

10.4 Policy (Review) - Child Protection

POLICY NAME: DRAFT REVIEW  
CHILD PROTECTION

POLICY REF: C03

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## OBJECTIVE

Council is committed to opposing child abuse practices and to supporting child protection and abuse prevention.

Consequently, and in accordance with the Ombudsman Amendment (Child Protection and Community Services) Act 1998, this policy aims to ensure the protection of children against abuse and to advise procedures for investigating and reporting allegations/convictions of child abuse against people employed or engaged by Council **that arise in the course of the work of Council.**

## BACKGROUND

Council will ensure that all employees are aware of their obligations under the Act to notify the General Manager of any child abuse allegation or conviction of which they become aware.

## DEFINITIONS

### An Allegation

should have the following elements:

- the person who is the subject of the allegation must be a current employee of a designated agency or public authority, or have been an employee at the time the allegation was made and must be identifiable. This does not necessarily mean identified by name, as a person may be identifiable by other information, including their description and work schedules of the agency.
- the allegation must describe behaviour that may constitute child abuse.

The alleged victim must have been aged under 18 years at the time of the alleged offence or behaviour

### Child

a person under the age of 18 years

### Child Abuse

- a) assault (including sexual assault) of a child, or
- b) ill treatment or neglect of a child, or
- c) exposing or subjecting a child to behaviour that psychologically harms the child whether or not, in any case, with the consent of the child.

### Child Abuse Allegation

an allegation of child abuse against a person or an allegation of misconduct that may involve child abuse.

### Child Abuse Conviction

Any conviction of a person, in this State or elsewhere, of an offence involving child abuse, and includes a finding by a court that a charge for such an offence is proven even though the court does not proceed to a conviction.

- Employee of an Agency**
- a) any employee of the agency, whether or not employed in connection with any work or activities of the agency that relates to children, and
  - b) any individual engaged by the agency to provide services to children, including:
    - Contractors
    - Subcontractors
    - Foster carers
    - Volunteers
    - Work experience participants; and
    - Student placements, eg TAFE or tertiary students
  - c) Anyone employed by an agency who received a group certificate for taxation purposes, whether or not their position requires them to work with children.

An employee of an agency does NOT include elected Councillors, because, although they are volunteers they are not engaged to provide a service to children. Councillor's actions will only be covered by this policy if participating in council-run activities as a volunteer, and an allegation of child abuse arises from that participation.

- Engaged**
- A person is deemed to be engaged by an agency if the agency:
- Provides the person with work that involves the provision of services to children,
  - Provides the person with general directions (ie a brief) about the services the agency wants them to provide
  - Is able to terminate their contract or involvement with an agency if their work is unsatisfactory or for any other reason.

- Head of an Agency**
- The person who has the ultimate 'hiring and firing' authority within Council. In this policy, it will mean the General Manager of Council.

- Investigation**
- Any preliminary or other inquiry into, or examination of, the matter.

- Prohibited Person**
- A person convicted of a serious sex offence and under the new legislation, is not allowed to work, or to continue to work, with children. It is also an offence for a prohibited person to apply for a position working with children.

- Physical Abuse**
- Assault and/or non-accidental injury and/or harm to a child by a parent, caregiver or another person. It includes harm or injuries that are caused by excessive discipline, severe beating or shaking, bruising, lacerations or welts, burns, fractures or dislocations, female genital mutilation, attempted suffocation or strangulation and death. Physical assault is a hostile act towards a child. The assault occurs regardless of the adult's intention to harm and regardless of the child or young person's

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	<p>consent. Assault can include pushing, shoving, throwing objects, spitting, hitting, smacking, threatening behaviour (either verbal or action). Actual physical harm does not have to occur in order for an assault to have occurred, ie the child does not need to be hurt or injured. Even if the person did not intend to make contact with the child, it may still constitute an assault if the circumstances indicate the act may have been reckless (ie being a reasonably foreseeable consequence of their action).</p>
<b>Reportable Allegation</b>	A reportable allegation or conviction against a person or an allegation of misconduct that may involve reportable conduct.
<b>Reportable Conduct</b>	<p>Any sexual offence, or sexual misconduct, committed against, with or in the presence of a child, <i>or</i></p> <p>Any assault, ill-treatment or neglect of a child, <i>or</i></p> <p>Any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child</p>
<b>Reportable Conviction</b>	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.
<b>Risk of Harm</b>	<p>Relevant to mandatory reporting requirements.</p> <p>A child or young person is at risk of harm if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence of any one or more of the following circumstances:</p> <ul style="list-style-type: none"> <li>(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,</li> <li>(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,</li> <li>(c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,</li> <li>(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,</li> <li>(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. Note. Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.</li> </ul>

## SCOPE OF POLICY

This policy applies to individuals engaged to provide services to children and could include:

- council employees
- councillors
- contractors
- sub-contractors
- volunteers
- work experience participants, being either any work experience employer providing supervision to or working directly with students, or work experience students placed in a designated agency to work with children; and
- student placements.

