL or court bail.

Section 5 LEGAL ACTION

5.1. Decision making

Action to protect a child from further abuse may be appropriately taken by family members, including extended family. Sometimes this may involve applications to the Family Court for parenting or residence orders.

However, there may be circumstances when formal state intervention is needed. Orders are sometimes sought through the Youth Court to ensure that appropriate assessments are completed or immediate action is taken under Section 16 of the *Children's Protection Act* to protect a child from further abuse. In less urgent situations, a family care meeting may be convened, or an application made to the Youth Court for an Investigation and Assessment Order or a Care and Protection Order to secure the child's protection.

Such intervention requires the co-ordinated involvement of several agencies. The various activities undertaken by agencies during this stage should represent a planned and co-ordinated response to the investigation and assessment conclusions. A multi-disciplinary case conference can be useful to structure the approach to the Youth Court.

Within the criminal jurisdiction, SAPOL investigators gather the evidence and then decide whether to report or arrest the person suspected of having committed the abuse, or to file the matter. In all situations the police officer is to consider whether or not the intended action is in the best interests of the child, and should consult with all relevant agencies to obtain their views.

Having considered a police brief of evidence, the DPP then decides whether a criminal prosecution is warranted.

Each agency has a particular role and mandate. It is important in such co-operative arrangements that practitioners from each agency do not assume the responsibility for, nor prejudice, another agency's role in the child protection or criminal process.

The following information gives guidance with regard to these issues.

5.1.1. Families SA

The *Children's Protection Act* gives Families SA the responsibility of making applications to the Youth Court for Investigation and Assessment Orders and Care and Protection Orders when the safety of the child cannot be assured within the family setting (detailed procedures can be found in the Families SA *Child protection manual of practice* – Vol. 1).

Social workers will consult with their Families SA office supervisor to determine the need for a court order application, the grounds for the application, and the types of orders required. In the case of an Aboriginal or Torres Strait Islander child or young person, consultation will take place with a gazetted Aboriginal organisation. After consultation with the Crown Solicitor's Office, the solicitors from the CSO represent Families SA in making an application to the Youth Court.

5.1.2. SAPOL

The decision to arrest or report a person suspected as responsible for an alleged abuse should be made in accordance with SAPOL General Orders.

The decision-making process may involve consultation with Families SA and/or CPS workers who have dealt with the child and the family.

Importantly, the wishes of the child, and caregiver where appropriate, should be sought and, where possible, respected.

Whilst the threshold of what constitutes a 'reasonable cause to suspect' rests with the individual police officer, consideration should be given to the amount and type of useful information that children of a very young age can communicate before proceeding to charge a person.

5.1.3. Consultation with other agencies

In considering the issue of protection of a child there are options other than the criminal process that can be used. Families SA can apply for an Investigation and Assessment Order which might include an order that a guardian cease or refrain from residing in the same premises as a child (the onus of proof for such applications is the balance of probability).

Any person breaching Youth Court orders can be prosecuted, and the matter can be referred to SAPOL for investigation.

5.1.4. Additional information for adjudication and prosecution

It is extremely useful for the DPP to have the contact details for both the Families SA and CPS officers so that they may assist in the assessment of the prosecution files.

5.1.5. Prosecution decision process and guidelines

Proofing of the child witnesses

The DPP will advise the police investigator of the intended proofing session with the child.

If the investigator was the person who took the statement, attendance at the proofing will be arranged with them. If possible, the DPP will arrange for Witness Assistance Service officers to attend at all proofing sessions for children.

The DPP must be given copies of the video and/or audio tape record of interview when it is requested.

These tapes are an important means by which the prosecutor can assess the presentation of the child so he can make a determination about a reasonable prospect of conviction.

The prosecutor would usually arrange for the child to view the video before proofing to ensure that the child has the best chance of accurately recounting the circumstances surrounding the allegations.

The prosecutor would not as a matter of course provide a copy of the video or audio tape to the defence counsel. They will, however, permit the viewing of the video by defence at the DPP office, and if an expert for the defence wishes to view the video, the DPP would facilitate this.

Conveyance to the proofing (metropolitan)

Normally the supporting parent will convey the child to the DPP proofing. However, the officer in charge of the matter may help in this regard.

5.2. Prosecution protocol for the DPP

SAPOL is the investigative body that provides a brief with an attached record of interview of the child.

5.2.1. The interview

The interview needs to specify with some particularity the identity of the alleged offender and to provide sufficient detail of the alleged offence/s to enable the DPP to identify the appropriate charges. It is essential that the interviewer is appropriately trained and provided with sufficient material to enable them to conduct an interview that covers all the essential elements of the alleged offence.

It is clearly undesirable to conduct multiple interviews with a child. In the case that insufficient detail is contained in the interview, the DPP will liaise with SAPOL and/or CPS. Re-interviewing should only occur if it is not possible to decide whether or not to prosecute without doing so.

There must be enough detail to identify an occasion upon which it is alleged the offence/s occurred. For example, when dealing with old offences, reference to the grade the child was in is not helpful unless the age at which the child started school is known.

There must also be enough detail about the sexual behaviour to determine the individual offences (such as persistent sexual abuse) or charges based on the course of conduct.

The interviewer must not lead the child or suggest answers, as this defeats the purpose of the interview and makes it impossible to determine whether the child can give an intelligible account of events.

Before the interview the interviewer should be apprised of relevant facts so that he or she knows what topics need to be canvassed and what needs clarification.

If there was a recent complaint by the child it is very important to ask the child how he or she came to make the complaint and what it was he or she said.

In cases where the DPP requires further information or assistance in relation to the cognitive development or any other matter relating to the child, or the family circumstances of the child, contact may be made with CPS either directly or through the investigating officer.

5.2.2. The assessment

An assessment is made in all cases as to whether there is a reasonable prospect of conviction. In the case of young children it is preferable to determine whether there is a reasonable prospect of conviction before laying charges. In most cases the child will be proofed by a solicitor from the DPP. The assessment may include considerations of the following factors:

- The age of the child
- Whether the child can give an intelligible account of events
- The ability of the child to give sworn or unsworn evidence
- Any supporting evidence, including medical and forensic evidence
- Whether the alleged offender has made any admissions of guilt and, if so, what he or she admits
- Any relevant previous complaints of sexual abuse
- The attitude of the child and/or parent or guardian to the matter proceeding before the criminal courts
- The support that is available to the child, including counselling and medical assistance
- Any other relevant factor.

If it is determined that there is a reasonable prospect of conviction and the matter proceeds, the child and parents are regularly kept informed of the proceedings. In the event of new evidence or a change in circumstances it may be necessary to reconsider whether there is a reasonable prospect of conviction.

In the event that there is not a reasonable prospect of conviction on the available and admissible evidence, the child and parent or guardian must be promptly informed and given an opportunity to speak to the prosecutor in relation to the decision.

5.2.3. Engaging with the child

The child and his or her guardian must be advised of their rights in relation to closed-circuit TV, screens, a closed court and a court companion. The general procedures for giving evidence will be explained and any special requirements will be arranged. This will be done by the prosecutor or, where appropriate, the child witness assistance officer.

The child witness assistance officer will be available to all child witnesses who require information, counselling and/or a support person for court proceedings. This officer will be able to provide general information to the parents or guardians and refer questions of a legal nature to the prosecutor.

5.2.4. Informing the child and/or caregiver of the outcome after the trial

After the trial the child and his or her parents or guardian must be promptly informed of the outcome and be given an opportunity to speak to the prosecutor and/or child witness assistance officer if they wish.

5.3. Crown Solicitor's Office

As legal representatives of the Minister for Education and Child Development or the Chief Executive of the Department for Education and Child Development, the solicitors from the Crown Solicitor's Office present evidence to the Youth Court in connection with applications for either Care and Protection orders or Investigation and Assessment orders.

The evidence adduced is a combination of that gathered by Families SA caseworkers, statements taken from witnesses or victims by SAPOL, and medical reports, interviews and assessments conducted by the CPS. Unlike the DPP, the Crown Solicitor's Office does not have cause to interview a child victim or call a child victim to give evidence in the Youth Court. This is because of the provision in the *Children's Protection Act* that requires a child who is the subject of proceedings to be represented by a legal practitioner. This practitioner is normally provided from the Youth Legal Services of the Legal Services Commission, except when the child is of Aboriginal or Torres Strait Island descent, in which case a private practitioner funded by the Legal Services Commission will represent the child.

Section 6

INFORMATION SHARING

The first part of this section deals with the legislative and policy basis for the exchange of information by agencies involved in the care and protection of children.

This section goes on to describe the exchange of information and the legal process regarding the videotaping and/or recording of the interview, as well as the reports produced by the agencies.

6.1. Interagency information sharing protocols

The South Australian Government's *Keeping them safe* program states, "the key to success is to intervene early, when children are beginning to experience difficulty, share the warning signs, collaborate and take action before the problems become entrenched" (p 12). One of the aims of *Keeping them safe* is "to remove barriers to information exchange (such as misconceptions about legal constraints) and share information better to achieve better integration of services" (p 16). Research has shown that when information has not been shared it has often resulted in the non-confirmation of abuse or neglect, thereby denying children and their families access to further services or protection from continued abuse.

6.1.1. The Children's Protection Act 1993

The *Children's Protection Act 1993* outlines the legislative basis relating to confidentiality and information sharing with regard to child protection matters. Specific legislative requirements under this Act include:

- **Section 58** - A person engaged in the administration of the *Children's Protection Act 1993* who, in the course of that administration, obtains personal information relating to a child, a child's guardians or other family members or any person alleged to have abused, neglected or threatened a child, must not divulge that information. This section does not prevent:
 - a person from divulging information if authorised or required to do so by law, or
 - a person from divulging statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates, or
 - a person engaged in the administration of this Act from divulging information if authorised or required to do so by his or her employer.
- **Section 13** - Subject to this section, a person who receives a notification of child abuse or neglect from a notifier, or who otherwise becomes aware of the identity of a notifier, must not disclose the identity of the notifier to any other person unless the disclosure
 - is made in the course of official duties to another person acting in the course of official duties, or
 - is made with the consent of the notifier, or
 - is made by way of evidence adduced in accordance with subsections (3) and (4)
- **Section 52E** - Information about individual cases disclosed to the Guardian or a member of the Guardian's staff is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991* (see section 6.1.5)
- **Section 52L** - Information about individual cases disclosed to the Council for the Care of Children or a person employed (or formerly employed) to assist the Council for the Care of Children is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*. This section does not, however, prevent the disclosure of information about suspected offences or suspected child abuse or neglect to the appropriate authorities.

- **Section 52V** - The Child Death and Serious Injury Review Committee, or a person authorised by the committee to conduct a review of a case of child death or serious injury, may request any person who may be in a position to do so to produce documents, to allow access to documents or other information, or to provide information (in writing) that may be relevant to the review. A person does not, by complying with a request under this subsection, contravene a statutory prohibition against the disclosure of confidential information, or any rule of the common law or equity, or any principle of professional ethics.
- **Section 52X** - Information about individual cases disclosed to the Child Death and Serious Injury Review Committee or a person employed (or formerly employed) to assist the Committee is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*. A member of the committee, or a person who has been employed in duties related to the functions of the committee, must not disclose confidential information obtained as a result of his or her official position. However:
 - o information about possible criminal offences must be reported by the committee to the Commissioner of Police; and
 - o if the committee comes into possession of information suggesting that a child may be at risk of abuse or neglect, the committee must pass the information on to the appropriate authorities; and
 - o information relevant to a coronial inquiry or possible coronial inquiry is to be passed on to the State Coroner.

6.1.2. Information sharing: Guidelines for promoting the safety and wellbeing of children, young people and their families

The *Information sharing: Guidelines for promoting the safety and wellbeing of children, young people and their families* (ISGs) summarise the legal and practical framework that supports appropriate information sharing between agencies in child protection circumstances. The guidelines are designed to give providers of services to children, young people and their families confidence in sharing information appropriately with each other.

They apply to the public sector and to certain non-government organisations that have contracts with government and have agreed contractually to share information about risks to children and young people. This includes people who provide services wholly or partly to:

- children and young people
- adults who are parents or pregnant
- adults doing paid or volunteer work with children and young people.

The ISGs provide a step-by-step guide on the responsibilities and decisions involved in information sharing, as well as advice on where to get advice on complex information sharing requests and help with dispute resolution.

For current information on the guidelines and their implementation see www.gcyp.sa.gov.au and go to the information sharing guidelines page. The Office of the Guardian for Children and Young People is assisting with the implementation.

6.1.3. The information sharing protocol between the public health sector and Families SA

The *Information sharing protocol* between public sector health professionals and Families SA was endorsed by the chief executive officers of the Department of Health and the Department for Families and Communities in February 2007.

The protocol allows information to be shared between Health and Families SA (whether or not there has been a notification of suspected child abuse or neglect to Families SA) when:

- it is agreed that children or young people are 'at risk'
- in relation to pregnant women, their infant, once born, would be considered to be 'at risk'
- it is agreed that a child or young person will be at risk of future physical and emotional harm without assistance of some kind
- the behaviour or circumstances of an adult (parent or caregiver) places a child at risk.

The protocol enables Health and Families SA practitioners to know the detail of each other's involvement with children and their families in the above circumstances, as it relates to the risk to the child or young person.

This access to each other's information may influence management plans and the provision of services to children considered at risk and their families.

The *Information sharing protocol* only relates to the release of information that is related to the risk to the child.

