

D-22 Child Protection

NQS

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National Regulations

Reg. 84	Awareness of child protection law
Reg. 155	Interactions with children
Reg. 168	Education and care service must have policies and procedures
Reg. 176	Time to notify certain information to Regulatory Authority
Reg. 181	Confidentiality of records kept by approved provider
Reg. 358	Working with children check to be read

My Time, Our Place

LO. 1	Children feel safe, secure, and supported
	Children learn to interact in relation to others with care, empathy and respect
LO. 3	Children become strong in their social and emotional wellbeing

Policy Statement

We are committed to developing a safe and secure environment, which encourages children to interact positively with respect for others. We believe that the welfare of all children is of paramount importance and that the Centre has an obligation to defend the child's right to care and protection. Educators and Management have a legal responsibility as mandatory reporters to take action to protect children whom they suspect may be suffering from abuse, violence or exploitation. Our Centre will carry out responsibilities of Mandatory Reporting as indicated under legislation. This responsibility involves following the procedures as outlined by Community Services and the NSW Commission for Children and Young People.

Related Policies

- Normanhurst West OSHC Policy A-3: Philosophy

- Normanhurst West OSHC Policy A-11: Maintenance of Records
- Normanhurst West OSHC Policy A-15: Role of Management Committee
- Normanhurst West OSHC Policy A-17: Privacy and Confidentiality
- Normanhurst West OSHC Policy A-19: Nominated Supervisor
- Normanhurst West OSHC Policy C-1: Educator Recruitment and Selection
- Normanhurst West OSHC Policy C-3: Educator Orientation and Induction
- Normanhurst West OSHC Policy C-10: Volunteers/students/visitors
- Normanhurst West OSHC Policy C-11: Educator Child Ratios
- Normanhurst West OSHC Policy C-12: Communication

Procedure

All educators, both paid and unpaid, volunteers and students over 18 are required to complete a "Working with Children Check" prior to being appointed, and this must be verified by the Nominated supervisor prior to this person being in contact with children.

Supervision

Educators must be aware of children and the environment at all times. Adequate supervision is an important part of providing a safe and protective environment. The Centre will assess the level of supervision required in all situations, accounting for the development of each child, the difficulty of the activity, and the potential for an incident to occur which may place children at risk. Appropriate educator to child ratios will be maintained at all times.

Students, volunteers and visitors to the Centre will not be left unsupervised with the children.

Children will only be released from the Centre to persons who are authorised to collect them. Procedures for signing children in and out of the Centre will be closely monitored by staff to ensure the above (See A-8 Dropping off and Picking Up policy).

Mandatory Reporting

A Mandatory Reporter is someone who is required by law to make a report to Community Services if they have current concerns about the safety, welfare or wellbeing of a child (s23 NSW Children and Young Persons Care and Protection Act 1998). A child is defined as a person under 16 years of age. Mandatory Reporters are not required to report on unborn children, or those 16-17 years of age, but are encouraged to do so. Penalties apply for failing to make a report.

In OOSH services, Mandatory Reporters are:

- Educators who deliver services to children
- Management, either paid or voluntary, whose duties include direct responsibility or direct supervision for the provision of these services

Every educator or member of the Management Committee has a legal and ethical obligation to act to protect any child who is at significant risk of harm. Educators will be offered training in relation to child protection and notification as part of the training budget.

s23 NSW Children and Young Persons Care and Protection Act 1998 defines that a child 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 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,
- in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990*—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,
- 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,
- 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.

Note: Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

Any educator who forms a belief on reasonable grounds that a child is at significant risk of harm should immediately complete an incident / injury / trauma and illness report form, ensuring objectivity, and following service procedure and policy on Privacy and Confidentiality. The educator must then discuss these concerns with the Nominated Supervisor to ascertain if there is any further information the educator is unaware of. Any such conversations should be held in a confidential location, and Privacy and Confidentiality Procedures should be discussed prior to and at the end of every Child Protection related conversation. Any notes from the meeting shall be stored in accordance with the centre's Privacy and Confidentiality Policy.

