



Australian legal definitions: When is a child in need of protection?

CFCA Resource Sheet — July 2019



Overview

This CFCA resource sheet provides information for practitioners and researchers on legal definitions of when a child is in need of protection for each Australian jurisdiction.

It brings together information from various sources to provide an accessible single reference guide for practitioners and researchers.

Introduction

This resource sheet presents the legal definitions of 'a child in need of protection', as set out in civil child protection legislation in each Australian jurisdiction. This legislation determines the point at which, and the circumstances in which, a state or territory is mandated to intervene to protect children.

For a general definition of child abuse and neglect, and definitions of the five commonly regarded subtypes, see the CFCA Resource Sheet [What is child abuse and neglect?](https://aifs.gov.au/cfca/publications/what-child-abuse-and-neglect) (aifs.gov.au/cfca/publications/what-child-abuse-and-neglect).

Certain groups of people are required by law to report any suspicion of abuse or neglect of a child or young person to government authorities. Further information and guidelines regarding mandatory reporting can be found in the CFCA Resource Sheet: [Mandatory Reporting of Child Abuse and Neglect](https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect) (aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect).

If a child or young person has disclosed abuse or neglect to you, it is important to stay calm and reassure them that you will help them to be safe. For information on how to respond to disclosures of abuse, see the CFCA Practitioner Resource: [Responding to Children and Young People's Disclosures of Abuse](https://aifs.gov.au/cfca/publications/responding-children-and-young-people-s-disclosures-abu) (aifs.gov.au/cfca/publications/responding-children-and-young-people-s-disclosures-abu).



Parents and other family members may disclose to you concerns about not coping with their parenting responsibilities. Listening and providing support and practical help is important, while assessing whether there is a child at risk of abuse or neglect. Contact details and links to helplines and telephone counselling services that provide information, counselling support and service referral can be found in the CFCA Resource Sheet: [Helplines and Telephone Counselling Services for Children, Young People and Parents](https://aifs.gov.au/cfca/publications/cfca-resource-sheet/helplines-and-telephone-counselling-services-children-young-people) (aifs.gov.au/cfca/publications/cfca-resource-sheet/helplines-and-telephone-counselling-services-children-young-people).

The components of ‘a child in need of protection’

The legislative provisions in each jurisdiction that relate to the definition of a child in need of protection, and the threshold at which statutory child protection intervention is triggered, are outlined below. These excerpts illustrate the range of different ways in which states and territories define ‘a child in need of protection’ (or, in some jurisdictions, a child ‘at risk’).

Legislative definitions of ‘a child in need of protection’

This section outlines the legislative definitions of ‘a child in need of protection’, according to the relevant civil child protection legislation of each Australian jurisdiction. References to the threshold of risk required for a child protection intervention are **set in bold** (our emphasis) below.

Note: Please seek professional legal advice for any clarification of legal definitions and references to risk threshold.

- [Australian Capital Territory](#)
- [New South Wales](#)
- [Northern Territory](#)
- [Queensland](#)
- [South Australia](#)
- [Tasmania](#)
- [Victoria](#)
- [Western Australia](#)

Australian Capital Territory

Section 11 of the [Children and Young People Act 2008](#) (ACT) (www.legislation.act.gov.au/a/2008-19) defines a child as a person who is under 12 years old. Section 13 defines a young person as a person who is 12 years old or older, but not yet an adult. The *Children and Young People Act 2008* (ACT) refers to the *Legislation Act 2001* that defines an adult as a person who is at least 18 years old.

Section 342 of the *Children and Young People Act 2008* (ACT) deems that abuse, of a child or young person, means:

- (a) physical abuse; or
- (b) sexual abuse; or
- (c) emotional abuse (including psychological abuse) if the child or young person has experienced the abuse or is experiencing the abuse in a way that has caused or is causing **significant harm to his or her wellbeing or development**; or
- (d) emotional abuse (including psychological abuse) if—
 - (i) the child or young person has seen or heard the physical, sexual or psychological abuse of a person with whom the child or young person has a domestic relationship, the exposure to which has caused or is causing significant harm to the wellbeing or development of the child or young person; or
 - (ii) if the child or young person has been put at risk of seeing or hearing abuse mentioned in subparagraph (i), the exposure to which would cause significant harm to the wellbeing or development of the child or young person.’

