

This information is general and not a substitute for legal advice. The Legal Services Commission provides free advice for most legal problems.

If you are in a regional area contact Port Augusta 8468 5180 or Whyalla 8648 8940.

If you are in a metropolitan area contact the Legal Helpline 1300 366 424.

Always seek legal advice if your child is to be placed under a Child Protection Order.

(TTY 8463 3691) www.lsc.sa.gov.au www.lawhandbook.sa.gov.au

WHAT IS CHILD PROTECTION LAW?

The law concerning child protection in South Australia is the *Children's Protection Act 1993*. This Act gives authority to Families SA to intervene when a child is at risk (i.e. when there are serious child protection concerns).

When there are child protection concerns people can make notifications about suspected abuse or neglect of children and these notifications will be recorded and if necessary investigated with further action taken against those reported. Actions can be providing assistance to assist in the care of the child, or the removal of the child if at serious risk.

Some reasons why child protection notifications are made include:

Physical abuse – when a person purposefully injures or threatens to injure a child. For example, slapping a child for spilling a glass of milk or hitting a child with a belt because they wouldn't clean their room.

Emotional abuse – an attack on a child's self esteem through bullying, name calling, continual use of offensive language, threatening, ridiculing, intimidating or isolating the child. For example, taunting a child about urinating in bed or teasing a child about a stutter they may have.

Sexual abuse – any sexual act or sexual threat imposed on a child. For example, touching the child inappropriately on the genitals or bottom.

Neglect – where a child is harmed by the failure to provide the basic physical and emotional necessities. For example, the child is not receiving adequate food and water and as a result is often dehydrated and suffers medical problems from dehydration. Another example is when the child has smelly clothes, does not appear to bathe often and is in need of medical attention.

Children are considered at risk if there is a significant chance that they will suffer serious harm to their physical, psychological or emotional wellbeing in any of the categories outlined above and they do not have proper protection. Protection in this sense means adequate supervision, care and control of the child.

WHO IS RESPONSIBLE FOR CHILD PROTECTION?

The primary responsibility for child protection rests with the child's parents. In some instances parents are unable to ensure a safe environment, so other potential guardians are permitted to intervene whilst others are mandated, by the law, to intervene.

In South Australia reports of abuse and neglect are made to the Child Abuse Report Line (CARL), which is a division of Families SA. Anyone can make a report of abuse or neglect to the Child Abuse Report Line on 131 478. This is a 24 hours service staffed by social workers from Families SA.

Certain professionals are mandated notifiers, and must legally notify Families SA if they suspect on reasonable grounds that a child has been or is being abused or neglected and the suspicion of abuse and or neglect is formed in the course of the person's work (paid or voluntary) or while carrying out official duties.

Mandated notifiers include the following people:

<ul style="list-style-type: none"> • Medical Practitioners 	<ul style="list-style-type: none"> • Family Day Care Providers
<ul style="list-style-type: none"> • Pharmacists 	<ul style="list-style-type: none"> • Approved Family Day Care Provider
<ul style="list-style-type: none"> • Registered or Enrolled Nurses 	<ul style="list-style-type: none"> • Social Workers
<ul style="list-style-type: none"> • Dentists 	<ul style="list-style-type: none"> • Psychologists
<ul style="list-style-type: none"> • Police Officers 	<ul style="list-style-type: none"> • An employee or volunteer in a religious or spiritual organisation
<ul style="list-style-type: none"> • Teachers 	<ul style="list-style-type: none"> • Corrections Officers whose duties include supervision of young or adult offenders in the community
<ul style="list-style-type: none"> • A Minister of Religion* 	<ul style="list-style-type: none"> • An employee or volunteer in an agency (government and non-government) engaged in or responsible for delivery of health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children.
	<ul style="list-style-type: none"> • Any other person who is an employee 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, provided that person is engaged in delivery of the service or holds a management position which includes direct supervision of those services to children,

**Ministers of religion and priests are exempt from revealing information provided during confession in accordance with their religious rules.*

WHAT CAN HAPPEN WHEN FAMILIES SA INTERVENE?