To confirm if notification is required, the Nominated Supervisor, in conjunction with the educator will use the on-line Mandatory Reporter Guide which is available at <https://reporter.childstory.nsw.gov.au/s/>

Accompanying each question are definitions and examples that assist Mandatory Reporters to determine whether they should:

- Make a report to the Child Protection Helpline
- Consult their Child Wellbeing Unit
- Make a referral to community or government support services
- Document and continue their relationship with the child or young person or their family

Where there is significant risk of harm, educators will be directed by the online Mandatory Reporter Guide to make a report to the Child Protection Helpline. The report page from the online tool should

be printed, sealed in an envelope and placed in the child / family file regardless of the outcome. The report to the helpline can either be completed online via eReporting, or via a phone call by the Nominated Supervisor or the educator to **132 111**

Prior to phoning the Helpline, educators should have gathered the following information:

Child's information

- Name of child or young person (or alias) or other means of identifying them
- Age and date of birth (or approximation)
- If child is Indigenous – Aboriginal, Torres Strait Islander or both
- Cultural background of child, language(s) spoken, religion and other cultural factors
- Name, age of other household children or young people
- Address of child and family
- School or child care details
- If child has a disability – nature/type, severity, impact on functioning
- Is the child/young person subject of an Apprehended Violence Order?
- Is the child or young person under the care of the Minister or residing in out-of-home care?

Family information

- Name, age of parents/carer and household adults
- Home and/or mobile phone number
- Cultural background of parents, language(s) spoken, religion and other cultural factors
- Information about parental risk factors and how they link to child's risk of harm
- domestic violence
- alcohol or other drug misuse
- unmanaged mental illness
- intellectual or other disability
- Protective factors and family strengths
- Non-offending carers' capacity to protect child
- Any previous suspicious death of a child or young person in the household?
- Is the parent/carer pregnant?
- Is the parent/carer the subject of an Apprehended Violence Order?
- Description of family structure (for example, biological parents, single parent, blended family)
- Name, age, gender of siblings. Do siblings live with the child or young person?

Reporter Details

- Name, agency address, phone and email details
- Position
- Reason for reporting today
- Nature of contact with child or family
- Nature of ongoing role with child or family (include frequency, duration and type)
- If report is being made by someone else in the agency, name of the agency worker who sourced the report

Other information

- Services involved with child/family if known
- Principal language of family and whether an interpreter for a spoken or signed language is required
- If parent knows of report and their response
- If child or young person knows about the report and their views

- Information related to worker safety issues
- Outcome of Mandatory Reporter Guide

Educators should remember that it is not their responsibility to prove the risk

Should the Mandatory Reporting Guidance Tool be inconclusive, the Nominated Supervisor / educator should contact the Helpline for advice.

Where the Mandatory Reporting Guidance Tool advises the Nominated Supervisor / educator to “document and continue the relationship”, the service should continue to provide support and services, as well as offer referrals for the child and family.

Educators will leave the situation in the hands of the designated Departmental Officers once a report has been made. They should not discuss the issue with the parents or try to undertake any further investigation into the situation. Where further information is observed etc., the person who originally made the report should contact Community Services to advise. If no new information comes to light, the educator need not contact Community Services again. Community services will provide feedback to Mandatory Reporters on the reports it receives.

Educators will not question the child or parents prior to any discussions with the departmental Helpline officers.

Should the situation arise where the child is considered in immediate danger and the child is taken into the care of Community Services, educators will follow the advice of the Departmental Officers.

Educators should be aware that they are protected as a notifier under The Commission for Children and Young Persons (Care and Protection) Act (1998).

Information on Mandatory Reporting will be made available in the staff handbook, provided to all staff on employment and made available on the staff only Facebook group. This information will be kept up to date and referred to regularly.

It is the responsibility of Management and the Centre Coordinator to:

- Ensure all educators are aware of their responsibilities as Mandatory Reporters
- Ensure appropriate phone numbers and literature is made available to educators
- Ensure educators are aware of current legislation in protecting children and young people

Reportable Conduct

Reportable Conduct is defined as an allegation of the following with reference to an employee (for the purposes of reportable conduct, an Employee also refers to a volunteer or contractor of the organisation):

- a sexual offence, including Grooming
- sexual misconduct, defined as conduct with, towards or in the presence of a child that is sexual in nature.
- ill-treatment of a child
- neglect of a child
- an assault against a child

- an offence under s 43B (failure to protect) or s 316A (failure to report) of the Crimes Act 1900
- behaviour that causes significant emotional or psychological harm to a child.

