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| Policy Title                            | Child Protection   |
| Related Documentation                   | Working with Children – Worker Screening Authorised Statement<br>Office of Communities Commission for Children & Young People website ( <a href="http://www.kids.nsw.gov.au">www.kids.nsw.gov.au</a> )<br>Office of the Children’s Guardian website ( <a href="http://www.kidsguardian.nsw.gov.au">www.kidsguardian.nsw.gov.au</a> )<br>Commission for Children and Young People publication- Information for Reporting Bodies: Reporting Certain Misconduct Involving Children, September 2013 ( <a href="http://www.kids.nsw.gov.au/Working-with-children/New-Working-With-Children-Check/Resources">www.kids.nsw.gov.au/Working-with-children/New-Working-With-Children-Check/Resources</a> )<br>Child Protection – Responding to and Reporting Risk of Abuse and Neglect |
| Relevant Legislation/<br>Corporate Plan | <i>Ombudsman Act 1974 (NSW)</i><br><i>Children &amp; Young Persons (Care &amp; Protection) Act 1998 (NSW)</i><br><i>Child Protection (Offender’s Registration) Act 2000 (NSW)</i><br><i>Child Protection (Working with Children) Act 2012 (NSW)</i><br><i>Child Protection (Working with Children) Regulation 2013 (NSW)</i><br><i>Work Health and Safety Act 2011 (NSW)</i><br><i>Criminal Legislation Amendment (Child Sexual Abuse) Act 2018</i><br>Code of Conduct   |
| Responsible Officer                     | Executive Manager People and Performance   |

**Policy details may change prior to review date due to legislative changes, therefore this document is uncontrolled when printed.**

## Objectives

1. To build a workforce committed to child protection through a range of policies and work practices designed to ensure that services are provided to children in a safe and caring environment.
2. To support Council’s commitment to protecting children and young persons from child abuse and risks to their health, safety and welfare in accordance with Applicable Child-Protection Legislation.
3. To facilitate Council’s obligation to report to the Ombudsman or the Commission when children and young persons may be at risk of significant harm.
4. To encourage the fair investigation of allegations of inappropriate conduct by workers.
5. To assist in selecting and maintaining a workforce comprising of persons suitable for engagement in child-related work.
6. Responding to the recommendation of the Royal Commission into institutional responses to child sexual abuse 2017.

### DATA AND DOCUMENT CONTROL

**Directorate:** City Governance  
**Section:** People and Performance  
**Record:** CDO-24/432

**Adopted Date:** 25/07/2000  
**Revised Date:** 09/07/2024  
**Minute Number:** 215  
**Review Date:** 30/06/2028

## Policy Statement

Council is committed to being a child-safe organisation and to managing the risks associated with caring for children by implementing child-safe and child-friendly policies.

### Scope

This policy applies to all workers performing work for Council.

### Definitions

**Allegation** means a claim of reportable conduct or of potential misconduct that may involve reportable conduct. Allegations may be written or verbal, and may be anonymous. An allegation may relate to:

- A current worker or a person that was a worker at the time of the conduct forming the basis of the allegation.
- A child or young person at the time of the alleged behaviour. The alleged victim may be an adult now and the alleged behaviour may have occurred years before.

**Applicable Child-Protection Legislation** includes the following (as may be amended from time to time):

- a) *Children & Young Persons (Care & Protection) Act 1998 (NSW)*
- b) *Ombudsman Act 1974 (NSW)*
- c) *Child Protection (Offenders Registration) Act 2000 (NSW)*
- d) *Child Protection (Working With Children) Act 2012 (NSW)*
- e) *Child Protection (Working With Children) Regulation 2013 (NSW)*
- f) *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*

**Child:** under the *Ombudsman Act 1974* means a person who is under 18 years of age.

**Child:** under the *Children and Young Person (Care and Protection) Act 1998* means a person who is under 16 years of age.

Note: This act refers to 'Children and Young People' – see definition of Young Person below

**Child or young person at risk of significant harm** is defined in accordance with the Applicable Child-Protection Legislation (see the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*). Generally, it means a child or young person in relation to whom there are current concerns for their safety, welfare or well-being 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 parents or other caregivers have not arranged or 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 school by law, 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;
- 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, as a consequence, the child or young person is at risk of serious physical or psychological harm;
- 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.

**Child-Related Work** means work (paid or unpaid) involving direct contact by a worker with children as defined in the Applicable Child-Protection Legislation (including but not limited to mentoring and counselling services; child protection services; health care, education and child care services; sporting, cultural or entertainment venues; transport services). See section 5 of the *Child Protection (Working with Children) Act 2012* (NSW).

**Commission:** means the Commission for Children and Young People.

**Conviction:** A charge proven in court and recorded as such, including a finding that the charge for an offence is proven, or that the person is guilty of an offence, even though the court does not proceed to a conviction.