Circumstances when information can be released

Information can be released between agencies when

- an infant, child or young person is 'at risk' or could be 'at risk' in the future if assistance is not provided, or
- an unborn child will be 'at risk' once born due to the behaviour or circumstances of their mother.

Information that can be released

It is appropriate for information to be released if it is in relation to:

- the parent(s), caregiver(s), siblings of an unborn child who would be considered 'at risk' after birth
- the parent(s), caregiver(s), siblings of children or young people considered 'at risk'
- an infant, child or young person considered 'at risk'
- any other person who currently is or previously has been in close association with a child or young person considered to be 'at risk' (this person does not have to have been a caregiver of the child).

Consent in relation to the release of information by either Health or Families SA personnel

It is not necessary to obtain consent from a parent or guardian but it is desirable in the interests of maintaining client trust, unless unsafe to do so.

The *Information sharing protocol* specifically allows for the provision of information in situations of 'risk' without the seeking of consent.

Health professionals or Families SA workers should consider the merits of seeking consent from clients before contacting the other agency. When the seeking of consent is considered appropriate then the normal agency procedures for obtaining consent should be followed.

The decision to obtain consent is a matter of professional assessment and judgment.

The process of information exchange between Health and Families SA workers

If both parties agree that a particular child (including those unborn) is or will be at risk then information can be released.

Information is exchanged confidentially. It can be provided verbally or in writing.

Whenever information is exchanged, a dated note of the details and to whom the information was provided will be recorded in the client/patient record.

Health units and Families SA service units have developed procedures related to the *Information sharing protocol*. Health and Families SA workers should familiarise themselves with these documents.

6.1.4. The legislative basis for information sharing with the DECD Families SA Care Concern Investigations Unit (CCIU)

In determining whether a matter is serious enough to warrant a special investigation, and in supporting a special investigation process, the CCIU has a legislated authority to access relevant information as articulated under the *Children's Protection Act*.

Division 3, Section 19 of the *Children's Protection Act* states that

(1) If the Chief Executive—

(a) suspects on reasonable grounds that a child is at risk; and

(b) believes that the matters causing the child to be at risk are not being adequately addressed,

the Chief Executive must cause an assessment of, or investigation into, the circumstances of the child to be carried out or must effect an alternative response which more appropriately addresses the potential or actual risk to the child.

(2) For the purposes of an investigation, the Chief Executive may, by notice in writing, require a person who has examined, assessed, carried out tests on or treated the child, or the agency for whom the person works, to furnish the Chief Executive with a written report on the examination, assessment, tests or treatment.

Delegated legal authority has been provided by the Chief Executive of the Department for Education and Child Development to members of the Care Concern Investigations Unit to carry out investigations as to the child's circumstances. That legal authority to conduct such investigations is derived from:

- *Children's Protection Act 1993*
- *Public Sector Management Act 1995*
- *Disability Services Act 1993*
- *Family and Community Services Act 1972*
- Common Law.

6.1.5.

The legislative basis for information sharing with the Guardian for Children and Young People

The Guardian has legislated authority to receive relevant information about children and young people under the guardianship, or in the custody of, the Minister for Families and Communities.

The *Children's Protection Act*, part 7A, 52C says, inter alia:

(3) The Guardian has the powers necessary or expedient for, or incidental to, the performance of the Guardian's functions.

(4) A government or non-government organisation that is involved in the provision of services to children must, at the Guardian's request, provide the Guardian with information relevant to the performance of the Guardian's functions.

6.2.

Interagency protocols for exchange of information relating to the investigation or assessment of child abuse and neglect

The following information describes the protocols with respect to obtaining and dealing with reports and electronic recordings produced by those involved in the investigation or assessment of child abuse and neglect.

The exchange of information across agencies helps to maximise the opportunity to make appropriate and timely assessments, and to do so in the best interests of the child. The DPP needs accurate and timely information upon which to base a decision on the continuation or otherwise of a criminal matter.

Any report, transcript or recorded interview produced by the agencies is to be treated confidentially, and practitioners are to comply with the provisions set out in the South Australian Government's Cabinet Administrative Instruction No. 1 of 1989 (reissued 30 July 1992), *Information privacy principles*; see www.premcab.sa.gov.au/pdf/circulars/Privacy.pdf.

The Department of Health and Department for Education and Child Development have adopted the *Code of fair information practice*, which is based on the *Commonwealth Privacy (Private Sector) Amendment Act 2000*, to guide their handling of personal information; see www.health.sa.gov.au/Default.aspx?tabid=57.

The confidentiality requirement is again subject to the overriding obligation of the DPP to disclose to defence information relevant to the prosecution or to a potential defence.

6.3.

CPS reports – forensic, medical or psychosocial assessments, photographs

6.3.1.

Forensic and medical or psychosocial assessment reports

The investigating officer should advise the Child Protection Service clinician of any timeframes for the provision of reports. This should occur as soon as the timeframe is known.

The medical report will be supplied in a declaration form at the request of the investigating officer. Otherwise the report will follow the standard format.

WCH CPS: Requests should be directed to the director's secretary.

FMC CPS: Requests should be directed to the director, CPS.

The child's forensic interview report or psychosocial assessment can be attached to the brief of evidence. This provides the DPP with the family background information that they require to make an assessment of the file (for issues concerning disclosure of these documents to defence counsel, refer to the appropriate DPP prosecution policy).

6.3.2. Photographs

To obtain photographs for the purposes of copying them for court processes, the following arrangements have been agreed to.

WCH CPS: Liaise directly with the CPS director.

FMC CPS: Liaise directly with the CPS director.

Any reports produced by SAPOL remain the property of SAPOL.

6.3.3. Electronic recordings and transcripts

DPP may wish to view the initial recording of a forensic interview undertaken by CPS to decide whether criminal charges are to proceed. The DPP may wish to view the recording:

- for initial evaluation of the case
- for proofing
- to show defence
- to allow any different solicitor assigned to the case to watch it
- to allow the prosecutor to watch it
- for use in trial in case any inconsistent statement is made and it must be played to the witness giving evidence.

If a member of the DPP wishes to view the recording of an interview conducted by the CPS with a child, the DPP prosecutor will contact the CPS by telephone or in writing to request its release for this purpose.

- The CPS will advise when and where the record of the interview will be available.
- The DPP will then contact the investigating officer to arrange a viewing of the interview.
- The record of the interview will then be collected by that officer who will provide a receipt to the CPS.
- The record of interview will then be delivered to the DPP, and a receipt will be provided to the officer delivering the tape.

When the DPP no longer requires the record of interview the investigating officer will again be contacted to collect it, and a receipt provided. The record of interview will then be delivered to CPS, where a receipt will be provided to the delivering officer.

6.4. SAPOL: Record of interview, transcripts, photographs

6.4.1. SAPOL and DPP

A transcript is normally supplied with the brief of evidence.

A copy of the child's electronically recorded interview will be supplied to the DPP upon request.

A child's electronically recorded interview may be viewed at the SAPOL facility provided that prior notice is given. A quiet and private area will be provided to view the electronic recording.

Generally, no electronic recording will leave SAPOL. Permission for the removal of an electronic recording is at the discretion of the relevant SAPOL supervisor. Section 104 4(b) of the *Summary Procedure Act 1921* outlines the requirements for prosecution (DPP and SAPOL) to allow the defence access to the electronic recording of the child's interview. The DPP protocol is outlined within that agency's code of practice. When considering whether or not to provide access to child interviews to defence, advice should be sought from the officer in charge, Sexual Crime Investigation Branch.

6.4.2. SAPOL and DECD Families SA Care Concern Investigations Unit (CCIU)

When DECD (Families CCIU) is involved in a joint investigation with SAPOL, or needs to have a copy of the transcript of the child's interview for its ongoing work with the family, the agreed protocol between DECD CCIU and SAPOL is that:

- a copy of the transcript and/or synopsis of the child's interview may be forwarded to the requesting CCIU officer
- photographs of any injury will not be routinely supplied but can be viewed
- the electronic recording of the interview will not be released to CCIU but will be provided to the Youth Court, via the Crown Solicitor or by subpoena.

The request should be made to the officer in charge, Family Violence Investigation Section (metropolitan) or officer in charge of the relevant country investigation area.

The transcript or synopsis will be made available to CCIU should it be requested. The officer who releases the transcript to CCIU will advise the requesting CCIU worker of the circumstances under which the statement was obtained – eg, any confidentiality requirements expressed by the victim or supporting caregiver.

6.4.3. SAPOL and the Crown Solicitor's Office

From time to time the Crown Solicitor's Office, which acts on behalf of Families SA in Youth Court applications, may need to secure the electronic recording and/or transcript of a child's evidential interview. In these circumstances the electronic recording and/or transcript can be delivered either to the requesting solicitor from the Crown Solicitor's Office direct or to the Youth Court by subpoena.

6.4.4. SAPOL and the Family Court

The electronic recording or transcript of the child's interview will only be supplied to the Family Court by subpoena. Delivery is normally made to the Registrar; however, in some instances production can be made direct to the court.

6.4.5. SAPOL and Owenia House (formerly known as SOTAP)

The exchange of information between SAPOL and Owenia House, whether in writing or orally, is guided by the *Information privacy principles' instruction*, Clause 4 (10). It should be noted that:

- a child's statement cannot be given to Owenia House without the written approval from the victim and/or guardian (as appropriate)
- a perpetrator's criminal history cannot be given to Owenia House without the written consent of the subject of that criminal history
- details of any Paedophile Restraining Order that may apply to an individual being treated at Owenia House may be released as they are on the public record.

6.5. Recording of information

6.5.1. SAPOL recording the interview (also applicable to the CPS process)

The legislation that underpins the recording of interviews can be found in Section 104 of the *Summary Procedure Act 1921*. A PD133: *Verification by a police officer of transcript/written statement* needs to be submitted for the criminal process.

6.5.2. Children over 12 years

Unless the child suffers an intellectual disability, is illiterate or non-English speaking and a translator is required, interviews of children over 12 years must be in the form of a written statement verified by declaration (PD166).

This does not preclude an officer from electronically recording the interview and later compiling a typewritten statement.

If a child is over 12 years but the police officer is of the view that the child is mentally impaired, then the officer must provide a declaration to that effect to explain a departure from Section 104.

6.5.3. Children under 12 years, or a person who is illiterate or who suffers from an intellectual disability

The following should be read in conjunction with the 'Interviewing of children with an intellectual disability' in the document *Interagency guidelines* (1997).

In all cases when the child is under 12 years of age, is illiterate or suffers from an intellectual disability, the interview with the child will be electronically recorded. If audio-visual facilities are not available an audio tape of the interview can be used.

The video is sometimes used in the sentencing proceedings to show the level of maturity, the level of intellectual functioning and the appearance of the child at the time of the offence. The delay in finalisation of matters, and a desire not to call a child to give evidence except when absolutely necessary, means that a video can be useful at sentencing, and care should be taken to ensure the quality of both the audio and the visual recording.

If a child suffers from an intellectual disability, documentation detailing the intellectual disability needs to be submitted for the criminal process by the Investigating Officer.

6.6. Reports produced by the agencies

Although it is appropriate and necessary to share information between agencies, the protocols of the agency that owns the report should, as much as possible, be followed before using or releasing any part of that report to third parties.

6.6.1. Reports produced by CPS

Any reports produced by a clinician from CPS remain the property of Children, Youth and Women's Health Services through CPS, and to Southern Health Service, FMC. These reports are routinely provided to Families SA and SAPOL as part of the process of referral and assessment.

6.6.2. Reports produced by SAPOL

Synopses of child interviews are not to be completed by SAPOL personnel.

When an investigating officer does not personally interview the child, they are to view the interview at the time it is conducted. If this is not possible the interviewing officer is to provide the investigating officer with a video or audio copy of the interview as soon as possible. The investigating officer will then personally view or listen to the interview.

When it is determined by the officer in charge, Sexual Crime Investigation Branch (SCIB), in accordance with SAPOL policy, that an alleged offence involving a child falls within the ambit of the SCIB, they will be responsible for both investigating the offence and interviewing the child.

When the expertise of the SCIB is sought to interview a child, a request for such assistance is to be made via the operations inspector at SCIB.

Tapes will only be transcribed when:

- a disclosure is made, and
- there is a likelihood of the matter proceeding in criminal court.

Other practitioners may view the child's electronically recorded interview after prior arrangement with the Officer in Charge, SCIB.

These reports remain the property of SAPOL.

6.7. Storage and destruction of the child's electronic recording

6.7.1. SAPOL

The storage of evidential police electronic recordings will be in accordance with SAPOL General Order – Electronic Recording of Interviews. The destruction of these police electronic recordings will be as per the *State Records Act 1997*.

6.7.2. SA Health: Child Protection Service – Flinders Medical Centre – Southern Adelaide Health Service

The Flinders CPS retains the evidential interviews only if SAPOL are proceeding with the case to the criminal court.

6.7.3. SA Health: Child Protection Service – Women's and Children's Hospital – Children, Youth and Women's Health Service

The record of the interview is kept as part of the child's medical record.

Section 7

ADDITIONAL ASPECTS

This section details those additional aspects that are incidental to the interview and/or medical assessment of the child. The areas dealt with include:

- removal of children in danger
- transporting the child to the interview and/or medical assessment
- allegations of abuse within, or potentially involving, Family Court situations
- use of police warrants (under the *Children's Protection Act 1993*)
- therapeutic guidelines
- grievance dispute resolution.

