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CHILD PROTECTION POLICY

INTENDED USE

This Policy document is intended to be provided and made available to staff including employees and contractors during their employment or engagement with the service provider to ensure a clear understanding of their duties and obligations under the key items of child protection legislation in NSW.

This Policy outlines the key concepts and definitions under the relevant legislation including mandatory reporters, reportable conduct, and risk management. It also sets out expected standards of behaviour in relation to employees and contractors and their relationships with students.

INTRODUCTION

GENERAL

Woodbury Autism Education and Research provides an educational environment which nurtures and develops all students in their care and attempts to always ensure that, each student is safe and free from harm and any form of abuse.

To facilitate this, all staff will receive a copy of the service provider's policy on Child Protection on commencement of their employment, and whenever there is a change to such policy. The service provider's policy will be reviewed at the commencement of each service provider year or earlier, if necessary. All staff are required to sign and acknowledge that they have read and understood the service provider's policy on Child Protection and that they understand their legal obligations.

As part of the employee's orientation program when commencing employment, and on an annual basis thereafter, Woodbury Autism Education and Research staff will receive training in appropriate child protection procedures and understandings, and to notify the clinical director, should they suspect *reportable conduct*, or that a child is at risk of harm. Allegations of *reportable conduct* made to the clinical director will be dealt with procedural fairness and without fear of retribution to staff.

Woodbury Autism Education and Research recognises that the wellbeing and protection of children is a collective and shared responsibility and supports the principles of *Keep Them Safe - A shared approach to child wellbeing*. Woodbury Autism Education and Research is committed to the safety, welfare, and wellbeing of all children.



At Woodbury Autism Education and Research, students will only be released to authorised persons. A register of authorised persons will be kept in the main office of the service provider, accessible to all employees. To assist in investigations into allegations of reportable conduct, Woodbury Autism Education and Research will keep records of the names of all staff who work with each student throughout the day.

Both the staff member and the service provider have a range of different obligations relating to the safety, protection and welfare of students including:

- A duty of care to ensure that reasonable steps are taken to prevent harm to students
- Obligations under Child Protection Legislation
- Obligations under the NDIS Commission and
- Obligations under Work Health and Safety legislation.

The purpose of this policy is to summarise the obligations imposed by Child Protection legislation on the service provider and on employees, contractors and volunteers at the service provider and to provide guidelines as to how the service provider will deal with certain matters.



Child protection is a community responsibility.

Key Legislation

There are four key pieces of Child Protection legislation in New South Wales:

- The *Children and Young Persons (Care and Protection) Act 1998* NSW (Care and Protection Act)
- The *Child Protection Working with Children Act 2012* NSW (WWC Act)
- The NDIS Act 2013 and
- The *Ombudsman Act 1974* NSW (Ombudsman Act).

Your Obligations to Report

While we set out below circumstances in which the legislation requires reporting of child protection issues, the service provider requires reporting of any concerns about the safety, welfare or wellbeing of a child or young person to the clinical director. If the allegation involves the clinical director, report to the Chairman of the Board.

This obligation is part of the service provider's overall commitment to the safety, welfare, and wellbeing of children.

Other Policies

Please note that there are several other service provider policies that relate to child protection which need to be understood including, but not limited to:

- The Code of Conduct which sets out information about the standards of behaviour expected of all employees, contractors, and volunteers of the service provider.
- The Workplace Health and Safety Policy which summarises the obligations imposed by Work Health and Safety legislation on the service provider and workers and
- The Discrimination, Harassment and Bullying Policies which summarises your obligations in relation to unlawful discrimination, harassment, and bullying.



PART A: THE CARE AND PROTECTION ACT

The Care and Protection Act provides for mandatory reporting of children at risk of significant harm.

NOTE: Any concern regarding the safety, welfare or well-being of a student must be reported to the clinical director.

Who is a mandatory reporter?

Under the Care and Protection Act persons who:

- In the course of their employment, deliver services including health care welfare, education, children's services and residential services, to children or
- Hold a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services and residential services, to children, are mandatory reporters.
- All room leaders, clinical supervisors and therapists are mandatory reporters. Other service provider employees may also be mandatory reporters.

WHEN MUST A REPORT BE MADE COMMUNITY SERVICES

What is The Threshold?