## RELATED DOCUMENTATION

Related documents, policies and legislation:

- Ombudsman Act 1974
- Children and Young Persons (Care and Protection) Act 1998
- The Commission for Children and Young People Act 1998
- The Child Protection (Prohibited Employment) Act 1998
- Ballina Shire Council Code of Conduct
- Ballina Shire Council Protected Disclosures Policy

## POLICY

### 1. LEGISLATIVE REQUIREMENTS

Relevant Child Protection Legislation and requirements are:

#### a) Ombudsman Act 1974

This Act ensures government agencies are aware of their reporting obligations under the Act in instance of allegations of child abuse by an employee of that agency.

#### ***General Manager's responsibilities***

To report to the Ombudsman, within 30 days of becoming aware, any allegations or convictions of child abuse made against employees, and to conduct investigations into child abuse allegations or convictions and take appropriate action as a result.

#### ***Employee responsibilities***

To inform the General Manager of any child abuse allegation or conviction against an employee that occurs either within or outside the work place.

**b) Children and Young Persons (Care and Protection) Act 1998**

This Act prescribes the role of the Department of Community Services in child protection. Emphasis is placed on the responsibility of families, agencies and communities working in partnership to recognise the rights of children and young people to participate in decisions making.

***General Manager's responsibilities***

To ensure that employees are aware of their obligation to report a child or young person considered to be 'at risk of harm', and that Council policies, procedures and practices are in line with the Act in relation to Child Protection.

***Employee responsibilities***

To report concerns that a child or young person may be 'at risk of harm'.

**c) The Commission for Children and Young People Act 1998**

This Act requires the employment screening of preferred applicants for certain child-related employment.

***General Manager's responsibilities***

To notify the NSW Commission for Children and Young People of:

- Relevant completed disciplinary proceedings taken as a result of an allegation/conviction of abuse by an employee
- Applicants who have not been offered child-related employment as a result of assessment by approved screening agency.

**d) The Child Protection (Prohibited Employment) Act 1998**

Prohibits persons with convictions for serious sexual offences from working in child related employment, where that employment primarily involves direct unsupervised contact with children.

***General Manager's responsibilities***

To establish that existing employees are not 'prohibited' persons and only employ a person who is not a 'prohibited' person in a child related role.

***Employee responsibilities***

To disclose to the General Manager his/her status relating to the definition of a 'prohibited' person and not apply for, or remain in, child-related employment if a 'prohibited' employee.



## 2. PREVENTION OF CHILD ABUSE

Council is committed to preventing child abuse wherever possible.

This will be achieved by:

- Including relevant information to staff on their rights and responsibilities during the induction process
- Including relevant information in recruitment advertising and information packages, including requirements for employment screening where applicable.
- Ongoing review and monitoring of Council's Code of Conduct and Protected Disclosures Policies.
- Ongoing liaison and support with relevant external agencies.

## 3. MANDATORY REPORTING

In accordance with the Children and Young Persons (Care and Protection) Act 1998, Council staff in child related employment, eg child care workers or family day care workers, have a mandatory requirement to report to the Department of Community Services (DoCS) if they believe a child or young person has been, or is, at risk of being physically or sexually abused or ill treated. Mandatory reporting requirements apply only to a child under 16 years of age.

In addition, the General Manager must be made aware of any allegation of child abuse made against a person employed or engaged by Council, whether or not there is any supporting evidence that the abuse has taken place.

## 4. MAJOR FUNCTIONS AND OBLIGATIONS

Created by the Ombudsman Amendment (Child Protection and Community Services) Act 1998 (Part 3A) are:

- The Ombudsman must keep under scrutiny the systems for preventing child abuse, and the handling of a response to child abuse allegations or convictions
- The General Manager must notify the Ombudsman within 30 days of receiving any allegation of child abuse against an employee of the Council
- The Ombudsman can oversee or monitor the conduct of the investigation into such an allegation or conviction, whether it is conducted by the designated agency or by another agency
- The Ombudsman is required to 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
- The Ombudsman can directly investigate a child abuse allegation or conviction against an employee of a designated agency, or the handling of or response to such a matter.