7.1. Removal of children in danger

7.1.1. SAPOL

Part 4, Division 2 (Sections 15 to 18) of the *Children's Protection Act* deals with removal of children in danger. In this Division, a police officer may remove a child who they believe on reasonable grounds to be in a situation of serious danger and that it is necessary to remove the child from that situation in order to protect the child from harm or further harm (Section 16). In reality, however, this power would be rarely utilised without prior Families SA involvement.

Section 16 Removal and transportation

If an officer believes on reasonable grounds that a child is in a situation of serious danger and that it is necessary to remove the child from that situation in order to protect the child from harm (or further harm), the officer may remove the child from any premises or place, using such force (including breaking into premises) as is reasonably necessary for the purpose.

Before removing a child from a situation of danger, police officers must have prior approval from an officer of police of or above the rank of inspector, unless they believe on reasonable grounds that the delay involved in seeking such approval would prejudice the child's safety.

Police officers should try alternative measures – such as contacting the child's guardian/s or Families SA – before using this section.

A police officer who removes a child pursuant to this section must make all reasonable endeavours to return the child to the child's residence, unless they are of the opinion that it would not be in the best interests of the child to do so. In deciding whether to return the child to his or her residence, the officer should consider the child's opinions, taking into account the child's age and maturity. If the child wishes to be conveyed to his or her place of residence, police officers must endeavour to arrange the transportation.

Police officers in any doubt about where the child should be placed are to consult with an appropriate Families SA social worker and convey the child to the care of the person nominated by that worker.

Breaking into premises

Section 16 of the Act allows SAPOL to break into premises to remove a child. When this is necessary, consideration must be given to the urgency of the situation, the need to preserve life or prevent injury, and the requirements under SAPOL General Orders – Operational Safety – Incident Management – Entry to Premises.

Operational safety – incident management

In non-life-threatening situations prior approval must be sought from an officer of police or supervisor.

SAPOL action after removal

Whenever SAPOL action results in a child being removed, the nature and circumstances of the removal must be reported to Families SA.

If a child is removed or transported under this Division of the Act, the member responsible must complete a PD 373 (*Removal / transport of a child*) and notify CARL on 131 478.

If SAPOL removal results in the child being taken to a place other than their place of residence, then SAPOL will obtain the name of the Families SA officer consulted along with their place of work and contact number. This information must be provided by the removing officer to the child's guardian(s).

7.1.2. SAPOL assisting Families SA

Families SA supervisors are authorised, by the Minister for Families and Communities, through the Chief Executive of the Department for Families and Communities, to approve the removal of a child in accordance with Section 16 of the *Children's Protection Act*. Families SA supervisors are, in turn, able to instruct their personnel to remove children.

Families SA officers may call on SAPOL to assist them in the exercise of their powers under the provisions of the Act when there is a perceived threat of violence. When requested to assist, SAPOL will accept that Families SA have the necessary authority and will facilitate the process.

7.2. Transportation of the child to the interview or assessment

7.2.1. Metropolitan

Subject to the discussion about who will accompany the child to the interview, normally the non-abusing caregiver conveys the child. Issues such as whether the caregiver is in a domestic violence situation need to be considered.

The facility does exist for SAPOL personnel to assist in special circumstances – for example:

- if the caregiver has limited financial or physical means of attending the interview
- if country investigation personnel request conveyance of the child from the airport to the interview and/or medical assessment.

See also the interagency agreements regarding removal and transportation of children contained within General Order: Children – Protection.

Normally, the supporting parent will convey the child to the DPP for proofing. However, SAPOL members may assist with this.

7.2.2. Country (remote)

Individual local service areas are at liberty to develop their own arrangements within their local networks regarding an accompanying adult, caregiver or Families SA officer and the conveyance of a child for medical examinations and/or interview process.

If any difficulties are encountered in these negotiations, referral for assistance can be made to the officer in charge, SCIB.

In child sexual abuse cases, it is essential that SAPOL and Families SA consult quickly and regularly to ensure that children are protected and that the criminal investigation is not impeded. It is the responsibility of the officer in charge of a local service area to ensure that liaison is established and maintained between the local SAPOL and Families SA members.

As a general rule, country uniformed or investigation personnel will be responsible for interviewing or obtaining statements from children over the age of seven years. If required the appropriate advice and assistance can be obtained from SCIB.

Note: Children between the ages of seven and 12 years can only be interviewed by a member who has successfully completed the Certificate IV Child Abuse Investigator's Course or equivalent.

The role of all SAPOL employees includes providing information to victims in accordance with the 14 principles governing the treatment of victims in the criminal justice system (refer to the *Victims of Crime Act 2001*).

7.3. Allegations of abuse within, or potentially involving, Family Court proceedings

The following information provides guidance with regard to matters that involve or potentially involve Family Court proceedings.

The information is designed to facilitate the interagency process when these allegations arise. It is applicable to all agencies involved in planning the initial response and ongoing investigation and assessment of these matters.

Frequently, child abuse notifications involving Family Court authorised contact are made to authorities, placing an onus on agencies to act with a degree of urgency – for example, a child will be visiting his or her father on the weekend and the caregiver, who has a residency order for the child, notifies on the Friday that the child was sexually abused by her estranged partner.

Interagency discussion about how to best proceed in these instances is necessary.

During the course of the strategy discussion, consideration should be given to the degree of difficulty in obtaining any useful disclosures if the matter is to be dealt with within a short space of time. Additionally, the disclosure needs to be assessed within the context of the family situation. In most situations it may be more prudent to delay the interview to maximise the opportunity for the child to properly disclose their abuse.

There are a number of options that can be taken in these circumstances which are outlined below.

7.3.1. If a Contact Order is in place

The caregiver should be advised to consult with his or her solicitor to seek advice and/or alteration to the order on the next working day.

Mutual Visitation Agreements (no Court Order present)

The caregiver should be advised to withhold visitation agreements pending the outcome of the investigation. If caregivers wish to seek legal advice, the Legal Services Commission offers a free service. In many situations there is no need to go through lengthy and costly litigation.

7.3.2. Handover of statements to CPS

Whenever a matter involves a Family Court situation and the CPS is involved, it will be the responsibility of the police investigating officer to liaise with the appropriate officer from the CPS concerning the investigating officer's knowledge of the family situation and any SAPOL investigation into the matter.

7.4. Use of police warrants (Children's Protection Act 1993)

The following describes for Families SA and SAPOL how to obtain and how to use warrants under the *Children's Protection Act*.

Section 19 of the Act sets out the requirements for conducting an investigation into suspected child abuse and neglect. Families SA may do this when the Chief Executive, Department for Education and Child Development suspects on reasonable grounds that a child is at risk.

For these purposes the Chief Executive may, by notice in writing, require a person who has examined, assessed, carried out tests on or treated the child, or the agency for whom the person works, to provide a written report on the child.

If SAPOL is called to assist in an investigation with Families SA social workers, or if they are conducting an investigation with other police officers, Section 19 (3) of the Act allows for an authorised police officer to do all or any of the following:

- enter or break into, remain in and search any premises or place
- seize any item which the officer believes may be evidence relevant to the investigation
- take photographs, films or videos
- require a person who may be in a position to furnish information relevant to the investigation to answer any question put by the officer to the best of that person's knowledge, information or belief.

These powers under subsection (3) can only be exercised on the authority of a warrant issued by a magistrate, except when:

- entry to the premises or place has been refused or cannot be gained
- the police officer believes on reasonable grounds that the delay resulting from applying for a warrant would prejudice the investigation and the safety of the child to whom the investigation relates.

Under subsection (5) an authorised officer may, while exercising powers under this section, be accompanied by such other members of the police force or employees of Families SA as may be necessary or desirable in the circumstances.

Under subsection (6), subject to subsection (7), a person must not refuse or fail to comply with a requirement under this section.

Under subsection (7) a person is not required:

- to provide information that is privileged on the ground of legal professional privilege
- to answer a question if the answer to the question would incriminate the person of an offence.

In the main, Families SA will consult with SAPOL and confine their requests for investigation to matters of sexual abuse, serious neglect, physical abuse or the death of a child.

As these warrants are used for child protection purposes, it is prudent that the appropriate Families SA representative(s) be encouraged to accompany SAPOL when using the warrant. Guidance should be sought on the types of questions to be asked of the persons and the information or evidence needed for Youth Court purposes.

Before taking any action with regard to this section the authorised officer will obtain, in writing, verification from the Chief Executive (or delegate) that the child is at risk and that an investigation is required.

Police officers are reminded that the 'at risk' investigation is not subject to the same burden of proof as in the criminal courts. The court acting under the *Children's Protection Act* is not bound by any rules of evidence, and members should remember this when using the authorities given under this section.

When an authorised police officer seizes any item, or takes photographs, films or videos, they are to comply with General Order – Exhibits. Officers should liaise with the appropriate Families SA representative regarding any statements and exhibit requirements for the Youth Court.

Although the authority to use the warrant is given to authorised police officers, this does not preclude a non-authorised police officer from assisting Families SA in an investigation without recourse to the provisions of this section.

Procedure for taking out a warrant

The SAPOL process in applying for warrants and the procedure for Families SA when negotiating the use of these warrants are contained in General Order – Children Protection.

An application for the issue of a warrant under this section may be made personally or by telephone.

If an authorised police officer is required to take out a warrant to assist in an investigation, the officer is to seek as much detail as possible from the requesting Families SA officer in order to satisfy a magistrate, whether by telephone or in person, that, on the balance of probabilities, there is just cause for issuing the warrant. Information such as any examination, assessment test or treatment should be made available to the requesting officer.

The grounds for seeking a warrant pertain only to the powers the officer wishes to exercise. Therefore, any prior knowledge needs to be addressed. For example:

- refusal of entry
- knowledge or suspicion that evidence is on the premises
- the need to seize items or take photographs
- the need for a person to answer questions.

The officer will set out on a Police Department Form PD 374 (Affidavit (*Children's Protection Act 1993*)) his or her suspicions and the grounds for the issue of a warrant. In cases where personal attendance is possible, officers will convey that affidavit to the Court and make the request to a magistrate in chambers.

If an officer believes that the urgency of the situation requires a telephone warrant, an application can be made through their local Court during office hours. If a magistrate is required after hours, the officer is to contact the Communications Sergeant.

A copy of the affidavit will be held on file at the officer's respective location.

7.5. Therapeutic guidelines

The following therapeutic guidelines have been developed by the two hospital-based CPS units. They offer guidance to therapists who are counselling children who are at the same time witnesses within the criminal court jurisdiction.

The guidelines will help to standardise the therapeutic process and help minimise the risks of contaminating a child's version of the events.

7.5.1. Referral to counselling

In all instances when a child abuse victim (whether intra-familial or extra-familial) comes to the notice of practitioners it is important that they provide the caregiver (and child when appropriate) information about the various options for counselling.

Therapy referrals to the CPS should be routine for children or young people who SAPOL have identified to have been sexually assaulted and who have been assessed by SAPOL. The CPS will decide on the best therapeutic source for the child or young person and family and arrange the referral.

The same process of referral should be followed in rural and regional areas. CPS will advise the Families SA District Centre and/or SAPOL on whether the child should be seen in Adelaide or in another location and by whom.

Families SA

It is the role of the Families SA social worker to consider the referral of family members for therapy. This includes siblings, parents and other relevant members of the household.

Family members can be referred to a number of different health professionals. It is important that the social worker making the referral understands the range of services available, has a clear knowledge of the skills of the various practitioners providing such services, and discusses the reason for the referral with the client as well as the therapist to whom the referral is being made.

Consent for release of information should be discussed with the family at the time of referral.

SAPOL

In all instances, information regarding the various therapeutic services should be provided to the child and/or their caregiver.

In the metropolitan area SAPOL may consider referring the matter on to a victim contact officer so they can assist with the victim's needs. However, the number of people that the child comes into contact with should be kept to a minimum.

7.5.2. Abuse and neglect

The CPS is committed to the principle that the child's or adolescent's emotional and psychological wellbeing is paramount, and that the Criminal Court process needs to be seen in this context. Whilst the CPS supports a child's or young person's involvement in the Criminal Court process, it will also ensure that the child or young person understands that they have a choice about their participation, firstly in the assessment process and then in the Criminal Court process.

In conducting therapy, the therapist involved needs to exercise considerable responsibility regarding note-taking, questioning, and managing disclosures over time. With regard to note-taking, limited notes may be taken during therapeutic intervention, although notes made need to be accurate and reflect the questions asked as well as the responses given. Notes taken are primarily to assist the clinician in remembering the thread of the therapy and to assist the clinician in subsequent recollection.

In preparing reports specifically for the criminal justice system (including victim impact statements) the following will be considered:

- The child's or adolescent's presentation
- The effects of abuse or neglect from the child's or young person's perspective
- The effects of abuse or neglect from the caregiver's perspective
- The impact of the abuse or neglect experiences on the child's or young person's current and future psychological and emotional functioning.

If an allegation of abuse or neglect seems likely to proceed to the Criminal Court then the CPS clinician will need to be sensitive to the child's or young person's situation in the context of the Criminal Court process.

7.6. Grievance dispute resolution

Whilst a great deal of goodwill exists across agencies, from time to time difficulties are encountered between agencies or individual practitioners. If left unresolved, these may hinder the child protection process.

These issues need to be resolved speedily and the following information provides assistance in this task.

7.6.1. Dispute resolution

The resolution of conflict between workers is part of the professional conduct of interagency case management. Responsibility for the resolution of conflict rests, in the first instance, with those directly involved.

Conflict resolution may be assisted by:

- clarifying each worker's roles and responsibilities, as well as the legal and resource constraints under which the worker is operating
- acknowledging and accepting the authority held by particular departments and organisations which makes the relevant department accountable for the actions and decisions it takes.