A mandatory reporter must, where they have reasonable grounds, to suspect that a child under 16 years of age is at risk of significant harm, report to Community Services as soon as practical. The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

In addition, while not mandatory, the service provider considers that a report should also be made to Community Services where there are reasonable grounds to suspect a young person, 16 or 17 years of age, is at risk of significant harm and there are current concerns about the safety, welfare, and well-being of the young person.

Reasonable Grounds

'Reasonable grounds' refer to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm, based on:

- Firsthand observations of the child, young person, or family
- What the child, young person, support network or another person has disclosed



- What can reasonably be inferred based on professional training and or experience

'Reasonable grounds' does not mean that the staff member is required to confirm their suspicions or have clear proof before making a report.

Significant Harm

A child or young person is 'at risk of significant harm' if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

- The child's or young person's basic physical or psychological needs are not being met or are at risk of not being met.
- The support network has not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care.
- In the case of a child or young person who is required to attend service provider in accordance with the Education Act 1990, the support network 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.
- The child or young person has been, or is at risk of being, physically or sexually abused or ill-treated.
- The child or young person is living in a household where there have been incidents of domestic violence and, consequently, the child or young person is at risk of serious physical or psychological harm.
- The support network 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.
- The child was the subject of a pre-natal report under section 25 of the Care and Protection Act 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.



OTHER RELEVANT DEFINITIONS

Policy Definition Of Significant Harm

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well-being of the child or young person are present to a significant extent. What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent.

What is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare, or well-being.

In the case of an unborn child, what is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child's birth.

The significance can result from a single act or omission or an accumulation of these.

Child is a person under the age of 16 years for the purposes of the Care and Protection Act.

Child Abuse And Neglect

There are different forms of child abuse. These include neglect, sexual, physical, and emotional abuse.

Neglect is the continued failure by the support network to provide a child with the basic things needed for the child's proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.

Physical abuse is a non-accidental injury or pattern of injuries to a child caused by the support network or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation.

Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.

Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punishing a child in a non-trivial way is a crime.

Serious psychological harm can occur where the behaviour of the support network damages the confidence and self-esteem of the child or young person, resulting in serious emotional deprivation or trauma.

Although it is possible for 'one-off' incidents to cause serious harm, in general it is the frequency, persistence and duration of the support network behaviour that is instrumental in defining the consequences for the child.



This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation, or threatening behaviour.

Sexual abuse is when someone involves a child or young person in a sexual activity by using their power over them or taking advantage of their trust. Often children are bribed or threatened physically and psychologically to make them participate in the activity. Child sexual abuse is a crime.

Child wellbeing concerns are safety, welfare or wellbeing concerns for a child or young person that do not meet the mandatory reporting threshold, risk of significant harm.

Young person means a person who is aged 16 years or above but who is under the age of 18 years for the purposes of the Care and Protection Act.



WHAT SHOULD BE DONE IF A MANDATORY REPORT IS REQUIRED

Reporting by the service provider about these matters to Community Services and, where necessary, the police, is generally undertaken by the clinical director. This is in accordance with best practice principles and is the expectation of the service provider.

If there is a concern that a child or young person is at risk of significant harm, the clinical director is to be contacted as soon as possible to discuss whether the case reaches the threshold of 'risk of significant harm' and the steps required to report the matter.

However, if there is an immediate danger to the child or young person and the clinical director is not contactable, the Police and/or the Child Protection Helpline should be contacted directly and then advise the clinical director as soon as possible.

Staff are not required to, and must not, undertake any investigation of the matter.

The support network is not to be informed that a report to Community Services has been made.

Staff are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy but could expose the staff member to potential civil proceedings for defamation.

WHAT SHOULD BE DONE IF THERE IS A CONCERN THAT IS BELOW THE MANDATORY REPORTING THRESHOLD

While the Care and Protection Act outlines a mandatory reporter's obligation to report to Community Services, all employees of this service provider, any concern regarding the safety, welfare and wellbeing of a student must be reported to the clinical director.

Staff are required to deal with all reports regarding the safety, welfare, or wellbeing of a student with confidentially, and only disclose it to the clinical director. Failure to do so will be a breach of this policy.



PART B: THE OMBUDSMAN ACT

RESPONSIBILITIES

General

Part 3A of the Ombudsman Act requires the heads of certain agencies, including non-government service providers in New South Wales, to notify the New South Wales Ombudsman of all allegations of reportable conduct by an 'employee' and the outcome of the service provider's investigation of these allegations.