These allegations could relate to the inside or outside work of the Employee.

Where a Reportable Conduct Allegation is made about an educator, an investigation must be undertaken in a respectful, timely and thorough manner. The steps the Director, as “Head of Relevant Entity” will follow are:

- Steps will be taken to understand the nature of the allegation, to determine whether this is a reportable conduct allegation, and whether there is an allegation of a criminal offence. Clarifying questions may need to be asked during this time to determine whether there is an allegation that needs to be reported, rather than determine if an alleged incident is true. If this is a direct disclosure from a child, any clarifying questions should be minimised and only asked if absolutely necessary. When this is necessary, questions must be open ended. The facts as stated will be recorded in writing on an Incident Report including dates, times, name of person involved, name of person making the allegation and the person making the report. Where there is an immediate risk to the child, the employer must take prompt and decisive action to cease and prevent further contact between the employee and the child making the allegation, and any other child. These steps may require securing forensic evidence. Immediate steps taken must be documented at the earliest opportunity.
- Making any mandatory reports to Police or Department of Communities and Justice (DCJ) and confirming whether Police will make any inquiries or commence an investigation.
- Making any mandatory reports to the Child Protection Helpline required. If a report has also been made to the Police or Department of Communities and Justice (DCJ), this must be advised to the Helpline operator
- Notifying the Office of the Children’s Guardian about the allegation within 7 business days, as per the Children’s Guardian Act 2019
- Notifying the Convenor of the Management Committee
- If the Police are not commencing an investigation, planning and conducting an investigation into the allegation. If the allegation refers to the Director, this will be undertaken by the Convenor of the Management Committee, or their express delegate. Should the Police be commencing an investigation, the next steps should be confirmed with them prior to proceeding. Investigations may involve:
 - advising the employee that a reportable allegation has been made against them (after receiving clearance from the Police or DCJ if they are involved). This step should be taken after considering any impact this may have on the investigation, and also the health and safety of the individual. If a decision is made not to inform the employee, this must be advised to the Office of the Children’s Guardian immediately, along with reasoning.
 - For the protection of both the children and the employee involved, encouraging the employee to take special leave or be removed from duties involving direct care and contact with children until the situation is investigated further or resolved. It is important to reassure employees at the allegation stage that no decision has been made regarding whether or not the alleged conduct occurred; that the employee will be provided with the details of the allegation as soon as they are fully known; and they will be given an opportunity to respond to them. The employee should also be provided with appropriate support.

- disclosing the following information about the response to the report to the child who is the alleged victim and their parent or carer, unless it is considered that disclosure is not in the public interest, as per section 57 of the Children's Guardian Act:
 - information about the progress of the investigation,
 - information about the findings of the investigation,
 - information about action taken in response to the findings.

There will often be public interest reasons not to disclose information to one or more of these parties. It is important to document what, if any, information is disclosed under this provision and any public interest reasons information is not disclosed. This documentation should be provided to the Office of the Children's Guardian.

- Securing information from any organisations who may have already interviewed the child/ren and or the employee, such as DCJ or the Police. This would potentially prevent the need to re-interview parties.
- conducting risk assessments and managing any real or perceived risk to children
- Presenting all relevant information to the Employee to allow them a genuine opportunity to respond to the allegations. As part of this formal interview, the purpose and process of the investigation, the employee's rights and the role of the Office of the Children's Guardian should be clearly explained, along with any right to make a complaint as to how the investigation has been handled. The employee may choose to have a support person present.
- At all times, procedural fairness should be ensured. Steps taken to ensure procedural fairness may include:
 - maintain an appropriate level of confidentiality,
 - identify and manage any real or perceived conflicts of interest or real or apprehended bias,
 - put the subject employee on notice (at an appropriate time) of the nature and scope of the allegations, the process that will be followed and (if relevant) that a notification has been made to the Office of the Children's Guardian,
 - keep the employee reasonably informed of the progress of the investigation,
 - conduct as timely an investigation as possible in the circumstances,
 - frame the allegations appropriately,
 - put all the allegations to the employee, with sufficient notice,
 - provide an option of a support person should the employee be interviewed in relation to the allegations,
 - explain the potential consequences of an adverse finding,
 - provide the employee with a genuine opportunity to respond to the allegations, in writing or at interview.
- providing the Office of the Children's Guardian with further detailed advice or update within 30 calendar days
- drafting a report including any findings, outcomes, recommendations and actions. The final risk assessment and action should address all identified risks, including those relating to:
 - the employee – for example, consider whether the employee needs ongoing support; whether training or other remedial action is required; or if disciplinary action is warranted. Any previous relevant matters relating to the employee should be considered when deciding the appropriate action to take as a result of this investigation.