The following steps should be taken to resolve conflicts.

- Workers involved in the case should actively seek to resolve their differences by face-to-face discussion.
- If workers are unable to resolve their differences, they can individually or jointly seek assistance from a senior officer. Relevant persons involved in the case should be advised that this action is to be taken and of its outcome.
- If supervisors or managers are unable to resolve the conflict, they can individually or jointly seek assistance from a more senior officer. Again, relevant persons should be advised of this action and of its outcome.
- If a conflict has highlighted major issues, policies or practices that cannot be resolved by the workers or supervisors, the issue in question (not the particular case, except by way of example) should be referred to the Senior Officers Group, Care and Protection.
- If the conflict relates to recurring or major issues concerning the operation of the *Children's Protection Act* or other matters relating to the Act, the general issue should be referred to the Council for the Care of Children.

However, as this document relates to some agencies and departments not represented on the Senior Officers Group, Care and Protection; Chief Executive Co-ordinating Committee: Child Development; or the Council for the Care of Children, referral at the managerial level should be made to:

- CPS: Director of the relevant CPS
- SAPOL: Officer in Charge, Sexual Crime Investigation Branch
- Families SA: District Centre Manager
- DFC: Special Investigations Unit Manager
- Crown Solicitor: the Crown Solicitor
- DPP: DPP or delegate
- DECD: Regional Director.

If the dispute cannot be resolved at this level then the matter can be referred to a more senior level of each agency.

Section 8

APPENDIX A:

FORENSIC OR EVIDENTIAL INTERVIEWING REGARDING ALLEGATIONS OF SEXUAL AND PHYSICAL ABUSE – CHILD PROTECTION SERVICES

8.1. Preamble

It is the responsibility of the two CPS units to conduct forensic (evidential) interviews of young, articulate children under seven years of age. This responsibility involves close collaboration with SAPOL, who currently observe from behind a one-way screen the interviews conducted by the CPS.

Pre-articulate children may be assessed at CPS even though they are not likely to be interviewed.

8.2. Purpose of assessments of sexual and physical abuse

- To assess notifications of concerns about sexual and/or physical abuse made by a child (under seven years old), or on behalf of a child, by providing an evidential/forensic interview(s) and interviews with parents and/or caregivers
- To assess the reliability of these concerns and their context
- To consider information about parenting capacity and its relationship to the ongoing physical and psychological safety of the children involved in these assessments, where this arises.

8.3. Process of assessment (parents)

Parent(s) of children referred to the CPS are interviewed, sometimes together, sometimes separately.

Primary caregivers are routinely interviewed before their child or children are seen.

The timing of all interviews is negotiated with SAPOL to accommodate the procedural requirements of their investigation.

A range of issues relating to the concerns raised in notifications made to Families SA, and issues thereby impacting on parenting capacity, are also considered in the CPS assessment process.

Feedback about the CPS opinion and the needs of the child or children is provided to both parents at the conclusion of the assessment. Families SA and SAPOL are also provided with feedback and subsequently a written report.

8.4. Process of assessment (children)

Children are interviewed alone and separately at the CPS in a playroom with a one-way screen or via closed circuit television recording.

The manner in which children are interviewed is overtly child-focused and sensitive to each child's developmental and emotional needs.

The assessment of children will usually include a number of interviews, beginning with a familiarisation interview to assist the child to become at ease with the environment and the interviewer, and to assess the child's developmental and emotional capacity to manage the interview process.

A final session may be provided for the child to provide closure and a play-time.

Forensic evidential interviews are conducted with SAPOL present behind a one-way screen or via a television monitor.

All forensic evidential interviews are video-recorded (DVD), and evidential interviews are also audio-taped.

DVD recordings are also retained and are available for the purposes of SAPOL and the DPP, according to established procedures.

8.5. Reports

The CPS assessment report is prepared for Families SA and is a summary of interviews, background information and the process of assessment.

The conclusions address the reliability of the concerns notified and include recommendations.

All allegations of sexual and physical abuse are assessed in a context. In considering this context, concerns regarding parenting capacity may arise and are noted in the CPS assessment report.

The CPS medical reports contain details of the forensic medical examination and opinion, and are similarly routinely forwarded to Families SA and SAPOL.

Section 9

APPENDIX B:

PRINCIPLES FOR WORKING WITH ABORIGINAL PEOPLE

The information contained in this section is intended to be a useful guide to engage appropriately and sensitively with Aboriginal people and communities. It is important to acknowledge that Aboriginal and Torres Strait Islanders are not a homogeneous group, but instead represent a diverse range of clan groupings, kinship ties and languages. It is also important to note that indigenous Australians may live a traditional lifestyle, may be heavily urbanised or may have enjoyed a varied exposure, and - as non-indigenous Australians do - they will differ in terms of their experiences, understanding and beliefs. As such, these principles should be viewed as a guide only and may not be applicable or appropriate in all situations.

In intra-familial matters where Families SA are involved and protective issues exist, consideration can be given to using the services of Yaitya Tirramangkotti, co-located with CRU.

9.1. Identification

Ensure that at point of referral, Aboriginal and Torres Strait Islander people are correctly identified.

Aboriginal people come from diverse cultural backgrounds and are cosmetically different, speak different languages, have different values and totems. It is mandatory to identify people by race, but it is important to be aware that an Aboriginal person cannot always be identified by their physical appearance or by their surname. By not asking people their racial identity you may be denying them a service. It is also important to note that some Aboriginal people will choose not to acknowledge their Aboriginality, which is their right.

9.2. Communication

Patience and flexibility is the key to communicating effectively with Aboriginal and Torres Strait Islander people. Some people are reluctant to disclose personal background and history for a variety of reasons, such as stigma, shame, past disinterest by service providers, or the fear of government interference.

Ensure that Aboriginal and Torres Strait Islander people have access to accredited interpreter services.

Ensure that information is available in appropriate formats and languages.

9.3. Family

Consider ways of involving the extended family.

The extended family plays a much greater role in Aboriginal life than for most non-Aboriginal people: 'family' includes an extensive range of relatives; cousins are regarded as brothers and sisters; aunts, uncles or grandparents can raise the children.

Authority structures may differ from those within non-Aboriginal society and may determine who can be involved in discussion of an issue.

Traditionally, women deal with women's business and, if speaking to a male professional, a woman may bring a male to speak on her behalf.

Name changes are common, as is being known by other names.

9.4. Gender issues

Be sensitive to gender issues, particularly with case allocation. Because of strong gender distinction in Aboriginal society, it is more appropriate to have a woman assessed by a woman and a man by a man. In particular, personal or intimate issues are best addressed by a person of the same gender (Eades, D 1992; SACRRH, 2001).

9.5. Jargon and technical language

Remember the words that you use every day are not always familiar to Aboriginal clients.

If it is necessary to use technical, legal, policy or medical terminology, make sure that you explain what it means.

9.6. Time orientation

Concepts of time can be different. Very few traditionally orientated Aboriginal people have the non-Aboriginal preoccupation with time.

9.7. Eye contact

Many Aboriginal people, especially women, will not look another person in the eye. Traditionally, eye contact can be seen as offensive.

Shyness can also be caused by fear of the unknown, shame, and feelings of injustice.

Seating arrangements for interviewing are best when sitting shoulder-to-shoulder or on the diagonal, rather than directly across from each other. This seating position is non-confrontational, allows for less direct eye contact to occur, and will make the client feel more comfortable.

9.8. Questioning

Many Aboriginal people, whether or not from a traditional or tribal background, have a need to answer your questions. It is important not to use leading questions: rather use questions that require more explanation.

Avoid using long questions and be specific in your questioning. For example, a person was asked, "Have you eaten?" he replied "Yes". He had eaten that morning and it was now evening.

Avoid using negative questions such as "Haven't you eaten yet?" The response would be "Yes," meaning "yes, I haven't eaten yet," but it may be interpreted as "yes, I have eaten." (Eades, D 1992).

Rephrase the question to "Would you like something to eat?" or "Are you hungry?"

Avoid negative questions (eg. "You'll do it, won't you?"). These are extremely common in English but have no equivalent in many Aboriginal languages.

9.9. Affirmation or gratuitous concurrence

This is an important issue as there is a tendency to say 'Yes' or 'No', whether or not the person agrees with the statement.

Often they will answer your questions in the way they think you want them to answer. They will also often try to avoid a conflict and answer accordingly.

Concurrence is a recognised Aboriginal strategy for dealing with interviews, particularly when there is a power imbalance and/or intimidating circumstances (Eades, 1995, *Cross-examination of Aboriginal children*, Aboriginal Law Bulletin, pp 10-11).

9.10.**Reading body language**

Aboriginal people are usually respectful people and are skilled at reading mood and body language.

9.11.**Use of silence**

The use of silence in Aboriginal culture is seen as an acceptable way to answer a question. In Western cultures silence is viewed more as an avoidance technique or as defiance.

9.12.**Further references**

Bourke, 1998, *Communication Issues*, R. Sarre, & D. Wilson (Eds). *Sentencing and Indigenous Peoples*, Australian Institute of Criminology Research and Public Policy Series No. 16.

Eades 1995, *Cross-examination of Aboriginal Children*, *Aboriginal Law Bulletin*, 10-11.

Eades 1992, *Aboriginal English and the law*, Queensland Law Society Inc.

Families SA 1998, *The Aboriginal resource guide for SAAP case management in South Australia*, Community Services Division, Adelaide.

Families SA 1997, *Child protection manual of practice*, Adelaide.

SA Department of Human Services 2002, *Working with Aboriginal People – A cultural guide*, Adelaide.

Diversity Directions Inc. (formerly known as Multicultural Child Care Unit) 1997, *The cultural cameos*, Adelaide.

Royal Commission into Aboriginal Deaths in Custody 1988, Commonwealth of Australia.

Section 10

APPENDIX C:

USE OF TRANSLATORS

Multicultural SA offers an accredited translation service through the Interpreting and Translating Centre (ITC): telephone 8226 1990.

10.1.1. Identifying and arranging for the most appropriate translator

When arranging for an interviewer, ITC will need to know any special requests in terms of:

- age
- preferred gender of translator (bearing in mind some of the traditional views held)
- language (including dialect. There are many dialects within the same country and also between Aboriginal clans.)
- any possible conflict of interests
- if necessary, the nature of the matter to be discussed; this allows the translator to make an informed choice about their involvement.

ITC will advise the name of the translator.

Practitioners should always be mindful that translators can often be influential and closely linked with the people from their own ethnic communities. This may give rise to the further possibility of feelings of shame and loss of self-respect in the victim, family and/or alleged perpetrator.

10.1.2. Briefing the translator before the interview

The translator needs to be instructed about his or her role and responsibilities. That is, the translator needs to be informed that he or she should interpret what you say and what the person says. It may also be wise to inform the translator of the general details to be discussed.

When an interpreter is to be used in the conduct of a CPS interview with a child, the interpreter must be adequately briefed regarding the manner in which the interview is conducted. They must be aware that the interview may occur over more than one session; that personal and relationship issues are likely to be raised and explored; and that the purpose of the interview is broader than just the recording of any allegations made by the child.

10.1.3. Information that the translator can supply

The translator's role is to strictly phrase questions and answers. They will not give opinions as to the validity or otherwise of a statement or event.

However, the translator can offer advice concerning the level of language ability of the interviewee (ie, educated or uneducated language ability). This may be beneficial in the way in which the interviewer phrases their questions.

10.1.4. General principles for working with a translator

These following principles apply differentially to each agency.

- Record the time, date and location of the interview.
- Learn proper protocols and forms of address – including a few greetings and social phrases – in the family’s primary language, the name they wish to be called, and the correct pronunciation.
- Introduce yourself and the translator, describe your respective roles, and clarify mutual expectations and the purpose of the encounter.
- Avoid body language or gestures that may be offensive or misunderstood.
- Use a positive tone of voice, and facial expressions that sincerely convey respect and your interest in the family, and address them in a calm, unhurried manner.
- Speak clearly and somewhat more slowly, but not more loudly.
- Speak directly to the client as if the translator was not present.
- Limit your remarks and questions to a few sentences a time; avoid giving too much information or long complex discussions of several topics in a single session.
- Avoid technical jargon, colloquialisms, idioms, slang, and abstractions.
- Give instructions in a clear and logical sequence, emphasise key words or points, and offer reasons for specific recommendations or actions.
- Periodically check on the family’s understanding and the accuracy of the translation by asking the family to repeat instructions or whatever has been communicated in their own words, with the translator facilitating, but avoid literally asking, “Do you understand?”
- When possible, reinforce verbal information with materials written in the family’s language, and visual aids or behavioural modelling if appropriate. Before introducing written materials, tactfully determine the client’s literacy level through the translator.
- Be patient and prepared for the additional time that will inevitably be required for careful interpretation.
- Record the time of concluding the interview.

Section 11

APPENDIX D:

AGENCY PROFILES, ROLES AND RESPONSIBILITIES

The following information is intended to help practitioners understand the mandates, roles and responsibilities of the agencies mentioned within this *Interagency code of practice*.

It should also be recognised that each agency has roles and functions additional to that of child protection. For example, Families SA also has a role in responding to issues such as domestic violence, adoption, family maintenance, financial support, community residential care and youth training centres.

11.1. Families SA

Families SA has the statutory responsibility for receiving notifications of, and investigating and/or making enquires into, allegations of suspected child abuse and neglect. Such investigations may be conducted jointly with SAPOL.