Families SA can be asked to intervene by parents, usually in emergency situations such as when a parent is ill and requires hospitalisation. This is referred to as a Parental Authority for Placement (“PAP”) and it requires a written agreement with signed consent from the parents and a case plan is drawn up and attached to the PAP. Guardianship remains with the parents and Families SA will need to consult the parents in regards to any decisions that need to be made about the child. A PAP can last for a maximum of 6 weeks and can only be renewed for a further 6 weeks.

In urgent situations, Families SA will respond within 24 hours of a notification. Families SA may remove children if the harm is serious or immediate and seek an Investigation and Assessment Order. A non-urgent response is where the family are notified of concerns and referred to support services for assistance. There is also what is termed a ‘Notifier Only Concern’ where the notification is placed on the database but no further action, investigation or response follows.

Families SA can work with families prior to or during court action and this may be done with the child being placed out of the family home for a time. There are two ways that a child can be taken out of the family home in order for Families SA to investigate a notification, the first is a Voluntary Custody Agreement (“Care Agreement”) and the second is through an Investigation and Assessment Order Application at the Youth Court.

VOLUNTARY CUSTODY AGREEMENT / CARE AGREEMENT

This is a short term agreement between the parents and Families SA, usually 3 months with an option to extend to a maximum of 6 months, which gives Families SA the right to make day to day decisions about the child, including where the child is to live. This agreement must be in writing and must state the following: how long the agreement is for, where the child is to live, contact arrangements with the parents and other family members and the decisions that Families SA must consult parents about.

Families SA can make arrangements for short term care and may arrange support services for the family. There is also usually a safety plan in place for safety issues that may arise for the child, particularly where there may be family violence. For Aboriginal children, the Aboriginal Family Support Services may assist Families SA in sourcing and arranging for support services and care placement options. Always obtain legal advice prior to signing a Voluntary Custody Agreement.

INVESTIGATION & ASSESSMENT ORDERS

Where Families SA are unable to continue an investigation voluntarily with parents or guardians, they can apply to the Youth Court for Investigation and Assessment Orders. These orders are usually made in emergencies following the removal of a child at risk and are often used to carry out medical examinations or other interviews and assessments. A variety of orders can be made including orders for:

- the examination and assessment of the child
- specified people to answer questions and/or make reports
- custody of the child to the Minister
- access visits – usually at the discretion of the Minister
- the exclusion of specified people from the child's home or from having contact with the child

Under these orders any examination or assessment of the child by a professional can be done without the parent's or guardian's consent. Orders only last for a maximum of six weeks but Families SA can apply for one extension of four weeks.

FAMILY CARE MEETING

This meeting usually takes place during the Investigation and Assessment Order but can take place at other times prior to Court action but must take place prior to a Guardianship order being heard unless there are circumstances that make it impossible for this meeting to take place. This meeting is between Families SA, family members and any other professionals involved with the child. If an agreement is reached between the parents or guardians and Families SA, a Family Care Plan will be written up outlining what is to happen with the future care of the child. The plan outlines where the child is to reside, whether the Minister (through Families SA) is to take over guardianship, what access, cultural and other arrangements would be made for the child and the family, what action the parents or guardians need to undertake such as parenting programs, drug and alcohol counselling and or relationship counselling. The discussions in the meeting are confidential and only the outcome and agreement can form part of the court record. Lawyers are restricted from being present at Family Care Meetings. If an agreement is not reached it is usual for the Minister (through Families SA) to apply to the Youth Court for a Care and Protection Order.

CARE AND PROTECTION ORDER APPLICATIONS

Care and Protection Orders can be sought without having first applied for an Investigation and Assessment Order but this is only in the case of Families SA having evidence of severe abuse and neglect. If an Investigation and Assessment process has been completed and the findings are that the child is at risk and an order of the court is required to secure the child's protection an application for Care and Protection Orders is made by the Minister (through Families SA). There are two types of orders that can be sought from the Youth Court:

- A 12 month Guardianship of the Minister Order ("GOM12"); and
- An order for Guardianship of the Minister until the child attains 18 years of age ("GOM18").