Section 343 of the *Children and Young People Act 2008* (ACT) deems that neglect, of a child or a young person, means a failure to provide the child or young person with a necessity of life if the failure has caused or is causing **significant harm** to the wellbeing or development of the child or young person.



‘Examples—necessities of life

1 food

2 shelter

3 clothing

4 health care treatment¹

Section 344 of the *Children and Young People Act 2008* (ACT) deems that a child or young person is at risk of abuse or neglect if, on the balance of probabilities, there is a **significant risk** of the child or young person being abused or neglected.

Section 345 of the *Children and Young People Act 2008* (ACT) deems that:

‘(1) ... a child or young person is in need of care and protection if—

(a) the child or young person—

- (i) has been abused or neglected; or
- (ii) is being abused or neglected; or
- (iii) is at risk of abuse or neglect; and

(b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from the abuse or neglect or the risk of abuse or neglect.

(2) Without limiting subsection (1), a child or young person is in need of care and protection if—

- (a) there is a serious or persistent conflict between the child or young person and the people with parental responsibility for him or her (other than the director-general) to the extent that the care arrangements for the child or young person are, or are likely to be, seriously disrupted; or
- (b) the people with parental responsibility for the child or young person are dead, have abandoned the child or young person or cannot be found after reasonable inquiry; or
- (c) the people with parental responsibility for the child or young person are sexually or financially exploiting the child or young person or not willing and able to keep him or her from being sexually or financially exploited.’

New South Wales

Section 3 of the [Children and Young Persons \(Care and Protection\) Act 1998](http://www.legislation.nsw.gov.au/#/view/act/1998/157/full) (NSW) (www.legislation.nsw.gov.au/#/view/act/1998/157/full) defines child as a person who is under the age of 16 years.

Section 71(1) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) deems that the Children’s Court may make a care order in relation to a child or young person if it is satisfied that the **child or young person is in need of care and protection** for any reason including, without limitation, any of the following:

- ‘(a) where there is no parent available to care for the child or young person as a result of death or incapacity or for any other reason,
- (b) the parents acknowledge that they have serious difficulties in caring for the child or young person and, as a consequence, the child or young person is in need of care and protection,
- (c) the child or young person has been, or is likely to be, physically or sexually abused or ill-treated,
- (d) subject to subsection (2) the child’s or young person’s basic physical, psychological or educational needs may not be met, or are likely not to be met, by his or her parents or primary care givers,
- (e) the child or young person **is suffering, or is likely to suffer serious developmental impairment or serious psychological harm** as a consequence of the domestic environment in which he or she is living,
- (f) in the case of a child who is under the age of 14, the child has exhibited sexually abusive behaviours and an order of the Children’s Court is necessary to ensure his or her access to, or attendance at, an appropriate therapeutic service,
- (g) the child or young person is subject to a care and protection order of another state or territory that is not being complied with,’

¹ The example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears.



Section 71(2) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) states that the Children's Court cannot conclude that the basic needs of a child or young person are likely not to be met only because of:

- (a) a parent's or primary care-giver's disability, or
- (b) poverty.'

Section 23 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) deems that a child or young person is **at risk of significant harm** if current concerns exist for the safety, welfare or wellbeing of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

- (a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
- (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
- (b1) in the case of a child or young person who is required to attend school in accordance with the [Education Act 1990](#) (NSW) (www.legislation.nsw.gov.au/#/view/act/1990/8) – the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
- (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- (d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is **at risk of serious physical or psychological harm**,
- (e) a parent or other caregiver has behaved in such a way towards the child or young person that the **child or young person has suffered or is at risk of suffering serious psychological harm**,
- (f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.'

Northern Territory

Section 13 of the [Care and Protection of Children Act 2007](#) (NT) (legislation.nt.gov.au/en/Legislation/CARE-AND-PROTECTION-OF-CHILDREN-ACT-2007) defines a child as a person less than 18 years of age, or a person apparently less than 18 years of age if the person's age cannot be proved.