**Disciplinary action:** means steps taken against a worker for improper or unauthorised conduct by Council, the Commission or by a professional body that supervises the professional conduct of the worker. In the event that a worker is found to have engaged in misconduct, they may be subjected to punishment in the form of a caution, a written warning, suspension or termination of their engagement by Council.

**Finding of Misconduct Involving Children:** is defined in accordance with the Applicable Child-Protection Legislation and includes a finding of misconduct (by Council or other authoritative body) following an investigation, regarding:

- Sexual misconduct committed against, with or in the presence of a child, including grooming a child;
- Any serious physical assault of a child

(See *Child Protection (Working with Children) Act 2012* (NSW))

**Investigation:** means any preliminary or full inquiry into, or examination of an alleged matter such as a Reportable Allegation, Reportable Conduct or Reportable Conviction.

**Mandatory Reporter:** People who deliver services, wholly or partly, to children as part of their paid or professional work. This is regulated by the Children and Young Persons (Care and Protection) Act 1998. This includes, but is not limited to, professionals working in:

- health care;
- welfare;
- education;
- children's services;
- residential services; and,
- law enforcement.

(See section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW))

**Neglect:** means the harm inflicted on a child or young person due to the failure to provide them with basic physical and emotional necessities of life. For example, failure to provide or arrange for adequate and proper food, supervision, nursing, clothing, medical attention or lodging for a child or young person.

**Notification:** means the requirement to notify or inform a third party such as the Ombudsman or Commission under the Applicable Child-Protection Legislation.

**Ombudsman** means the NSW Ombudsman.

**Reportable Allegation** is defined in accordance with the *Ombudsman Act 1974* (NSW) and means an allegation of Reportable Conduct against a person or an allegation of misconduct that may involve Reportable Conduct.

**Reportable Conduct** is defined in accordance with the *Ombudsman Act 1974* (NSW) and includes:

- 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, or
- Any behaviour that caused psychological harm to a child, whether or not, in any case, with the consent of the child.

**Reportable Conviction** is defined in accordance with the *Ombudsman Act 1974* (NSW) and includes a conviction (including a finding of guilt without the court proceeding to a conviction), in this State or elsewhere, of an offence involving reportable conduct.

**Serious physical assault** means touching or physical acts which:

- Result in a child or young person being injured, beyond a type of injury like a minor scratch, bruise or graze,
- Had the potential to result in a serious injury,
- The injury suffered may be minor, but the assault is associated with aggravating circumstances (such as inhumane or demeaning behaviour).

(See resource of the Commission entitled "Information for Reporting Bodies: Reporting Certain Misconduct Involving Children" September 2013)

**Sexual misconduct** means conduct that is sexual in nature and involving, or in connection with, a child.

This may include:

- 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 for unlawful sexual activity
- Deemed non-consensual sexual activity on the basis of special care relationships
- Crossing professional boundaries
- Sexually explicit comments and other overtly sexual behaviour.

(See resource of the Commission entitled "Information for Reporting Bodies: Reporting Certain Misconduct Involving Children" September 2013)

**Worker** means any person who is engaged in work in any of the following capacities:

- a) as an employee (paid or unpaid), person akin to an employee
- b) as a contractor or sub-contractor
- c) as a volunteer
- d) as a person undertaking practical training as part of an educational or vocational course (other than as a school student undertaking work experience).

**WWCC** means a Working with Children Check conducted in accordance with applicable child protection legislation.

**WWCC status** means the classification of an individual and/or WWCC application which are detailed in the WWCC Verification System. The status may be classified as one of the following:

- a) **Application in progress** means the individual has completed the application process but that a determination has not yet been made declaring them as cleared.
- b) **Cleared** means the individual has been given a clearance and is cleared to work with children until their WWCC expires.

- c) **Barred** means the individual has been barred and cannot work with children. It is an offence to engage a barred person in child-related work.
- d) **Interim Bar** means the individual has been barred and cannot work with children pending the outcome of a risk assessment conducted by the Commission. It is an offence to engage a barred individual in child-related work.
- e) **Not found** means the individual has not been located in the WWCC Verification System (for example, due to incorrect information, an application being withdrawn or terminated without outcome or the application process not being completed).

**WWCC Verification System** means the system operated and administered by the Commission to verify an individual's WWCC status.

**Young Person** is defined in accordance with the *Children and Young Persons (Care and Protection) Act 1998* (NSW): and means a person who is aged 16 years or above but who is under the age of 18 years.