An 'employee' includes employees, contractors, volunteers, work experience participants, clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services. In this part where there is a reference to an employee it includes all these persons.

The Ombudsman

- Must keep under scrutiny the systems for preventing reportable conduct by employees of non-government service providers and the handling of, or response to, reportable allegations including, allegations which are exempt from notification or convictions
- Must receive and assess notifications from non-government service providers concerning reportable conduct or reportable convictions
- Is required to oversee or monitor the conduct of investigation by non-government service providers into allegations of reportable or reportable convictions
- Must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation
- May directly investigate an allegation of reportable conduct or reportable conduct against an employee of a non-government service provider, or the handling of or response to such a matter (e.g. arising out of complaints by the person who is the subject of an allegation) and may undertake 'own motion' investigations of non-government service providers where the Ombudsman considers it appropriate to do so, including where there is evidence of systemic failure or serious conflict of interests.



Head of Agency

The Head of Agency is the clinical director of the service provider.

Under the Ombudsman Act, the clinical director must:

- Set up systems within their organisation to ensure that they are advised of any allegations of reportable conduct against employees
- Notify the Ombudsman as soon as possible and no later than thirty days after being made aware of an allegation
- Notify the Ombudsman whether the Service provider plans to take disciplinary or other action in relation to an employee who is the subject of a reportable allegation or conviction, and the reasons for taking or not taking any such action as soon as practicable and
- Provide the Ombudsman with any documentary and other information as the Ombudsman may from time-to-time request to assist in the Ombudsman's monitoring of an investigation.

Obligations to Report

Staff must report any concerns they may have about any other employee engaging in reportable conduct or any allegation of 'reportable conduct' that has been made to the clinical director including information about themselves. If a staff member is unsure whether the conduct is reportable conduct but consider that it is inappropriate behaviour, they must still report it.

Staff must also report to the clinical director if they become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct. This includes information relating to staff.

If the allegation involves the clinical director, a report is required be made to the service provider's Chairman of the Board.

Support Network Contacts

The clinical director is the contact point for the support network if they wish to report an allegation of reportable conduct against an employee.



REPORTABLE CONDUCT

Definition of Reportable Conduct

Reportable conduct is defined as:

- any sexual offence or sexual misconduct committed against, with or in the presence of a child including a child pornography offence or an offence involving child abuse material
- any assault, ill-treatment, or neglect of a child and
- any behaviour that causes psychological harm to a child whether, in any case, with the consent of the child

Reportable conduct does not extend to:

- conduct that is reasonable for the purposes of the discipline, management, or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards or
- the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures or
- conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

OTHER RELEVANT DEFINITIONS

Set out below are definitions of the various terms referred to above in relation to reportable conduct.

Behaviour that causes **Psychological Harm** to a child is behaviour that is obviously or very clearly unreasonable and results in significant harm or trauma to a child. There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.

Child is a person under the age of 18 years for the purposes of the Ombudsman Act.

Ill-treatment captures those circumstances where a person treats a child in an unreasonable and seriously inappropriate, improper, inhumane, or cruel manner. The focus is on the alleged conduct rather than the actual effect of the conduct on the child.



Ill-treatment can include disciplining or correcting a child in an obviously unreasonable and seriously inappropriate manner, making excessive and/or degrading demands on a child, hostile use of force towards a child, and/or pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

Neglect includes either an action or inaction by a person who has care responsibility towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

Supervisory Neglect

- An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
- An intentional or reckless failure to adequately supervise a child or a significantly careless act or failure to act, that:
 - Involves a gross breach of professional standards, and
 - Has the potential to result in the death or significant harm to a child.

Support Network Neglect

Grossly inadequate care that involves depriving a child of the necessities of life: such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.

Failure To Protect From Abuse

An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.

Reckless Act or Failure To Act

A reckless act, or failure to act, that:

- Involves a gross breach of professional standards, and
- Has the potential to result in the death of, or significant harm to, a child.

Physical Assault is any act by which a person intentionally inflicts unjustified use of physical force against another. An assault can also occur if a person causes another person to reasonably apprehend that unjustified force is going to be used against them.



Even if a person who inflicts physical harm or causes another person to reasonably apprehend physical harm does not actually intend to inflict the harm or cause fear, they may still have committed an assault if they acted 'recklessly'.

'Recklessness' in this context relates to circumstances when the person ought to have known that their actions would cause a person physical harm or cause them to fear injury.