According to Section 20 of the *Care and Protection of Children Act 2007* (NT), a **child is in need of care and protection** if:

- (a) the child **has suffered or is likely to suffer harm or exploitation** because of an act or omission of a parent of the child; or
- (b) the child is abandoned and no family member of the child is willing and able to care for the child; or
- (c) the parents of the child are dead or unable or unwilling to care for the child and no other family member of the child is able and willing to do so; or
- (d) the child is not under the control of any person and is engaged in conduct that causes or is likely to cause harm to the child or other persons.'

Section 15 of the *Care and Protection of Children Act 2007* (NT) defines harm to a child as being:

'(1) ... any **significant detrimental effect** caused by any act, omission or circumstance on:

- (a) the physical, psychological or emotional wellbeing of the child; or
- (b) the physical, psychological or emotional development of the child.

(2) Without limiting subsection (1), harm can be caused by the following:

- (a) physical, psychological or emotional abuse or neglect of the child;
- (b) sexual abuse or other exploitation of the child;
- (c) exposure of the child to physical violence.'

Section 16 of the *Care and Protection of Children Act 2007* (NT) defines exploitation of a child:

'(1) ... [as including] sexual and any other forms of exploitation of the child.

(2) Without limiting subsection (1), sexual exploitation of a child includes:

- (a) sexual abuse of the child; and



- (b) involving the child as a participant or spectator in any of the following:
 - (i) an act of a sexual nature;
 - (ii) prostitution;
 - (iii) a pornographic performance.'

Queensland

Section 8 of the [Child Protection Act 1999](http://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-1999-010) (Qld) (www.legislation.qld.gov.au/view/whole/html/inforce/current/act-1999-010) defines a child as an individual under 18 years.

Section 10 of the *Child Protection Act 1999* (Qld), deems **a child in need of protection** as a child who:

- '(a) has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm; and
- (b) does not have a parent able and willing to protect the child from the harm.'

Section 9 of the *Child Protection Act 1999* (Qld) defines harm to a child as:

- '(1) ... any **detrimental effect of a significant nature** on the child's physical, psychological or emotional wellbeing.
- (2) It is immaterial how the harm is caused.
- (3) Harm can be caused by—
 - (a) physical, psychological or emotional abuse or neglect; or
 - (b) sexual abuse or exploitation.
- (4) Harm can be caused by—
 - (a) a single act, omission or circumstance; or
 - (b) a series or combination of acts, omissions or circumstances.'

South Australia

Section 16 of the [Children and Young People \(Safety\) Act 2017](http://www.legislation.sa.gov.au/LZ/C/A/Children%20and%20Young%20People%20(Safety)%20Act%202017.aspx) (SA) (www.legislation.sa.gov.au/LZ/C/A/Children%20and%20Young%20People%20(Safety)%20Act%202017.aspx) defines a child or young person as a person who is under 18 years of age.

Section 17 of the *Children and Young People (Safety) Act 2017* (SA) defines the meaning of harm as:

- '(1) For the purposes of this Act, a reference to *harm* will be taken to be a reference to physical harm or psychological harm (whether caused by an act or omission) and, without limiting the generality of this subsection, includes such harm caused by sexual, physical, mental or emotional abuse or neglect.
- (2) In this section—
psychological harm does not include emotional reactions such as distress, grief, fear or anger that are a response to the ordinary vicissitudes of life.'

Section 18 of the *Children and Young People (Safety) Act 2017* (SA) defines the meaning of risk as:

- '(1) For the purposes of this Act, a child or young person will be taken to be *at risk* if—
 - (a) the child or young person **has suffered harm (being harm of a kind against which a child or young person is ordinarily protected)**; or
 - (b) there is a likelihood that the child or young person **will suffer harm (being harm of a kind against which a child or young person is ordinarily protected)**; or
 - (c) there is a likelihood that the child or young person will be removed from the State (whether by their parent or guardian or by some other person) for the purpose of—
 - (i) being subjected to a medical or other procedure that would be unlawful if performed in this State (including, to avoid doubt, female genital mutilation); or
 - (ii) taking part in a marriage ceremony (however described) that would be a void marriage, or would otherwise be an invalid marriage, under the *Marriage Act 1961* of the Commonwealth; or
 - (iii) enabling the child or young person to take part in an activity, or an action to be taken in respect of the child or young person, that would, if it occurred in this State, constitute an offence against the *Criminal Law Consolidation Act 1935* or the *Criminal Code* of the Commonwealth; or