Philosophy

The following principles provide the framework for Families SA work with families:

- The safety of the child is to be of paramount importance in any work Families SA conducts with children and families. Children and young people are entitled to be free from harm, have their rights upheld and their welfare promoted.
- All powers must be exercised in the best interests of the child, with due consideration to the rights of the child.
- Strengthening and supporting families in their care-giving role is consistent with a belief that families are acknowledged as the best setting for the rearing of children, so long as the safety of the child can be assured.
- Children and young people have a right to be consulted and have their views taken into account, having regard for their age and understanding.
- Families have a right to respectful, courteous service, with clear explanations of Families SA powers, actions and reasons for concern.

- People of diverse cultural and linguistic backgrounds have a right to service responses which take account of, and are sensitive to, issues of race, culture and language.

Responsibilities

Families SA is responsible for:

- receiving notifications of suspected child abuse and neglect based on reasonable grounds
- responding when allegations of abuse or neglect constitute grounds for intervention
- assessing the type of response the allegation requires:

Children in serious danger: A strategy discussion will be held between SAPOL, CPS and Families SA to plan the investigative response and action required to address the child's need for immediate protection.

Children at risk of significant harm: An investigative response with the emphasis on collaborative work with families.

Children in need and likely to suffer in the long term: A less intrusive family support response to plan with the family ways of addressing concerns and the children's needs.

Families SA is also responsible for:

- conducting investigations into and assessments of the abuse or neglect of children, either jointly with SAPOL and CPS, or solely by Families SA social workers
- acting to address the immediate needs of the child for care and protection, including placement into alternative care
- further intervening to support and strengthen families when allegations of abuse or neglect are confirmed, and the child is at risk of further abuse
- when the safety of the child cannot be assured within the family, making application to the Youth Court for a Care and Protection Order.

Outcomes

- Safety: Families SA will ensure that the highest priority is given to effective intervention to protect children who have been the subject of abuse or neglect.
- Best interests: Families SA will ensure that the child's best interests are the paramount consideration throughout the period of intervention.
- Strengthening the family: Families SA will support families to provide safe and nurturing environments for their children whenever possible.
- Voice of the child: Families SA will ensure that the views of the child or young person are given serious consideration when decisions are to be made and, when necessary, will provide the opportunity for those views to be expressed through a representative third party.
- Expeditious dealings: Intervention by Families SA will be timely, effective and as minimally intrusive as the circumstances allow.
- Partnerships: Families SA will actively pursue working in partnership with children and their families, subject to the need to protect the safety of the child. Families SA will advocate for and support interagency collaboration to ensure best outcomes for families and children.
- Cultural sensitivity: Families SA intervention will take into account race, culture and language, and will implement culturally appropriate strategies to ensure the wellbeing of the child.

11.2.

South Australia Police (SAPOL)

To provide a holistic response for victims and caregivers and to further enhance the interagency process SAPOL have established:

- Family violence investigation sections within each metropolitan local service area
- the Child Exploitation Investigation Section
- the Victim Management Section
- in country locations, local service area Criminal Investigation branches

Philosophy

With regard to child abuse and neglect SAPOL's philosophy is:

- acknowledgement of the paramount importance of the safety and the best interests of the child in any action undertaken by SAPOL

- a commitment to working together in partnership with the community and other agencies in reducing the incidence of child abuse and neglect in our community.

Responsibilities

SAPOL's primary responsibilities are to:

- investigate all criminal allegations of child abuse and serious neglect (which may involve interviewing children, witnesses, and the person suspected of having committed the alleged abuse)
- comply with their duties as mandated notifiers
- provide and promote co-operative working relationships with other agencies to ensure the safety of the child
- streamline the investigation process in order to reduce the number of interviews and any potential trauma or harm that can be experienced by the victim and caregiver
- when practicable, consult with the Families SA case co-ordinator and other relevant agencies about the effects of legal proceedings on the child's safety and emotional well-being and the wider case management implications of such action
- keep relevant parties informed of the progress of the investigation and of any action taken with respect to the accused
- treat victims and caregivers in accordance with the 14 principles as described within the *Victims of Crime Act 2001*
- provide assistance to those in circumstances of personal emergency
- provide advice regarding therapeutic referral for the victim
- preserve the peace.

Intended outcomes

SAPOL will:

- take appropriate action with regard to the victim and/or caregiver which minimises any harm that can occur during the investigation process
- forward appropriate briefs of evidence to the prosecution authorities
- provide a service which delivers satisfaction to the victim, caregiver, guardian and key agency
- conduct any action undertaken by SAPOL in a co-ordinated and co-operative manner with other key agencies
- aim for a long-term reduction in the incidence of child abuse and neglect.

SAPOL action with clear notifications disclosing a criminal offence

Police officers are accountable for the criminal investigation. Criminal investigations must not be referred or managed by Families SA or any other agency.

This does not preclude discussion about who should interview the child at the scene. If it is deemed necessary that a Families SA officer take the lead role, then a police officer must still be involved in that process for court purposes.

However, regardless of any decision reached in this process, the Families SA officer is required to assess and be assured of the child's safety as part of their investigation process.

11.3. Child Protection Services

Preamble

The Child Protection Services (CPS) located at Flinders Medical Centre – Southern Adelaide Health Service (FMC-SAHS) and the Women's and Children's Hospital – Children, Youth and Women's Health Service (WCH-CYHWS) have a mandate from the South Australian Department of Health to provide:

- assessment services to infants, children and young people who have been referred by Families SA or SAPOL because a suspicion of abuse or neglect needs to be investigated
- therapy services to infants, children and young people in whom abuse or neglect has been confirmed.

The assessment and treatment services may be provided to siblings and other family members of the primarily referred infant, child or young person.

Children seen at CPS are aged 0–18 years. CPS are overtly child-focused and the needs of infants, children and young people are considered paramount.

The assessment and treatment services at the CPS, WCH-CYHWS and FMC-SAHS contribute to the achievement of the overall health goals for infants, children and young people in South Australia.

Philosophy

All infants, children and young people have the right to:

- develop in an environment that is safe and supportive of their optimal psychological, social and physical well-being

- an environment that will protect them from harm and ensure that their rights are upheld and represented.

Social, familial, economic, environmental and psychological factors contribute to the phenomenon of child abuse and neglect.

CPS works in collaborative and collegial partnerships with Families SA, SAPOL and other services. This ensures optimal outcomes for the children and families that are seen by the CPS.

While the harm experienced by children may be categorised as physical abuse, sexual abuse, emotional abuse and neglect, inherent in any form of abuse or neglect is psychological harm.

Each child's experience is considered within the context of his or her family and the prevailing social and cultural environment. This means that a child's sense of racial, ethnic, religious and cultural identity will be honoured.

Goals

The CPS aims to:

- provide timely assessments of infants, children and young people who have been notified as suspected victims of child abuse or neglect and in whom investigation is considered necessary by Families SA and/or SAPOL. The request to CPS for the provision of a clinical service will be considered by CPS in consultation with Families SA and SAPOL, generally in the context of a strategy discussion. When referrals for assessments (either medical and/or psychosocial) are accepted by CPS they will be undertaken within a forensic context to ensure that information obtained can be used within appropriate court jurisdictions (primarily by Families SA and SAPOL).
- provide optimal therapeutic services to infants, children and young people in whom abuse or neglect has been confirmed. This may involve providing services to their families, foster carers and relevant others.
- provide consultation and advice in relation to child protection to professionals within metropolitan and country South Australia
- provide training and education in relation to child protection in metropolitan and country South Australia
- engage in and promote research about child abuse and neglect.

CPS assessments

Referrals to CPS by Families SA or SAPOL are jointly considered by the three parties at a strategy discussion.

Strategy discussions, in this context, determine whether sufficient information is available to decide the optimal clinical response. If not, then the strategy discussion resolves what additional information is necessary and by whom it will be gathered.

The assessments (all following forensic principles) that are undertaken by CPS include the following.

1. Evidentiary interviews

These are conducted for suspected abuse or neglect with children less than seven years of age. Interviews occur when it is considered that there is a likelihood that a child will be able to describe their abusive experiences.

The final decision regarding whether or not an interview should occur rests with the CPS.

The conduct and process of the interview is always considered in the context of the child's parents' or family situation.

A child's need for protection must not depend solely on his or her capacity to explain allegations of abuse or neglect. Relevant information about the need for protection will be drawn from obtaining and analysing other sources.

The forensic assessment process is conducted over a period of time and does not necessarily begin with an interview of the child.

When it is considered that children are too young to be interviewed or that they are unable to manage the demands of the interview process, a broader assessment may be undertaken involving the child, parents and possibly other individuals.

When appropriate, a parent about whom a concern of abuse or neglect has been raised may also be interviewed. The timing and conduct of this interview is negotiated with SAPOL to accommodate the procedural requirements of their investigation.

A forensic interview of a child under the age of seven years aims to elicit the most accurate and detailed account of the child's experience while ensuring that a child-focused approach is maintained by the clinician.

The interview:

- documents what the child has to say in relation to the allegation or suspicion

- obtains information which leads to the formulation of an opinion of the level of reliability of what the child has said
- gathers information which contributes to the child's on-going safety and needs
- if appropriate, provides the child with the opportunity to express thoughts or feelings about the incident(s).

The interview process is conducted over several stages:

- interview of parents or caregivers to obtain information relevant to the child's interview
- preliminary interview (primarily for the process of building rapport) which allows the clinician to gain information about the child's capabilities, in particular the child's language, developmental and emotional abilities
- the interview proper, if the child has appropriate receptive and expressive language skills and narrative ability.

Feedback about the opinion of the clinician and the needs of the child is provided to both parents at the conclusion of the assessment. If one parent is the subject of the allegations then guidance will be sought from SAPOL before offering the feedback appointment to that parent.

Forensic interviews are observed by a police officer and electronically recorded.

2. Parenting assessment

These are generally undertaken at the request of Families SA when abuse or neglect is considered to have occurred and it is agreed that an opinion in relation to parenting capacity is necessary.

3. Forensic or medical assessment

These are undertaken at the request of Families SA and/or SAPOL on infants, children and young people about whom there is a suspicion of recent or past abuse or neglect. Such a suspicion will be related to the presence of physical injury, allegations of sexual molestation or evidence of neglect.

CPS therapy

The therapy undertaken by CPS includes the following programs:

- Individual therapy for children and young people 0–18 years of age in whom abuse or neglect has been confirmed. This client group is referred by Families SA or SAPOL.

- Group therapy for caregivers (including foster-carers), children and young people
- *Keeping them safe* therapy program. This program is for children 2–12 years in whom abuse or neglect has been confirmed by families sa.
- Sexualised behaviour treatment program for children in whom no abuse is considered to have occurred but where sexualised behaviour has been identified as a problem.

Urgent CPS clinical responses

An urgent response is conducted jointly by forensic medical and psychosocial staff (psychologist or social worker).

The following criteria are guides for determining whether or not an urgent response for a forensic medical, forensic interview or parenting assessment is indicated:

- Recent abuse or assault whereby an urgent forensic medical assessment may provide forensic evidence
- Recent abuse or assault that has led to injury or medical symptoms which require assessment and documentation
- The child is perceived to be at high risk of harm as determined by the strategy discussion
- There is a sapol need to investigate urgently and/or to detain a suspect
- The referred child, who has been subjected to recent physical or sexual assault and/or serious neglect, is considered to have been traumatised to the extent that his/her psychological wellbeing is compromised
- The child or young person's mental health is of significant concern and/or there are issues involving the possibility of self-harm
- There is a request for a parenting assessment where Families SA is seeking or has obtained an Investigation and Assessment Order.

CPS referrals and consultations

CPS provides an intake worker and a senior on duty from 9.00am to 5.00pm, Monday to Friday.

The role of the senior on duty is to provide consultation, support and advice to the intake worker and to assist with strategy discussions, interagency matters and complex issues.

CPS also provides an after-hours urgent service. The senior on duty or on-call clinician responds to all phone calls, organises strategy discussions and information gathering, and co-ordinates urgent services provided by medical and psychosocial clinicians.

11.4. Office of the Director of Public Prosecutions (DPP)

The first contact of the Office of the Director of Public Prosecutions with files involving allegations of sexual abuse is either through a solicitor preparing advice for SAPOL on potential charges, or through their committal function. The solicitor in either case will review the file and will often arrange for an interview with the child. When there is strong corroboration, evidence or admission by the defendant, the solicitor may determine not to unnecessarily re-interview the child. An assessment will then be made as to whether there is a reasonable prospect of conviction. That assessment will involve consideration of a number of factors, including the cognitive development of the child, any supporting evidence, any admissions made by the accused, and the attitude of the child and/or parents or guardians to the matter proceeding before criminal courts.

If a decision is made to charge an accused person, the solicitor from the DPP will ensure that the child and his or her family are kept informed at every stage of the court proceedings. The child will be advised of his or her rights in relation to closed circuit television (CCTV), screens, a closed court and a court companion. The DPP will ensure that the child witness assistance officer will be available to all child witnesses who require information, counselling and support. After the trial the child and his or her parents or guardians will be informed promptly of the outcome of the proceedings.

When the DPP becomes involved in matters pertaining to physical assaults and neglect of children, these acts are usually at the most serious end of the scale. The DPP's procedure with respect to these matters will be as per the normal practice, taking into account the Director of Public Prosecution's *Prosecution policy guidelines*.

11.5.