### **Legislative Context**

*Children & Young Persons (Care & Protection) Act 1998 (NSW) Ombudsman Act 1974 (NSW)*

*Child Protection (Offenders Registration) Act 2000 (NSW) Child Protection (Working With Children) Act 2012 (NSW)*

*Child Protection (Working With Children) Regulation 2013 (NSW) Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*

### **Principles**

### **Roles and Responsibilities**

1. The General Manager (or their authorised delegate) shall notify the Ombudsman of the following:
  - Any Reportable Allegation, or Reportable Conviction, against a worker of which the General Manager becomes aware;
  - Whether or not Council proposes to take any disciplinary action or other action in relation to the worker and the reasons for this decision;
  - Any written submissions made concerning any such allegation or conviction that the worker concerned wished to have considered in determining what (if any) disciplinary or other action should be taken.
2. In accordance with the *Ombudsman Act 1974* (NSW), the notification shall be made as soon as practicable after the General Manager becomes aware of the allegation or conviction (ideally within 30 days or within such other period as may be agreed to by the Ombudsman).
3. The General Manager (or their authorised delegate) shall notify the Commission of any worker against whom an investigation has been completed and a Finding of Misconduct Involving Children has been made.
4. Any notifications to be made by the General Manager (or their authorised delegate) to the Commission and Ombudsman shall be in the form and method approved by these bodies (for example, online via the respective websites or by telephone).
5. It is the responsibility of Directors, Managers and Supervisors to report any allegations of Reportable Conduct to the General Manager (or their authorised delegate), and to assist in carrying out any subsequent investigation.

6. It is the responsibility of all workers to notify their supervisor immediately, if they witness, or have a reasonable basis to suspect or become aware of, a Reportable Allegation, Reportable Conduct or a Reportable Conviction by another worker.
7. All workers shall notify their supervisor if they witness, or have a reasonable basis to suspect that, a child is at a significant risk of harm (either at the child's home or at the workplace).
8. In the event that a worker, who is a Mandatory Reporter, becomes aware or has a reasonable basis to suspect a child is at a significant risk of harm (either at the child's home or at the workplace), they should discuss this matter as soon as possible with their Director, Manager and/ or Supervisor to determine whether the matter needs to be reported to the Police, the Commission, the Ombudsman and/or another entity.
9. It is the responsibility of Human Resources to provide advice and support to all workers in relation to their obligations under this policy. They shall also assist in implementing, and educating workers on, this policy.
10. Other parties may be involved during these processes including the Union, the Employee Assistance Program Counsellors and Contact Officers, and their role is to advise and support workers.

### **Rights of all Parties**

1. Any child that is the subject of alleged Reportable Conduct has the right to be in a secure and safe environment. Any worker under investigation may be removed from that environment or placed on alternate duties until the investigation is complete.
2. Council shall endeavour to afford procedural fairness in any investigation conducted into any Reportable Allegation, Reportable Conduct or Reportable Conviction.
3. Council shall also endeavour to maintain confidentiality over information obtained in the course of any investigation under this policy.
4. Council may deny a person access to, or limit their access to, records kept if they consider it would jeopardise an investigation or place a child at risk.

### **Confidentiality**

1. All workers involved in the reporting or investigating of allegations of Reportable Conduct shall be mindful of the sensitive nature of the issue and take all reasonable steps to maintain confidentiality and respect the privacy of those involved. Nothing in this statement is to be taken as mitigating against the obligation of workers to report incidents or allegations of Reportable Conduct.
2. All information relating to investigations will be secured in Human Resources separately from personnel files, unless the investigation results in disciplinary action. If this is the case, the following details will be kept on the workers' personnel file under a confidential code in ECM:
  - That an allegation was made;
  - That an investigation was conducted;
  - What the finding was;
  - What action was taken
3. Any person who makes an allegation of Reportable Conduct may be protected under Council's Public Interest Disclosure Policy.

**Unsubstantiated Allegations**

1. Where an allegation is clearly wrong or unsubstantiated, the person who is the subject of the allegation shall be supported by Council. The nature of the support shall be reasonable and appropriate to the circumstances of the case. It may include access to specialist counselling services, legal services or special leave.
2. Any worker who is found to have made a malicious, vexatious or baseless allegation may be subject to disciplinary action.

**Prevention and Education**

1. All current and prospective workers in child-related work shall be screened in accordance with Council's Working with Children - Worker Screening Authorised Statement to ensure their suitability to work with children.
2. All workers shall be educated on the Applicable Child-Protection Legislation and how it impacts on them in terms of the position they hold and their responsibilities.
3. Workers shall be educated to a level appropriate to the position they hold. Specifically, the level of education relates to the following categories of workers:
  - a) Child care staff, who have a 24 hour/day responsibility;
  - b) Other identified positions, which have a workplace only responsibility;
  - c) Contractors, volunteers and work experience participants;
  - d) "Investigators" - Directors, Managers and Supervisors;
  - e) Mandatory Reporters.
4. Council's induction program shall include information on the Applicable Child-Protection Legislation.

**END OF POLICY STATEMENT**

**DOCUMENT HISTORY AND VERSION CONTROL RECORD**

**Contact for inquiries and proposed changes**

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| <b>Name</b>             | Nicole Jenkins                           |
| <b>Position/Section</b> | Executive Manager People and Performance |