The GOM12 is a 12 month order where the child has been placed under the guardianship of the Minister (Families SA) for a period of 12 months; these orders are generally used in the first instance and when there is a prospect of reunification of the child with the parents or guardians. This requires Families SA to work through a case plan with timelines to implement and achieve the goals in the plans, generally, the parents are put on a plan for contact with the child and for personal and parenting development. This is an opportunity for Families SA and the parents to work together to reunite the child with the family and in all reality it is a time when parents are under extreme scrutiny and examination, it is a time when parents should actively participate and engage in programs and counselling.

Parents and guardians have the right to nominate possible care providers for the child who is to be placed under an order. This nominated care provider will then be assessed by Families SA.

A GOM18 is an order where the child has been placed under the guardianship of the Minister (Families SA) until the child attains the age of 18 years of age. This type of order is ordinarily sought after a GOM 12 has already been granted and reunification was not possible, however there are some rare circumstances where this order can be sought without having previously had a GOM12 order in place. The reality with these types of orders are that parental access is minimal and there is only an obligation on the Minister (Families SA) to facilitate a yearly review with the family in regards to the child's education, health etc.

NOTE: In Investigation and Assessment Applications as well as GOM Applications, each party has a right to a representative: one for the child, one for the Minister (Families SA) and one for both or each of the parents or guardians, whichever is more appropriate. In some instances it may be necessary for each parent or guardian to have their own representation and in other instances they may share representation, it generally depends on the circumstances and interest of each parent or guardian.

WHAT ARE THE SPECIAL PROVISIONS FOR ABORIGINAL CHILDREN?

There are a number of special provisions in the Act that relate to Aboriginal children. Such provisions include the requirement for consultation with a "recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation" before any orders can be made; this recognised Aboriginal organisation is currently the Aboriginal Family Support Services ("AFSS"). What this means in practice is that when an application for an order is made, AFSS usually provides a report to the court, amongst other things, the report outlines whether AFSS supports the order or not, including the reasons for their view. In their report AFSS also discuss support options with the goal of family reunification if they are in support of a GOM12.

In relation to all Aboriginal children the Aboriginal Child Placement Principle is applicable: this principle governs the placement of Aboriginal children when they are in out of home care. The principle contains the following key elements:

- Removal of Aboriginal children from family and community must be a last resort.
- When removal of an Aboriginal child is unavoidable, where possible, the child should be placed within the extended family or relatives.
- If placement with extended family or relatives is not possible an Aboriginal child should be placed with an Aboriginal family from the local community and within close geographical proximity to the child's natural family.
- If placement with another Aboriginal family is not possible then, after consultation with AFSS, an Aboriginal child may be placed with a non-Aboriginal family living in close geographical proximity to the child's natural family.
- In any placement of an Aboriginal child within a non-Aboriginal family, the non-Aboriginal family in conjunction with Families SA must ensure the maintenance of the child's culture and identity through contact with the child's Aboriginal community.
- If your child is Aboriginal and under a GOM12 or GOM 18 order then it is your right to insist on adherence to the Aboriginal Family Placement Principle, particularly where you child is residing with a non-Aboriginal family or an Aboriginal family that is from a different cultural group to your child.

INTERVENTION ORDERS AND CHILD PROTECTION

In some instances Intervention Orders (previously known as Restraining Orders) can be put in place to protect children at risk of family violence. The police can issue an interim intervention order against someone (including the child's parents, guardians or another person) where a child is at risk of being abused by that person.

There does not necessarily need to be consent by the parties for an interim order to be put in place and in cases where there is family violence South Australia Police may issue an order without necessarily obtaining any consent from the parties involved.

See the Legal Services Commission factsheet on '*Intervention Orders*' for further information.

FURTHER INFORMATION OR ASSISTANCE

Legal Advice

Legal Services Commission – 1300 366 424
www.lsc.sa.gov.au

Aboriginal Legal Rights Movement – 1800 643 222
www.alrm.org.au

Women's Legal Service – 1800 670 864
www.wlssa.org.au

Law Society Referral Service – 08 8229 0222
www.lawsociety.asn.au

Other Advice

Parenting SA - www.parentingsa.gov.au

Parent Helpline – 1300 364 100

Aboriginal Family Support Services – 08 8205 1500
www.afss.com.au

Child Abuse Report Line (CARL) – 131 478

To order copies of this free fact sheet visit www.lsc.sa.gov.au
or telephone 8463 3528.

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