Crown Solicitor's Office

The Crown Solicitor's Office (CSO) is a division of the Attorney-General's Department and is the principal provider of legal services to government agencies, Cabinet and the Attorney-General. Solicitors from the Administrative and Environment Section of this office appear in the Adelaide Youth Court, and before country Magistrates' Courts sitting as the Youth Court (either in person or by tele-conference), on behalf of either the Chief Executive of the Department for Education and Child Development in relation to investigation and assessment applications, or the Minister for Education and Child Development in relation to care and protection, variation and discharge applications.

Goal

The CSO's goal is the provision of timely legal services of a high standard.

Outcomes

The CSO provides legal advice, prepares Court applications on instructions from the child or the child's caseworker, and appears as legal counsel. Legal advice is normally given in relation to whether the evidence the case worker has gathered is sufficient to satisfy the 'at risk' criteria laid down in the *Children's Protection Act*, and also in connection with the orders that the Department for Families and Communities is likely to obtain from the Court on the facts of a particular case.

Solicitors of the section are rostered weekly to provide urgent legal advice to Families SA workers who are considering removing a child from the custody of their guardians; they also represent the Chief Executive when a child has been removed under Section 16 of the *Children's Protection Act*.

The Crown Solicitor's Office also provides legal advice and legal representation for Families SA in the Family Court of Australia, if it is necessary for the Minister to intervene to become a party to proceedings, or when Families SA documents or employees are subpoenaed to appear in this or other Courts.

Section 12

APPENDIX E

AGENCY GUIDELINES FOR THE CONDUCT OF FORENSIC INTERVIEWS AND ASSESSMENTS

The following information describes the interviewing and assessment processes of the three key agencies involved in child protection (CPS, Families SA and SAPOL).

12.1. CPS

The CPS assessment incorporates various combinations of the following processes:

- Parenting assessments
- Forensic interviewing and psychosocial assessment of the child
- Forensic medical assessment of the child
- The provision of reports based on the various assessment services provided.

Interviewing young children at different ages and developmental levels requires different processes.

12.1.1. The use of formal interviews to evaluate suspected abuse in young children

The commitment to, and responsibility for, interviewing children less than seven years of age rests with the hospital-based CPS. The possibility of interviewing a young child is dependent upon the child's level of development and their emotional status.

Children younger than three-and-a-half years

While it is improbable that an interview of a child younger than three-and-a-half years can be conducted, an assessment of allegations of abuse and neglect can be made by gathering collateral information from parents and sometimes other sources such as SAPOL or Families SA. This information often assists in clarifying the probability of abuse or neglect having or having not occurred. Such opinions are then usefully discussed with parents.

Children less than three-and-a-half years in whom there is a reasonable suspicion of abuse or neglect having occurred (based on a preliminary investigation by Families SA and SAPOL) are always assessed regarding their suitability for interviewing by CPS clinicians.

Children five to six years

The CPS clinician will decide on what interviewing process to follow and what interview structure to use, based on their preliminary assessment of the child.

12.1.2. Defining urgency

Most, but not all, urgent referrals from Families SA have already been designated as urgent. A significant number of urgent SAPOL referrals will have no Families SA involvement. They are classified as extra-familial. Strategy discussions are necessary for all urgent referrals. Ongoing interagency negotiations will often occur in relation to the referral and CPS service provision.

The criteria governing the urgency of a forensic interview or forensic medical assessment can be influenced by:

- a suspicion of recent inflicted physical injury or sexual molestation
- a suspicion in relation to an adult perpetrator and involving an incident that may have occurred in child care, a school environment, or substitute care
- a high level of distress in a child or their carer as a result of the allegation and resulting surrounding circumstances.

Other factors that may increase the urgency of a referral include on-going high risk to the child based on the notification information and agreed by the referring agency, and by the CPS or SAPOL needing to detain a suspect.

12.2. Families SA

In the most serious situations to which this *Interagency code of practice* applies, information gathered at the point of intake would have identified the need for an interagency approach. In these situations, a strategy discussion will be held to plan the investigation and determine which agency (SAPOL, CPS or Families SA) will conduct interviews or assessments with the child. If a forensic interview is considered necessary, only CPS or SAPOL will conduct this.

In other situations, if the information provided by the notifier was not clear, comprehensive or indicating criminal behaviour, it may be agreed that Families SA commence an investigation on its own, including possibly speaking with the child in a preliminary way. In doing so, Families SA may bring to light clearer or further information indicating that a criminal offence may have been committed. In these instances, Families SA will involve SAPOL and/or CPS in the investigation process, particularly to conduct any evidential interview deemed necessary.

When a child is deemed to be in immediate danger, Families SA will act in the interests of the child's safety. On some occasions this may mean Families SA intervention prior to SAPOL or CPS attendance or involvement. Any criminal evidence that is received or collected during this process by Families SA will be referred to SAPOL or CPS upon their involvement.

This same process would apply also to any Families SA investigation that reveals information suggesting that a criminal offence may have been committed.

The timing of when to cease the initial questioning of the child is a matter of professional assessment.

As a guide, the reasonableness of the suspicion should be objective rather than subjective in nature. That is, there should be some foundation to it – for example, a child has made a clear statement of having been sexually abused, or there has been a witness to the alleged abuse.

The Families SA social worker will tell the child that what he or she has told the worker is serious and that Families SA workers are required to advise SAPOL of all cases where it is suspected that a criminal offence has occurred. The Families SA worker will discuss with the child, if of appropriate age, what might happen next. Where a child is mature enough to understand the concepts, he or she should be given an explanation of the purpose of the formal interview, so that the child is fully informed to a level appropriate to his or her age and understanding, and freely consents to the interview session.

When the child is too young to understand fully, the social worker should listen to the views of the parent or carers. However, he or she should guard against the possibility of anyone who may be implicated in the abuse of the child exerting any pressure on the child not to give his or her account.

Generally, the consent of parents should be sought before interviewing a child. However, in cases of serious abuse when there is either a concern for the future safety of the child, or the possibility that either or both parents will intimidate the child, then an interview should proceed without parental consent.

If the child or his or her parent or carer does not consent to the interview, both CPS and SAPOL will still be advised of the outcome, as appropriate.

12.3. SAPOL

12.3.1. SAPOL and the 'Consent for Child Interview'

In all cases, permission for the evidential interview should be sought from either the child (depending upon their age), their caregiver, or the Families SA representative.

The form PD232: *Consent to interview a child* is to be completed and attached to the file.

The consent to the interview means that the information and/or transcript of the interview is provided for SAPOL and prosecution purposes as well as for use by Families SA. The person consenting to the interview and signing the form may choose whether SAPOL supplies the transcript to the other agencies mentioned on the form, such as CPS or Owena House. The interviewing officer should bring to the attention of that person the aforementioned issues, and that both CPS and Owena House are external agencies to SAPOL.

12.3.2. The Victim Management Section

The Victim Management Section (VMS) is part of the Sexual Crime Investigation Branch (SCIB) and is responsible for supporting investigations of child sexual abuse by providing a professional statement-taking service, evidence collection and victim management.

Plain-clothed female police officers are employed in this section. The officers speak only with victims and their non-offending parent or carer, and their focus is oriented purely to the victim and the evidence.

When a child has already been referred to CPS the investigating officer should discuss the interviewing process with the appropriate CPS person. This is especially so when there are intra-familial concerns.

Victims who attend at VMS for an interview do so on an appointment basis; however, urgent referrals can be accommodated in some instances. Before interviewing the child, the interviewer will speak privately with the caregiver and/or child regarding their rights and options, processes and SAPOL practices. This also provides a good opportunity for the interviewer to build rapport with the child and to find out more information, such as the names used by the child for his or her body parts.

The form *Consent to interview a child* (PD 232) is signed and the child, in most instances, is interviewed without the presence of a family member or any other person who may have to give evidence in court at a later time.

The method by which interviews are usually conducted appears in Appendix A.

Interviewers are conscious of the child's needs and generally interviews will not take any longer than 30 minutes.

SAPOL members will subsequently offer a referral for counselling and medical assessment if necessary.

12.3.3. SAPOL interviewing physical assault victims

Investigators will make an initial assessment of each physical abuse notification before contacting VMS personnel.

The following criteria are to be followed in determining VMS involvement:

- The victim is within the metropolitan area, and
- The victim is over six and under 12 years of age, and
- Injuries to the victim require medical treatment.

12.3.4. Victim Management Section interviewing child sexual assault victims

The Victim Management Section (VMS) interviews all children over seven years of age (subject to this *Interagency code of practice*) who complain of having been the subject of:

- rape
- attempted rape
- incest
- indecent assault (in circumstances where the child is under the age of 12 years and the alleged offender is a family member)
- unlawful sexual intercourse (except where the victim and offender are of similar age, as in boyfriend and girlfriend)
- other sexual offences if accompanied by acts of violence and complex circumstances exist.

Negotiation can be entered into with regard to other sexual offences.

With approval of the officer in charge, SCIB, VMS may also obtain statements from victims or witnesses if requested by interstate or overseas authorities.

12.3.5. Attendance at the initial interview of the child

If a police patrol or investigator is considering visiting a child at the scene (eg, a school), consideration should be given to requesting that an appropriately trained member nominated to interview the child also attend and initially speak with the child. In this way the child will only have one person to deal with, the task of building rapport will be made easier, and it will help to minimise the number of interviews in the process.

Care should also be taken not to have too many practitioners involved in this process as this may distress the child.

12.3.6. Non-SAPOL personnel witnessing interview with the child

In most instances, the child should be interviewed without the presence of a family member or any other person who may have a vested interest.

If the child requests a support person, this should, however, be allowed. The support person must have the rules associated with his or her presence explained – that is, not to interrupt, ask questions or prompt answers.

The support person may be required to give evidence in terms of a 'recent complaint'. A detailed statement should be obtained from them before the interview with the child.

12.3.7. Other services provided by SCIB

SCIB will also:

- provide support and advice to victims
- arrange medical assessments for victims of sexual assault
- organise counselling for victims through the appropriate agency
- take possession of the victim's clothing, forensic specimens and other exhibits for evidential purposes
- assist child abuse investigators with their enquiries by maintaining liaison with them and with the victim
- give evidence when required at judicial hearings
- liaise with the two CPS units
- provide mandated notification
- attend pre-trial conferences
- act on urgent referrals (when an appropriate child abuse investigator cannot be contacted).

12.3.8. Patrol and child abuse investigators: Interviewing

In order to minimise the number of interviews of the child, the criminal investigator or patrol officer should:

- seek clarity of the initial notification detail by interviewing the notifier (complainant), if appropriate
- not interview the child unless formally trained to conduct evidential interviews of abused children.

It is only under an extremely limited set of circumstances – for example, no other person is available – that this policy should be deviated from.

Notification of all sexual assaults must be made to SCIB in accordance with the General Order – Sexual Offences.

12.3.9. SAPOL working with CPS

The DPP has provided guidelines regarding the minimum prerequisite for the submission of a police brief of evidence with respect to pre-articulate children in this document. These guidelines, and an early decision as to the ability of the child to provide the information required for court purposes, will provide guidance to SAPOL regarding the realistic actions that are possible with the CPS clientele age group.

In particular, when an interview involves a young child, the investigating officer or their supervisor will liaise with the relevant CPS person to decide on the usefulness or otherwise of conducting a forensic interview.

CPS non-urgent interviews and the SAPOL response

As Section 104 of the *Summary Procedure Act 1921* requires that SAPOL witness the evidential interview of the child for criminal court purposes, separate procedures have been developed.

In the normal course of events, if an interview requires SAPOL attendance, the CPS clinician will contact the appropriate police investigations section to arrange a suitable time to witness that interview.

CPS urgent interviews and the SAPOL response

If a matter is to be treated as an urgent enquiry, the referring officer will need to state the reasons at the time of the strategy discussion or referral. Once the reasons have been stated an agreed course of action should be followed.

When matters are considered urgent, there may be occasions when the assessment and interview take place on the same day.

If an urgent matter requires SAPOL attendance (usually defined as within 48 hours), initial contact will be made with the sergeant in charge, Family Violence Investigation Section or respective investigations section. If these officers cannot be contacted then contact will be with the officer in charge, Sexual Crime Investigation Branch to arrange for the attendance of a witnessing officer.

All interviews with the child at the CPS will be electronically recorded.

12.4. Country guidelines – interviewing

12.4.1. CPS

The same referral criteria and assessment service applies to country personnel and children. Prior contact should be made with the CPS regarding availability of staff.

Any referral by country SAPOL to the CPS for a forensic interview should be discussed at a strategy discussion and arrangements for the forensic interview agreed. The strategy discussion will occur whether or not Families SA are involved with the case.

12.4.2. SAPOL

It is recognised that differences can occur in this initial procedure, depending upon whether the response is located in the metropolitan or country areas. In country areas it will be handled by local resources and SCIB will be available on a 24-hour basis to provide telephone advice on the appropriate response.

The SCIB telephone number during normal office hours, seven days a week, is 8172 5555.

After-hours contact is available via Police Communications Centre.

The same criteria apply to country personnel as to metropolitan-based patrol and criminal investigation areas.

It is reiterated that an interview of a child seven to twelve years old should not be undertaken unless the officer is formally trained to conduct evidential interviews of children suspected of being abused.

12.5. Forensic medical assessments

A forensic medical assessment frequently complements the forensic interview conducted by the CPS.

Whether or not a forensic medical assessment is indicated will be initially discussed at the strategy discussion and then again, if necessary, after the forensic interview has been conducted.

While an important focus of the forensic medical assessment is on the documentation of injury and, when possible and appropriate, the collection of forensic specimens, primary regard will always be paid to the health and wellbeing of the child.