- (d) the parents or guardians of the child or young person—
 - (i) are unable or unwilling to care for the child or young person; or
 - (ii) have abandoned the child or young person, or cannot, after reasonable inquiry, be found; or
 - (iii) are dead; or
 - (e) the child or young person is of compulsory school age but has been persistently absent from school without satisfactory explanation of the absence; or
 - (f) the child or young person is of no fixed address; or
 - (g) any other circumstances of a kind prescribed by the regulations exist in relation to the child or young person.
- (2) It is immaterial for the purposes of this Act that any conduct referred to in subsection (1) took place wholly or partly outside this State.
- (3) In assessing whether there is a likelihood that a child or young person will suffer harm, regard must be had to not only the current circumstances of their care but also the history of their care and the likely cumulative effect on the child or young person of that history.
- (4) In this section—
female genital mutilation means—
 - (a) clitoridectomy; or
 - (b) excision of any other part of the female genital organs; or
 - (c) a procedure to narrow or close the vaginal opening; or
 - (d) any other mutilation of the female genital organs,but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose;
sexual reassignment procedure means a surgical procedure to give a female, or a person whose sex is ambivalent, genital characteristics, or ostensible genital characteristics, of a male.
- (5) A medical procedure has a genuine therapeutic purpose only if directed at curing or alleviating a physiological disability or physical abnormality.'

Section 41 of the *Children and Young People (Safety) Act 2017* (SA) defines 'reasonable grounds' for the removal of a child or young person by a child protection officer:

- '(1) Subject to this section, if a child protection officer believes on reasonable grounds that—
 - (a) a child or young person **has suffered, or there is a significant possibility that a child or young person will suffer, serious harm;** and
 - (b) it is necessary to remove the child or young person from that situation in order to protect them from suffering serious harm or further serious harm; and
 - (c) there is no reasonably practicable alternative to removing the child or young person in the circumstances,

the child protection officer may remove the child or young person from any premises, place, vehicle or vessel using such force (including breaking into the premises, place, vehicle or vessel) as is reasonably necessary for the purpose.'

Tasmania

Section 3(1) of the [Children, Young Persons and Their Families Act 1997](http://www.legislation.tas.gov.au/view/html/inforce/2017-08-30/act-1997-028) (Tas.) (www.legislation.tas.gov.au/view/html/inforce/2017-08-30/act-1997-028) defines a child as a person under 18 years of age.

Section 3(1) of the *Children, Young Persons and Their Families Act 1997* (Tas.) defines abuse and neglect as:

- '(a) sexual abuse; or
- (b) physical or emotional injury or other abuse, or neglect, to the extent that –
 - (i) the injured, abused or neglected person **has suffered, or is likely to suffer, physical or psychological harm detrimental to the person's wellbeing;** or
 - (ii) the injured, abused or neglected person's physical or psychological development is in jeopardy'

According to section 4(1) of the *Children, Young Persons and Their Families Act 1997* (Tas.), **a child is at risk if:**

- '(a) the child has been, is being, or is likely to be, abused or neglected; or
- (b) any person with whom the child resides or who has frequent contact with the child (whether the person is or is not a guardian of the child) –



- (i) has threatened to kill or abuse or neglect the child and there is a reasonable likelihood of the threat being carried out; or
 - (ii) has killed or abused or neglected some other child or an adult and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
- (ba) the child is an affected child within the meaning of the *Family Violence Act 2004* (Tas.); or
- (c) the guardians of the child are –
 - (i) unable to maintain the child; or
 - (ii) unable to exercise adequate supervision and control over the child; or
 - (iii) unwilling to maintain the child; or
 - (iv) unwilling to exercise adequate supervision and control over the child; or
 - (v) dead, have abandoned the child or cannot be found after reasonable inquiry; or
 - (vi) are unwilling or unable to prevent the child from suffering abuse or neglect; or
 - (d) the child is under 16 years of age and does not, without lawful excuse, attend a school, or other educational or training institution, regularly.
- (2) For the purposes of subsection (1), it does not matter whether the conduct that puts a child at risk occurred or, as the case requires, is likely to occur wholly or partly outside Tasmania.'