Additionally, under the Commission for Children and Young People Act 1998 and Child Protection (Prohibited Employment) Act 1998, Council is required to create a workplace where children are safe and protected.

To comply with this legislation, Council will conduct **"The Working with Children Check"** through employment screening for certain categories of persons who are involved in child related employment. Failure to comply with employment screening or to make a false disclosure is an offence. The legislation also makes it an offence to employ a prohibited person and also for a prohibited person to remain in child-related employment. Child related employment is defined as any employment that primarily involves direct contact with children where that contact is not directly supervised.

## 5. ROLES AND RESPONSIBILITIES

The General Manager, as the 'Head of Agency' is responsible to:

- Establish systems for preventing, handling and responding to allegations or conviction of child abuse against an employee of the agency
- Provide, when requested by the Ombudsman, information about the type and operation of those systems.
- Make arrangements within the Council to require all employees to notify of any child abuse allegation or conviction of which they become aware.
- Notify the Ombudsman of any child abuse allegation or conviction against an employee of Council within 30 days of becoming aware of the allegation or conviction.
- Notify the Ombudsman whether or not he/she plans to take any disciplinary or other action in relation to an employee the subject of an allegation or conviction and the reasons for not taking any such action.
- Notify DoCS of allegations of child abuse where he/she considers that there are reasonable grounds to suspect that a child is at risk.

The Manager Risk & Human Resources shall be the nominated Child Protection Officer for Council with responsibility to:

- Assist the General Manager with obligations outlined above.
- Assist with investigations as required by the General Manager.
- Implementing the policy throughout the organisation.
- Conduct background checks on potential employees as required.
- Maintain records of all investigations, checks and other activities undertaken in accordance with this policy.
- Accept reports of alleged child abuse from employees and forward these reports to the General Manager.

## 6. PROCEDURES

### a) Allegation of child abuse Investigation Procedure

The following procedure applies for all investigations into allegations of child abuse within Council's responsibility under the relevant child protection legislation outlined in Section 3.

1. The General Manager shall notify the Ombudsman within 30 days of receiving, or becoming aware of, an allegation of child abuse against an employee, regardless of



- whether or not there is supporting evidence that the abuse has taken place. This notification shall include the nature of the allegation and proposed procedure for the investigation.
2. The General Manager shall investigate every allegation of child abuse which is reported or of which he/she becomes aware. He/she may delegate some of the tasks to the Child Protection Officer or other designated officer but retains responsibility for the process.
    - a) The General Manager must ensure that the investigation is carried out in a timely manner, without undue delay.
    - b) Prior to interviewing the employee, a risk assessment of the individual's employment is to be made to include, but not be limited to:
      - The nature of the allegation
      - The vulnerability of the children
      - The disciplinary history of the employee
      - Position occupied by the employee
      - Level of supervision of the employeeThis risk assessment will endeavour to determine:
      - The appropriate action in regard to the subject of the allegation
      - Any need to contact an external body, eg DoCS or Police
    - c) Council must report the outcome of any relevant employment proceedings to the Commission for Children and Young People.
  3. An interview will take place with the complainant to clarify details of the allegation. This will be done in such a way as to protect the identity of all parties.
  4. The employee will be advised:
    - Of the nature of the complaint
    - That an investigation is underway
    - The expected duration of the investigation
    - The seriousness of the situation
  5. Following the interview the General Manager shall determine, with consideration of the risk assessment of the individual's employment, if the employee should be moved to other duties or, if necessary, suspended on full pay for the duration of the investigation.
  6. If the allegation relates to a serious matter, the General Manager may seek advice from the Police Service and/or Ombudsman before commencing the investigation, or at any time during the investigation in which a serious matter arises.
  7. Investigations of allegations against employees will take place in conjunction with DoCS and/or Police investigations, or they may take place without the involvement of these agencies if there are no risks of harm or criminal issues.
  8. The General Manager may elect that the investigation be conducted by an external accredited private investigator.

9. The investigator must abide by any legislative and/or DoCS guidelines for gathering evidence from children.
10. A summary of the report will be provided to the employee as the final element in the investigation.
11. At the conclusion of the investigation the General Manager will:
  - a) Decide on any appropriate action which could include:
    - disciplinary action
    - counselling/education for the employee
    - change of work practices
  - b) Advise the Ombudsman and the Commission for Children and Young People of the outcome and action taken
  - c) Discuss with the Ombudsman what information should be provided to the notifier with regard to the outcome of the investigation.
12. The General Manager will then determine whether an appropriate education program is needed for any other staff to prevent further instances.