When conducting forensic procedures with victims of abuse and neglect, regard should be given to the *General principles for carrying out forensic procedures* as detailed in Part 3, Division 1 of the *Criminal Law (Forensic Procedures) Act 2007*.

12.5.1. Metropolitan

CPS

When it is considered that a forensic medical assessment is indicated, children and young people up to 16 years of age who live in the Adelaide metropolitan area must be referred to the appropriate CPS at either the Women's and Children's Hospital or the Flinders Medical Centre, according to the agreed geographical distribution.

Before contacting the CPS for the forensic medical assessment, every attempt should be made to obtain the consent of the parent or guardian.

Young people over 16 years of age for whom a medical assessment is indicated should normally be referred to Yarrow Place Rape and Sexual Assault Service.

Staff of Yarrow Place and the CPS may negotiate between themselves to ensure that the most appropriate service sees a particular client.

Under no circumstances are caregivers to be advised that their child will be going for a forensic medical assessment until the referral has been accepted by CPS.

Families SA

In urgent cases, forensic medical assessment must be considered as imperative when injury is evident or alleged (involving any body area, including the anogenital region). Urgent strategy discussions will cover the arrangements for forensic medical assessment through CPS.

Some serious cases will also require urgent forensic medical assessment. Strategy discussions are necessary for the urgent referral for forensic medical assessments of serious cases. Routine referral of serious cases for forensic medical assessments should follow the usual referral processes.

In country locations, a strategy discussion should occur with the appropriate CPS in relation to urgent and serious referrals when a forensic medical assessment is considered warranted. A recommendation can then be made as to whether the child will need to be seen in Adelaide or by a local medical practitioner. It is important to note that forensic medical assessments can only be undertaken in Adelaide.

Reference should also be made to the section *Examination and assessment of children: Procedures and practice guidelines* contained within the *Families SA Child protection manual of practice*. (See page 60 of the manual.)

SAPOL

In considering the need for a forensic medical assessment the various professionals from SAPOL, Families SA and the CPS will always regard the welfare of the child or young person as of primary importance.

Consent and SAPOL – Appropriate consent is to be authorised and obtained before a forensic procedure is to be conducted on a child. (For further information refer to the *Criminal Law (Forensic Procedures) Act 2007*).

Forensic samples – It will be the responsibility of the investigating officer to collect a Sexual Assault Investigation Kit obtained by CPS. SCIB will collect Sexual Assault Investigation Kits obtained by Yarrow Place. Collection of Sexual Assault Investigation kits should occur expeditiously, preferably immediately after the forensic medical assessment has been completed.

Urgent medical requirements – In the event of a request for an urgent forensic medical assessment SCIB should be contacted. Arrangements will be made for the investigating officer to contact the appropriate CPS. The nature of the concerns and the reasons for the urgency will be clarified during the strategy discussion.

Non-urgent medical requirements – When forensic medical assessments are part of the routine process (that is, non-urgent) these arrangements can be made through the investigating officer.

Site or crime scene investigation – Often during a strategy discussion the need for a site or crime scene investigation becomes apparent. The conduct of a site investigation and the involvement of the forensic paediatrician in it will be discussed and decided during the strategy discussion.

12.5.2. Country

CPS

The same referral process applies as for the metropolitan area.

Strategy discussions are always to occur when an urgent referral is made. In certain situations (when older adolescents have been sexually assaulted by non-family members) it may be appropriate for local medical practitioners who have been trained in the forensic medical assessment of victims of sexual assault to undertake the forensic medical assessment. This decision should only be made after a strategy discussion has been held.

SAPOL

Medicals other than CPS – On a number of occasions forensic medical examinations of adolescent children are undertaken by local general practitioners. This is particularly the case in country regions. In more serious cases police officers should consider accessing the services of the metropolitan-based CPS.

Country local service area – It is the responsibility of the officer in charge of the country local service area to ensure that liaison is maintained between SAPOL and the medical practitioner/s in the local service area. A system suitable for the country local service area should be devised to ensure that, when the need arises, there is an appropriate doctor available to conduct the medical examination. The doctor may need assistance from SAPOL in terms of the use of a Sexual Assault Kit, medical notes, or in maintaining the chain of evidence. SAPOL should also bring to the attention of the doctor the requirements under Part 2, Divisions 1, 2 and 3 of the *Criminal Law (Forensic Procedures) Act* when dealing with a person who is not under suspicion. In more serious cases police officers should, before considering accessing the services of their local country doctor, contact the officer in charge, SCIB, for advice.

12.6. Interviewing the person suspected of being responsible for the abuse

It is important for all involved that each agency seeks to co-operate in the interviewing of the person suspected to be responsible for the abuse to ensure the most timely and effective intervention.

The focus of this interview for SAPOL is the criminality of the alleged behaviour. For Families SA and CPS it is part of their overall assessment of the safety of child.

12.6.1. Families SA

Families SA's aims for interviewing the parent or caregiver of the child are to:

- obtain information from the parents about the allegations made
- determine the circumstances surrounding the allegation
- gain an understanding of the family dynamics and the parents' perceptions of the allegations
- assess the safety of the child and any other children within the family
- gain a preliminary understanding of the family risk, and of their strengths and needs.

When the parent is the alleged perpetrator

If the allegation is one where criminal charges could be laid, strategy discussions must take place and agency roles must be clearly specified. It is not appropriate in these circumstances for the Families SA social worker to interview the person suspected as responsible for the abuse.

12.6.2. SAPOL

The Sexual Crime Investigation Branch and Family Violence Investigation Sections are available to provide support and advice for SAPOL investigators in relation child sexual offences.

12.6.3. Co-ordinating the interview

Families SA and SAPOL

Discussions with Families SA should occur about working with the parent or caregiver before interviewing the child or alleged perpetrator. It may make it more difficult for Families SA to work with the non-abusing caregiver on protecting the child if they have been unable to do so before SAPOL action.

SAPOL and CPS

As both the CPS and SAPOL interview the alleged perpetrator as part of their overall assessment process, the investigating officer may need to co-ordinate the SAPOL interview with the appropriate CPS person.

In any case, when the victim is under seven years of age, the investigating officer should consult with the appropriate CPS officer regarding the child's assessment before speaking to the alleged perpetrator.

There may be instances when it is not possible to conduct an evidential interview of a child – for instance, because of the child's age; however, the CPS psychosocial assessment of the child may indicate that abuse has occurred. In these situations the investigating officer should consult with the appropriate CPS person and may consider interviewing the alleged perpetrator.

Section 13

APPENDIX F:

QUESTIONS FOR A STRATEGY DISCUSSION

13.1.

Investigations

- > Are both a SAPOL and a Families SA investigation needed?
- > Is SAPOL involvement also needed to ensure the safety of Families SA workers, to gain access to the child or the home and/or secure the safety of the child? Is SAPOL involvement only needed for these purposes?
- > What SAPOL personnel will handle these various roles?
- > What steps do Families SA and SAPOL see as necessary to advance their separate investigations?
- > Can Families SA and SAPOL personnel usefully carry out any of these steps together? –
 - » to save time and resources
 - » to keep to a minimum the number of personnel coming in contact with the child
 - » to reduce the number of times an individual, and in particular a child, needs to be interviewed?
- > What is to happen if either Families SA or SAPOL are not available and immediate action is required?
- > What aspects of the enquiry are important from the other agency's point of view? For example: if SAPOL cannot be part of the process, the need to locate and/or preserve forensic evidence, including bruises and bite marks; the need to ascertain what occurred without compromising any future evidence that the child might give.
- > How best to manage the need to engage with parents?
- > How many practitioners need to respond?

13.2.

Medical assessments (including forensic assessments)

- > Does the child have visible injuries?
- > Is it likely that the child will need investigations performed in addition to physical examination?
- > How quickly should these assessments occur?
- > How will the issue of consent for medical examination be addressed?
- > Who should conduct these assessments?
- > How quickly can they happen?
- > What needs to be examined?
- > What forensic samples need to be obtained from the child, the scene, the alleged perpetrator (eg, bruising, bite marks)?
- > How quickly does this need to occur?

(Referral of a child for medical assessment: Under 16 years of age to the CPS, and 16 and over to Yarrow Place)

13.3.

Interviews

- > Who needs to be interviewed?
 - » Notifier
 - » Child
 - » Caregiver or non-abusing caregiver
 - » Siblings
 - » Alleged perpetrator
 - » Appropriate others.
- > In what order do these people need to be interviewed?
- > When do they need to be interviewed?
- > Where should the interviews occur?
- > What is the purpose of the interview?
 - » To take a statement (SAPOL only)
 - » To gather basic information
 - » To assess ability to make a formal statement at a later date
 - » To more broadly assess.
- > Who should do the interviews or assessments?
- > Who needs to be involved in the interviews or assessments and with what roles?
- > How will the interview be recorded?
- > How will the issue of consent for interviewing be addressed?
- > How can multiple interviewing of individuals, especially the child, be avoided?

13.4.

What needs to happen to ensure the child's immediate safety?

- > Can family resources, neighbours or other individuals be used as safety resources?
- > Should the alleged perpetrator be removed from the home, either voluntarily or in response to legal action?
- > Should the non-offending caregiver move to a safe environment with the child?
- > Can the child be placed elsewhere? (eg. voluntary placement with extended family, voluntary placement in alternative care)
- > Is medical treatment required for the child?
- > How can the child's immediate safety be achieved?
 - » By negotiation with caregivers, child and/or alleged perpetrator
 - » By youth court order
 - » By arrest of alleged perpetrator
 - » By bail conditions imposed on alleged perpetrator by SAPOL and/or subsequent magistrate's court appearance
 - » By removing the child.
- > Who will do this?
 - » Families SA
 - » SAPOL.

13.5.

What other information is needed?

- > What other information needs to be gathered?
- > Is there any current Family Court involvement?
- > At what point should the victim or non-abusing caregiver be given information about the criminal justice system, so they can make an informed choice about continuing with the prosecution process?
- > Who will convey the child to the interviewing agency?

Section 14

APPENDIX G:

ISSUES SPECIFIC TO THE EDUCATION SYSTEM

14.1. SAPOL

In the first instance, the notification, whether extra-familial or intra-familial in nature, will be made to the officer in charge, Family Violence Investigation Section (FVIS) or officer in charge, Country Investigations Section.

14.2. SAPOL involving DECD

Upon receipt of a notification alleging that a DECD employee, service provider or volunteer has abused a child, the supervisor or investigating officer will contact the manager of the DECD Investigations Unit to initiate a strategy discussion to discuss the best course of action. The DECD Investigations Unit should be informed in all circumstances when allegations of child abuse are made against employees, service providers and volunteers irrespective of whether the alleged abuse has occurred during the course of the person's employment or outside (including reports of intra-familial abuse).

SAPOL advice to DECD will include:

- a) the name, date of birth and address of the person who has been charged
- b) details of the charge and apprehension report
- c) the condition upon which the accused person has been bailed
- d) the court bailed to and the date of the first court appearance
- e) the school or schools involved
- f) whether there is a reasonable suspicion that there might be other victims
- g) whether there are any complicating factors that would affect disclosure to parents
- h) the contact details of the investigating officer
- i) whether the offence is a major indictable offence, a minor indictable or a summary offence.

When a person who works or volunteers at a school (government or private) is under suspicion and is being investigated by police and/or has been reported or arrested with a sexual offence, the Department for Education and Child development (DECD) Investigations Unit must be notified as soon as practicable. Sexual Crime Investigation Branch (SCIB) is responsible for that notification. The arresting officer must provide the following information direct to SCIB before completing duty. The information should be emailed to **SAPOL: SCIB SCHOOL SEXUAL OFFENCE NOTIFICATION**.

SAPOL in collaboration with other key stakeholders (Families SA and CPS) through strategy discussions are to ensure a support person is available for the child throughout the process and that support person be a parent (unless the parent is an alleged offender), a relative or friend chosen by or acceptable for the child.

SAPOL has a responsibility to notify parents or guardians that they are interviewing their child (children), preferably before the interview.

Every effort should be made to minimise disruption to student programs and the educational environment during the investigation. Children should not be interviewed by SAPOL at school or preschool if possible, unless it is considered to be in the best interests of the child and there is a pressing need for haste. (The urgency of interviewing a child at school or preschool would most likely present when allegations of abuse or neglect have been made against a parent, guardian or care giver and there is a lack of support or protection for the child.)

Should an interview need to be conducted with a child at a DECD site and **the allegation is against a staff member**, it is inappropriate for other staff members to be the child's support person or to be present at the interview. Ideally in the circumstances where allegations are made against a staff member of DECD and SAPOL has the responsibility to conduct the interview of the child, best practice is to engage the support of the parent, guardian or care giver and make alternative arrangements for the child to be interviewed in an appropriate environment. Wherever possible the child should be interviewed by a qualified SAPOL member in a one on one setting to negate any contamination and to obtain an optimum free narrative disclosure from the child.

It is the policy within DECD to conduct an immediate risk assessment to determine whether allowing an employee to remain in a student site while the investigation is being conducted poses a risk to the safety of children. Officers of the DECD Investigations Unit will negotiate with SAPOL when it is appropriate to inform an employee that an allegation has been made against them to avoid the risk of contaminating evidence. As part of this process careful consideration is also given to addressing potential risks to other children with whom the person has had, or may have contact.

In accordance with the principle of causing minimal disruption to the school environment, it is preferable that, whenever possible, SAPOL interview and/or arrest employees out of the work environment.

If the investigation is a large-scale operation, the management of the investigation will be planned through discussion between the SAPOL supervisor and the Manager, DECD Investigations Unit.