Assaults can include hitting, pushing, shoving, throwing objects or making threats to physically harm a child.

PSOA person subject to the allegation.

Reportable Conviction means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.

Sexual Misconduct has two categories which include:

- crossing professional boundaries, and
- sexually explicit comments and other overtly sexual behaviour.

The alleged conduct must have been committed against, with or in the presence of a child.

Crossing Professional Boundaries

Sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or intimate:

- relationship with,
- conduct towards, or
- focus on,

a child or young person, or a group of children or young persons.

Codes of conduct that outline the nature of the professional boundaries which should exist between employees and children/young people can be particularly useful. For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be necessary to provide more detailed written advice about what constitutes appropriate behaviour.



Sexually Explicit Comments and Other Overtly Sexual Behaviour Behaviour involving sexually explicit comments and other overtly sexual behaviour which can constitute sexual misconduct. Some forms of this behaviour also involve crossing professional boundaries. This conduct may include:

- inappropriate conversations of a sexual nature
- comments that express a desire to act in a sexual manner
- unwarranted and inappropriate touching
- sexual exhibitionism
- personal correspondence (including electronic communications such as e-mails and text messages) with a child or young person in relation to the adult's sexual feelings for a child or young person
- exposure of children and young people to sexual behaviour of others including display of pornography
- watching children undress. For example, in changing rooms or toilets when supervision is not required or justified.

Sexual Offences encompasses all criminal offences involving a sexual element that are 'committed against, with or in the presence of a child'. These offences include (but are not limited to) the following:

- indecent assault
- sexual assault
- aggravated sexual assault
- sexual intercourse and attempted sexual intercourse
- possession/ dissemination/ production of child pornography or child abuse material
- using children to produce pornography
- grooming or procuring children under the age of 16 years for unlawful sexual activity
- deemed non-consensual sexual activity on the basis of special care relationships



Reportable Incidents in the NDIS

All NDIS providers, registered or unregistered, are responsible for the delivery of quality and safe NDIS supports and services.

Registered NDIS providers are required to record and manage all incidents that happen in the delivery of NDIS supports and services in their internal incident management systems and notify the NDIS Commission of reportable incidents.

Registered NDIS providers must notify the NDIS Commission of all reportable incidents (including allegations), even where the provider has recorded and responded within their own incident management system.

For an incident to be reportable a certain act or event needs to have happened (or alleged to have happened) in connection with the provision of supports or services by the registered NDIS provider.

This includes:

- The death of a person with disability
- Serious injury of a person with disability
- Abuse or neglect of a person with disability
- Unlawful sexual or physical contact with, or assault of, a person with disability
- Sexual misconduct, committed against, or in the presence of, a person with disability, including grooming of the person with disability for sexual activity
- Unauthorised use of restrictive practices in relation to a person with disability.



WHAT HAPPENS WHEN AN ALLEGATION OF REPORTABLE CONDUCT IS MADE

Initial steps

Once an allegation of reportable conduct against an employee is received, the clinical director is required to:

- determine on face value whether it is an allegation of reportable conduct,
- assess whether Community Services or the Police need to be notified ie, if reasonable grounds to suspect that a child is at risk of significant harm or criminal offence,
- notify the support network, unless to do so would be likely to compromise the investigation or any investigation by Community Services or the Police,
- notify the Ombudsman within 30 days of receiving the allegation,
- carry out a risk assessment and take action to reduce/remove risk, where appropriate, and
- investigate the allegation or appoint someone to investigate the allegation.

Investigation Principles

The service provider will:

- be mindful of the principles of procedural fairness,
- inform the person subject of the allegation (PSOA) of the substance of any allegations made against them and provide them with a reasonable opportunity to respond to the allegations,
- make reasonable enquiries or investigations before making a decision,
- avoid conflicts of interest,
- conduct the investigation without unjustifiable delay,
- handle the matter as confidentially as possible, and
- provide appropriate support for all parties including the child/children, witnesses and the PSOA.



Investigation Steps

In an investigation the clinical director or appointed investigator will generally:

- interview relevant witnesses and gather relevant documentation,
- provide a letter of allegation to the PSOA,
- interview the PSOA,
- consider relevant evidence and make a preliminary finding in accordance with the NSW Ombudsman guidelines,
- inform the PSOA of the preliminary finding and provide them with an opportunity to respond,
- consider any response provided by the PSOA,
- make a final finding in accordance with the NSW Ombudsman Guidelines,
- decide on the disciplinary action, if any, to be taken against the PSOA,
- apply the NSW Office of the Children’s Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG, and
- send the final report to the Ombudsman and report to the OCG where required (see Part C).