Victoria

Section 3 of the [Children, Youth and Families Act 2005](http://classic.austlii.edu.au/au/legis/vic/consol_act/cyafa2005252/) (Vic.) (classic.austlii.edu.au/au/legis/vic/consol_act/cyafa2005252/) defines a child as:

- '(a) in the case of a person who is alleged to have committed an offence, a person who at the time of the alleged commission of the offence was under the age of 18 years but of or about the age of 10 years but does not include any person who is of or above the age of 19 years when a proceeding for the offence is commenced in the Court; and
- (b) in any other case, a person who is under the age of 17 years or, if a protection order, a child protection order within the meaning of Schedule 1 or an interim order within the meaning of that Schedule continues in force in respect of him or her, a person who is under the age of 18 years'

According to section 162(1) of the *Children, Youth and Families Act 2005* (Vic.), **a child is in need of protection** if any of the following grounds exist:

- '(a) the child has been abandoned by his or her parents and after reasonable inquiries—
 - (i) the parents cannot be found; and
 - (ii) no other suitable person can be found who is willing and able to care for the child;
 - (b) the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;
 - (c) the child **has suffered, or is likely to suffer, significant harm** as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
 - (d) the child **has suffered, or is likely to suffer, significant harm** as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
 - (e) the child **has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged** and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
 - (f) the child's **physical development or health has been, or is likely to be, significantly harmed** and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.
- (2) For the purposes of subsections (1)(c) to (1)(f), the harm may be constituted by a single act, omission or circumstance or accumulate through a series of continuing acts, omissions or circumstances.'



Western Australia

Section 3 of the [Children and Community Services Act 2004](http://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_132_homepage.html) (WA) (www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_132_homepage.html) defines a child as a person who is under 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently under 18 years of age.

According to section 28(2) of the *Children and Community Services Act 2004* (WA), **a child is in need of protection** if:

- '(a) the child has been abandoned by his or her parents and, after reasonable inquiries –
 - (i) the parents cannot be found; and
 - (ii) no suitable adult relative or other suitable adult can be found who is willing and able to care for the child; or
- (b) the child's parents are dead or incapacitated and, after reasonable inquiries, no suitable adult relative or other suitable adult can be found who is willing and able to care for the child; or
- (c) the child **has suffered, or is likely to suffer, harm** as a result of any one or more of the following –
 - (i) physical abuse;
 - (ii) sexual abuse;
 - (iii) emotional abuse;
 - [(iv) deleted]
 - (v) neglect,and the child's parents have not protected, or are unlikely or unable to protect, the child from harm, or further harm, of that kind; or
- (d) the child has suffered, or is likely to suffer, harm as a result of –
 - (i) the child's parents being unable to provide, or arrange the provision of, adequate care for the child; or
 - (ii) the child's parents being unable to provide, or arrange the provision of, effective medical, therapeutic or other remedial treatment for the child.'

According to section 28(1) of the *Children and Community Services Act 2004* (WA):

'*emotional abuse* includes –

- (a) psychological abuse; and
- (b) being exposed to family violence;

harm, in relation to a child, means any **detrimental effect of a significant nature on the child's wellbeing**, whether caused by –

- (a) single act, omission or circumstance; or
- (b) a series or combination of acts, omissions or circumstances;

neglect includes failure by a child's parents to provide, arrange, or allow the provision of –

- (a) adequate care for the child; or
- (b) effective medical, therapeutic or remedial treatment for the child.'

Conclusion

This resource sheet presents the legal definitions of child abuse and neglect as set out in the civil child protection legislation of each Australian jurisdiction. This includes the circumstances in which the jurisdictions are mandated to intervene in the protection of a child, due to risk of harm.



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