Email: DECD.InvestigationsUnit@sa.gov.au

Tel. 8227 2407

14.3. The Association of Independent Schools of SA (AISSA)

For matters relating to employees of a particular independent and non-Catholic school, initial contact can be made either with the principal of that school or the Deputy Chief Executive of the Association of Independent Schools of SA.

Tel. 8179 1400 Fax 8373 1116

14.4. Catholic education

For matters relating to employees, service providers or volunteers of a Catholic school contact:

Assistant Director, People and Culture

Tel. 8301 6667

Email: reports.ia@cesa.catholic.edu.au

14.5. SAPOL / DPP involving the Teachers' Registration Board of South Australia

The Teachers' Registration Board of South Australia (the Board) is the statutory body responsible for regulating the teaching profession in South Australia. The Board is empowered under the *Teachers' Registration and Standards Act 2004*. The Board relies upon the provision of information from various investigative and prosecuting authorities, particularly SAPOL and the Office of the Director of Public Prosecutions. Section 51 of the Act requires the Director of Public Prosecutions and the Commissioner of Police to establish arrangements for reporting to the Board offences which raise serious concerns about a person's fitness to be, or continue to be, registered as a teacher.

SAPOL and DPP personnel should follow the protocols established with the Board for this exchange of information. Further advice can be obtained from the Board's Legal Unit: telephone 8226 5984.

Section 15

APPENDIX H:

VENUES FOR INITIAL INTERVIEWS

15.1.

At school

If it is decided that it is necessary to speak to the child at school, then:

- sufficient time should be allowed to contact the school to arrange for the interview
- a decision must be made as to whether to advise the parents before or after the interview
- parents should be informed as soon as reasonably practicable in the circumstances.

When the initial interview of a child victim is conducted in a school, then:

- the primary responsibility of the principal and school staff is the welfare of the child
- all parties need to be sensitive to the needs of the child (consider non-uniformed personnel)
- the presence of the principal or a nominated teacher during the interview depends upon the circumstances surrounding the alleged abuse and/or to whom the initial disclosure was made
- if the allegation of abuse or neglect is against a staff member, it is inappropriate for other staff members to be present at the interview.

The person to whom the child first complained of the alleged abuse is a potential witness. Therefore, only in exceptional circumstances will this person be allowed to be present for any subsequent interview of the child – for example, if a full statement from that staff member has been taken prior to the child's statement.

Families SA responsibilities when speaking to a child at school

During any investigation the investigating social worker will sight and assess the child as part of the investigation process.

If the interview is to be conducted at a school, kindergarten, etc, Families SA must provide a letter to the principal outlining its authority under the *Children's Protection Act 1993* (see the pro forma letter contained within the Families SA *Child protection manual of practice*).

Careful consideration should be given to choosing a suitable and sympathetic setting for the interview. The location should be private, quiet, and reasonably comfortable. Care must be taken to safeguard the child's privacy and protect the child from the curiosity of other students and school personnel.

If the parents have not yet been informed that the child has been interviewed, immediate action must be taken to inform them that this has taken place, and about what, if anything, is to happen next. It is important to provide the parents with information about Families SA's role and responsibility and the process of any further investigation to take place, and to provide them with a copy of the Families SA pamphlet, *When Families SA visits you – information for families about child protection assessment*.

Having concluded the interview, provide the parents with written information about Families SA's role and responsibility, the process of investigation, your name, the supervisor's name and Families SA district office telephone number (see above pamphlet).

15.2.

At home

When speaking to the child at home, do so away from where the abuse occurred – for example, if the abuse occurred in the bedroom do not speak to the child there.

Ensure that distractions are kept to a minimum.

Ensure that the person suspected of having abused the child is not present within the house and has not been pre-warned about the arrangements.

Section 16

APPENDIX I:

DECLARATION OF PRINCIPLES GOVERNING THE TREATMENT OF VICTIMS OF CRIME

The Parliament of South Australia passed a declaration of principles to govern the way public agencies and officials deal with victims of crime.

The principles are not enforceable in criminal or civil proceedings, do not give rise to any right to damages for breach, and do not affect the conduct of criminal proceedings. Public agencies and officials, however, are authorised and required to have regard, and to give effect, to the principles so far as it is practicable to do so while having regard to the other obligations binding on them.

16.1. Declaration of principles governing treatment of victims

16.1.1. Fair and dignified treatment

A victim should be treated—

- with courtesy, respect and sympathy; and
- with due regard to any special need that arises because of the victim's—
 - » age
 - » sex
 - » race or ethnicity
 - » cultural or linguistic background
 - » for any other reason.

16.1.2. Right to have perceived need for protection taken into account in bail proceedings

If a police officer or a person representing the Crown in bail proceedings is made aware that the victim feels a need for protection from the alleged offender—

- the police officer or other person must ensure that the perceived need for protection is brought to the attention of the bail authority; and
- reasonable efforts must be made to notify the victim of the outcome of the bail proceedings and, in particular, any condition imposed to protect the victim from the alleged offender (unless the victim indicates that he or she does not wish to be so informed).

16.1.3. Right to information

A victim should be informed, on request, about the following:

- The progress of investigations into the offence
- The charge laid and details of the place and date of proceedings on the charge
- If a person has been charged with the offence—the name of the alleged offender
- If an application for bail is made by the alleged offender—the outcome of the application
- If the prosecutor decides not to proceed with the charge, to amend the charge, or to accept a plea to a lesser charge or agrees with the defendant to make or support a recommendation for leniency—the reasons for the prosecutor's decision
- The outcome of the proceedings based on the charge and of any appeal from those proceedings
- Details of any sentence imposed on the offender for the offence
- Details of any order made by a court on declaring the offender to be liable to supervision under part 8a of the *Criminal Law Consolidation Act 1935*
- If the offender is sentenced to imprisonment and later makes an application for release on parole—the outcome of the proceedings and, in particular, any condition imposed to protect the victim from the offender
- If the offender is subject to a supervision order under Part 8A of the *Criminal Law Consolidation Act 1935* and the offender, or any other person, later makes an application for variation or revocation of the order or an application for review of the supervision order is made—the outcome of the proceedings and, in particular, if the offender is released on licence, any conditions imposed on the licence.

A victim should be informed, on request, about the following:

- If the alleged offender absconds before trial—the fact that he or she has absconded
- If the offender escapes from custody—the fact that he or she has escaped
- If the offender, having escaped from custody, is returned to custody—the fact that he or she has been returned to custody
- If the release of the offender into the community is imminent—details of when the offender is to be released
- If the offender was ordered to undertake community service—whether the offender completed the community service
- If the offender was subject to a bond—whether the conditions of the bond were complied with.

However, a victim is not entitled to information that might jeopardise the investigation of an offence.

A victim should be informed, on request, about procedures that may be available to deal with a grievance the victim may have for non-recognition or inadequate recognition of the victim's rights under this Part.

16.1.4. Victim to be advised on role as witness

A victim who is to be a witness for the prosecution at the trial of the offence should be informed by the prosecution about the trial process and the victim's rights and responsibilities as a witness for the prosecution.

The information should be given (if practicable) so as to allow the victim sufficient time to obtain independent advice, and arrange independent support, in relation to the exercise of those rights or the discharge of those responsibilities.

16.1.5. Victim of serious offence entitled to be consulted in relation to certain decisions

A victim of a serious offence should be consulted before any decision is made—

- to charge the alleged offender with a particular offence
- to amend a charge

- to not proceed with a charge
- to apply under Part 8A of the *Criminal Law Consolidation Act 1935* for an investigation into the alleged offender's mental competence to commit an offence or mental fitness to stand trial.

16.1.6. Victim's entitlement to be present in court

A victim of an offence is entitled to be present in the courtroom during proceedings for the offence unless the court, in accordance with some other Act or law, orders otherwise.

16.1.7. Victim entitled to have impact of offence considered by sentencing court and to make submissions on parole

A victim is entitled to have any injury, loss or damage suffered as a result of the offence considered by the sentencing court before it passes sentence.

A victim of an offence is entitled to make written submissions to the Parole Board on questions affecting the parole of a person imprisoned for the offence.

16.1.8. Victim may request consideration of appeal

A victim who is dissatisfied with a determination made in relation to the relevant criminal proceedings (being a determination against which the prosecution is entitled to appeal) may request the prosecution to consider an appeal against the determination.

A request under this section must be made within 10 days after the making of the determination.

The prosecution must give due consideration to a request made under this section.

16.1.9. Victim to be informed about access to health and welfare services

A victim should be informed about health and welfare services that may be available to alleviate the consequences of injury suffered as a result of the offence.

16.1.10.

Rights in relation to compensation and restitution

A victim should have access to information about how to obtain compensation or restitution for harm suffered as a result of the offence.

If the prosecutor is empowered to make an application for restitution or compensation on behalf of a victim in criminal proceedings—

- the prosecutor should bring that fact to the attention of the victim; and should, if asked to do so by the victim:
 - » make the application on the victim's behalf; and
 - » bring to the attention of the court any relevant information provided by the victim in connection with the application.

16.1.11.

Return of property

If a victim's property is taken for investigation or for use as evidence, the property should, if practicable, be returned to the victim as soon as it appears that it is no longer required for the purposes for which it was taken.

16.1.12.

Protection of privacy

There should be no unnecessary intrusion on a victim's privacy.

In particular, a victim's residential address should not be disclosed unless it is material to the prosecution or defence.

A victim should be protected as far as practicable from unnecessary contact with the alleged offender and defence witnesses during the course of the trial and in proceedings under this Act. A victim should only be asked to attend proceedings related to the offence if the victim's attendance is genuinely necessary.

Section 17

APPENDIX J:

ISSUES SPECIFIC TO CHILDREN AND YOUNG PEOPLE UNDER THE GUARDIANSHIP OF THE MINISTER.

The Department for Education and Child Development is committed to ensuring the safety, protection and wellbeing of all children and young people who are placed in alternative or foster care, or into community or secure care facilities. CCIU will contribute to this commitment by providing an independent assessment and investigation of allegations of harm or abuse by a carer, staff member or volunteer towards any child or young person in the care of the Minister. Each Inquiry and Investigation will focus upon identifying and assessing individual, program and systems abuse and in doing so make appropriate recommendations to the Chief Executive to improve practice, policy and procedures to enhance the overall care and protection of children.

17.1. Care concerns

Care concerns can be defined as acts or situations that indicate there has been a failure to meet the agreed or minimum standards of care, which jeopardises the wellbeing of a child or young person in placement.

There may be concerns where there is no alleged harm or non accidental injury and no immediate risk or implied threat to the child or young person, but situations or circumstances if left unaddressed, may progress to a situation that poses a risk to, or has an adverse effect on the child or young person's safety, welfare or development. Such concerns may be indicators or early signs that a carer, staff member or volunteer is struggling with the demands of caring for the child or young person or that the carer, staff member or volunteer is not receiving adequate support or information about how to best manage the placement.

When such concerns arise in the general community, they may not necessarily require or meet the mandate for Families SA intervention. However, where the State has direct responsibility for the child or young person, (through Guardianship, custody or supervision orders or through placement of the child or young person in a Families SA authorised placement), there is a greater standard of care imposed on Families SA to ensure the concerns are addressed appropriately with the carer, staff member or volunteer.

17.1.1. Minor care concerns

'Minor' care concerns are minor breaches of accepted care standards that pose a minor risk to the safety and wellbeing of the child/young person. The focus of attention is on the supervision, development and training of the carer, staff member or volunteer by way of a discussion based process. Placement concerns are low-risk where inadequate 'parenting' skills, inappropriate controls or minor systemic deficits are evident.

'Minor' care concerns will be dealt with jointly by the contracting agency/alternative care service provider and Families SA by way of a general practice case management process.

17.1.2. Moderate care concerns

'Moderate' care concerns are moderate breaches of accepted care standards where the actions of the carer, staff member or volunteer allegedly constitutes a more serious deficit of care, which gives cause for concern that the child is at risk of harm and that their safety and wellbeing would be in jeopardy if intervention did not occur. The focus of attention is on the attitude, behaviour, skills and capabilities of the carer, staff member or volunteer and the supports and resources available to them. The process is conducted by way of an inquiry.

'Moderate' care concern enquiries will be undertaken jointly by Families SA and the contracting agency/alternative care service provider by way of a more formal process with outcomes documented in a formal care concern inquiry report.

17.2.

Special investigation

A 'special investigation' refers to matters where the allegations are more serious and constitute serious harm or a significant risk of serious harm to the child or young person in care of the Minister by a carer, staff member or volunteer, or where the manager of the CCIU deems it appropriate for a more thorough investigation.

17.2.1.

Serious care concerns

'Serious' care concerns are serious breaches of accepted care standards where the child is suspected to be in immediate danger or has already suffered serious harm or is at significant risk of serious harm as a result of the carer, staff member or volunteer's actions, inactions or impaired capacity to act in their designated role. The focus of attention is on the nature and degree of harm caused to the child, the risk of further harm, and how such a serious deficit of care was able to occur. The process is by way of investigation, where due process is followed for the protection of the safety and wellbeing of the child and the protection of the natural justice rights of the carer, staff member or volunteer. Both the individual culpability of the carer, staff member or volunteer and the contribution of systemic factors will be assessed.

Responsibility for management of a special investigation will be allocated to an investigator within CCIU. Some of these matters may constitute a possible criminal offence, which must be referred to the SAPOL for their assessment.

A special investigation may include matters where an alleged victim is now over the age of 18 years and the carer, staff member or volunteer are still registered, employed or caring for children.