The steps followed in the investigate process will be guided by the “Recommended Protocols for Internal Investigative and Disciplinary Proceedings, 2001” (IEU/AIS) as updated from time to time (See Appendix 2.)

The steps outlined above may need to be varied on occasion to meet particular circumstances. For example, it may be necessary to take different steps where the matter is also being investigated by Community Services or the NSW Police. A PSOA may have an appropriate support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.

Investigation For NDIS Reportable Incidents

The clinical director must also inform the NDIS Commission. If a reportable incident raises a serious compliance issue, the NDIS Commission has powers to take regulatory action. Action might include requiring the provider



to undertake specified remedial action, carry out an internal investigation about the incident, or engage an independent expert to investigate and report on the incident. The NDIS Commission can also conduct its own investigation and take appropriate enforcement action such as issuing a compliance notice or asking a court to impose a civil penalty.

The NDIS Commission takes a responsive and proportionate approach to regulation, providing guidance to build the capacity of NDIS providers to prevent and respond to incidents where possible. The NDIS Commission will work with NDIS providers to help them comply with the new quality and safeguards requirements, including through education and training about their obligations.

When notifying the NDIS Commission of a reportable incident, registered providers must follow the set processes and provide the required information as set out on the 'My Reportable Incidents' page. The NDIS Commission has developed a guidance about reportable incidents and NDIS Commission expectations.

RISK MANAGEMENT

Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence.

The clinical director is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

INITIAL RISK ASSESSMENT

One of the first steps following an allegation of reportable conduct against an employee is for the clinical director to conduct a risk assessment. The purpose of this initial risk assessment is to identify and minimise the risks to:

- the child(ren) who are the subject of the allegation,
- other children with whom the employee may have contact,
- the PSOA,
- the Service provider, and
- the proper investigation of the allegation.



The factors which will be considered during the risk assessment include:

- the nature and seriousness of the allegations,
- the vulnerability of the child(ren) the PSOA has contact with at work,
- the nature of the position occupied by the PSOA,
- the level of supervision of the PSOA, and
- the disciplinary history or safety of the PSOA and possible risks to the investigation.

The clinical director will take appropriate action to minimise risks. This may include the PSOA being temporarily relieved of some duties, being required not to have contact with certain students, or being suspended from duty. When taking action to address any risks identified, the Service provider will take into consideration both the needs of the child(ren) and the PSOA.

Note: A decision to take action on the basis of a risk assessment is not indicative of the findings of the matter. Until the investigation is completed and a finding is made, any action, such as an employee being suspended, is not to be an indication that the alleged conduct by the employee did occur.

ONGOING RISK MANAGEMENT

The clinical director will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

RISK MANAGEMENT AT THE CONCLUSION OF THE INVESTIGATION

At the completion of the investigation, a finding will be made in relation to the allegation and a decision made by the clinical director regarding what action, if any, is required in relation to the PSOA, the child(ren) involved and any other parties.

WHAT INFORMATION WILL BE PROVIDED TO THE PSOA

The PSOA will be advised:

- that an allegation has been made against them (at the appropriate time in the investigation), and
- of the substance of the allegation, or of any preliminary finding and the final finding.



The PSOA does not automatically have the right to:

- know or have confirmed the identity of the person who made the allegation, or
- be shown the content of the Ombudsman notification form or other investigation material that reveals all information provided by other employees or witnesses.

The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the Service provider in relation to the finding of misconduct involving children (see Part C).

DISCIPLINARY ACTION

As a result of the allegations, investigation or final findings, the Service provider may take disciplinary action against the PSOA including termination of employment. In relation to any disciplinary action the service provider will:

- Give the PSOA details of the proposed disciplinary action, and
- Give the PSOA a reasonable opportunity to respond before a final decision is made.

CONFIDENTIALITY

It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible. The service provider requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.

Records about allegations of reportable conduct against employees will be kept in a secure area and will be accessible by the clinical director or with the clinical director 's express authority.

No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the clinical director or executive administrator to do so.

If a staff member becomes aware of a breach of confidentiality in relation to a reportable conduct allegation, the clinical director or executive administrator must be advised.