- the child or children involved – is there a need for counselling, other ongoing support or a plan managing future contact with the employee?
- any other party – for example, if the allegation is found to be false and vexatious, a decision should be made regarding what action to take, if any, in relation to this.
- organisational culture – for example, the investigation may have identified a need for improved education and awareness around child protection issues for children, employees or both.
- systems – for example, did the investigation uncover work practices, or skills gaps that contributed to the reportable allegation arising? How can these be addressed?
- policies and procedures – were existing policies and procedures able to accommodate all the issues that arose during the investigation, or could they be refined?
- risks outside of the organisation's control – the head of the relevant entity should consider whether there is a basis for releasing information about the reportable conduct matter to a prescribed body under Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998.
- providing the report and supporting documents to the Office of the Children's Guardian for review and closure (should no further action be required)
- Advising the employee formally in writing, along with any consequences and information regarding formal review or appeal.
- Final advice should also be provided to the alleged victim and their parent/carer unless it is not in the public interest to do so (see Fact Sheet 7 Disclosing Information to Children, Parents and Carers for further guidance)
- storing the information in a secure and private location.

Complaints as to the handling of the investigation, or final findings must be made directly to the Office of the Children's Guardian

Support should be given to people making an allegation and/or persons who have been suspected. This support can be given in the form of counselling or referral to an appropriate agency.

Any person who gives a report, makes a complaint or gives the Office of the Children's Guardian a notification of a reportable allegation is protected under the Children's Guardian Act 2019.

Responding to a child's disclosure

If a child discloses allegations of abuse, it is vital that the educator involved is ready to listen attentively and remain calm and supportive. Finding a quiet, private place to talk and allowing the child to tell their story in their own words is important. Educators should avoid asking leading questions or probing for information that the child is not ready to disclose. It is important that the child is reassured that they have done the right thing in telling someone what has happened and that they have a right to feel safe. The educator should assure the child that they believe them and will try and help.

Sources

- Education and Care Services National Regulations 2011
- National Quality Standard
- My Time, Our Place Framework for School Age Care in Australia

- Children (Education and Care Services National Law Application) Act 2010
- Children and Young Persons (Care and Protection) Act (1998)
- Privacy Act 1988
- Working with Children Check NSW
- NSW Mandatory Reporter Guide
- NSW Interagency Guidelines ()
- Keep Them Safe – Information Session / overview participants manual 2009 / 2010
- Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13
- The NSW Reportable Conduct Scheme - Fact Sheet 1: Identifying Reportable Allegations
- The NSW Reportable Conduct Scheme - Fact Sheet 2: Heads of Entities and Reportable Conduct Responsibilities
- The NSW Reportable Conduct Scheme - Fact Sheet 3: Risk Management following an allegation
- The NSW Reportable Conduct Scheme - Fact Sheet 4: Planning and Conducting an Investigation
- The NSW Reportable Conduct Scheme - Fact Sheet 5: Recognising and managing conflicts of interest
- The NSW Reportable Conduct Scheme - Fact Sheet 6: Keeping Records
- The NSW Reportable Conduct Scheme - Fact Sheet 7: Disclosing information to children, parents and carers
- The NSW Reportable Conduct Scheme - Fact Sheet 8: Making a finding of reportable conduct
- The NSW Reportable Conduct Scheme - Fact Sheet 10: Information for Employers

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