PART C: WWC ACT

The Office of the Children's Guardian (OCG) is responsible for employment screening for child related employment. A Working with Children Check (Check) is a prerequisite for anyone in child-related work. It involves a national criminal history check and review of reported workplace misconduct findings. The result of a Check is either a clearance to work with children for five years, or a bar against working with children. Cleared applicants are subject to ongoing monitoring by the OCG, and any relevant new records which appear against a cleared applicant's name may lead to the Check being revoked.

It is the responsibility of the child-related worker to ensure that when they are eligible to apply for a Check or when their Check is up for renewal that they do so.

If you are an existing employee, employed at this service provider in paid child-related work prior to the commencement of the new Working with Children system or you are a volunteer, your requirement to obtain a Check will be phased in over a five-year period, according to the phase in schedule developed by the OCG.

Responsibilities

The object of the WWC Act is to protect children:

- by not permitting certain persons to engage in child-related work, and
- by requiring persons engaged in child-related work to have working with children check clearances.

Service providers are required to:

- verify online and record the status of each child-related worker's Check,
- only employ or engage child-related workers or eligible volunteers who have a valid Check, and
- report findings of misconduct involving children made against child-related workers or volunteers.

Child-related workers and eligible volunteers are required to:

- hold and maintain a valid Check,
- not engage in child-related work at any time that they are subjected to an interim bar or a bar, and
- report to the clinical director or executive administrator if they are no longer eligible for a Check, the status of their Check changes or are notified by the OCG that they are subjected to a risk assessment.



All volunteers are required to:

- be aware and follow the expectations of conduct expressed in the service provider Staff Code of Conduct

RELEVANT DEFINITIONS

BARS

Final Bar This bar is applied based on a decision made by the OCG, following a risk assessment. This person is barred against working with children.

Interim Bar An interim bar is issued to high-risk individuals to prevent them from continuing to work with children while a risk assessment is conducted. An interim bar may be applied for up to 12 months. If an interim bar remains in place for six months or longer, it may be appealed against through the Administrative Decisions Tribunal.

Not everyone who is subject to a risk assessment will receive an interim bar, only those representing a serious and immediate risk to children. Interim bars are issued only for risks considered likely to result in a final bar.

CHILD RELATED WORK

Child-related work includes, but not limited to work in the following sectors:

- early education and childcare including education and care service, childcare centres, and other childcare,
- education service providers and other educational institutions and private coaching or tuition of children,
- religious services,
- residential services including boarding service providers, homestays more than three weeks, residential services and overnight camps, or
- transport services for children including service provider bus services, taxi services for children with disability and supervision of service provider road crossings.

CHILD RELATED WORKER

A person who has physical contact or face to face contact with children in work outlined above, including service providers. This may include volunteer work.



A child-related worker may commence work once they have completed the Check application process. An application is completed when the online application form is complete, and the worker's identity has been proven at the NSW motor registry or Council Agency and the fee has been paid (if in paid work).

DISQUALIFIED PERSON

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of WWC Act.¹ A disqualified person is a person who has a bar preventing them from working with children in child-related work.

It is an offence for an employer to knowingly engage a child-related worker when they do not hold a Check or who has a bar or an interim bar.

FINDINGS OF MISCONDUCT INVOLVING CHILDREN

The service provider will report to the OCG when a finding has been made that the person (an employee of the service provider) subject to the finding engaged in:

- sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or
- any serious physical assault of a child.¹

The Service provider will advise the person that the OCG has been notified of a finding of misconduct involving children.

The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the Service provider in relation to the finding of misconduct involving children.

REPORTING BODY

Independent Service providers which are members of the AISNSW are defined as a reporting body by the WWC Act. Section 35 of the WWC Act requires this Service provider to notify the OCG findings of misconduct involving children made against a child-related worker. The service provider may also be obliged to report, amend, or provide additional information to the OCG as outlined in the WWC Act.

RISK ASSESSMENT

Risk assessment is an evaluation of an individual's suitability for child-related work.

The OCG will conduct a risk assessment on a person's suitability to work with children when a new record is received which triggers a risk assessment. This may include an offence under Schedule 1, pattern of behaviour



or offences involving violence of sexual misconduct representing a risk to children, findings of misconduct involving children or notification made to OCG by the Ombudsman.

WORKING WITH CHILDREN CLEARANCE (WWCC)

A Working with Children Check means authorisation under the WWC Act to engage in child-related work. An employee will be issued with a number which is to be provided to the Service provider to verify the status of an employee's Check.