**(b) Procedural Fairness**

The General Manager shall ensure equity to the employee who is the subject of allegation throughout the investigative process, specifically:

- The employee will be informed of the allegation. However, the General Manager shall give consideration as to when in an investigation the employee is informed depending on circumstances of the case. It may be necessary to delay informing an employee until such time as:
  - It has been determined whether there is a case to answer; or
  - Where there is the possibility that evidence could be tampered with or witnesses approached (for example, where a witness is a subordinate of the person under investigation)
- The investigative process will be explained to the employee.
- The employee may seek support from a union representative or a person of their choice at any time. Council will not formally notify the union at this stage of the procedure.
- Support must also be offered to the complainant and any other staff members affected by the investigation.
- The employee has the right to respond to the allegations and any proposed adverse findings before a final report is issued.
- The employee may make a submission to the investigation at any time.

**(c) Review of the outcome of the investigation**

If the subject of the allegation, or the victim, is unhappy with either the outcome or process of the investigation, they have the right to contact the Ombudsman and request a review.

**(d) Working with Children Check**

The Working with Children Check is about assessing a person's suitability to work with children. The Council will ensure that:

- 1) Paid and unpaid staff, such as volunteers, are asked if they are a "prohibited person"
- 2) The background of preferred applicants for paid child-related employment is checked.

Checking someone's background will help Council reduce the risk of abuse by individuals entrusted with the care of children. It will mean that, as far as possible, people who may pose a risk to children are not employed in roles where they have direct, unsupervised contact with children.

Within six months of the start of the legislation, Council will ask their paid and unpaid staff if they are a "prohibited person". Employees must make a declaration to their employer or remove themselves from child-related employment.

It is an offence for a "prohibited person" to work in a self-employed capacity that involves direct, unsupervised contact with children.

There will be a national criminal record check for preferred applicants for paid positions primarily working with children. It is a check for child abuse, child pornography, sexual activity or acts of indecency. It also includes a check on relevant Apprehended Violence Orders and a check of completed relevant disciplinary proceedings. It will be necessary to check a person's background before they are employed in a paid position primarily working with children.

In order for Council to determine what is child related employment, the following test should be applied:

- There is involvement or contact with children whilst carrying out the tasks or duties of a position
- The involvement or contact is of a direct nature
- There is no direct supervision of the employee during the time of direct contact with children.

Approved Screening Agencies have been appointed to undertake the Working with Children Check on behalf of all employers in New South Wales. These agencies are:

- NSW Department of Community Services
- NSW Department of Education and Training
- NSW Department of Health
- NSW Department of Sport and Recreation
- Catholic Commission for Employment Relations
- Commission for Children and Young People.

The screening process is to be conducted prior to offering a preferred applicant for employment a position in paid child-related employment with the organisation. If an issue arises in the checking process, the approved Screening Agency will conduct an assessment to help determine if that applicant is suitable to work with children. The Agency will provide

advice about any potential risks that the person may or may not pose when working with children.

The decision to employ rests with the employer, however, if the employer chooses not to employ a person based on the results from the Working with Children Check, the employer must notify the Commission for Children and Young People.

All results of screening tests conducted on current or potential employees of Council shall be treated as 'staff-in-confidence' and secure appropriately.

## **7. DOCUMENTATION AND RECORD KEEPING**

The General Manager or nominated investigating officer must ensure that full and complete records are kept of every aspect of an investigation.

All documentation shall be kept confidential and shall be released only as required by law. The documentation shall be kept indefinitely by the Child Protection Officer.

## **8. CONFIDENTIALITY AND RIGHTS OF PERSONS**

There is a need for confidentiality in all aspects of notification of allegation/conviction of child abuse and conducting Working with Children Checks. The rights of the person, who is alleged to have been abused, will be protected, as will the rights of the person whom the allegation/conviction or screening relate. In this regard the confidentiality of all identified persons will be protected/maintained and investigations will be acted on impartially, discreetly, fairly and reasonably, with the involvement of the persons involved. No other persons are to be told of allegations/convictions or employment screening information other than the General Manager, Designated Officer and possibly relevant immediate manager.

The Council's Protected Disclosures Policy shall apply to all instances of child abuse allegations where:

- The allegation is reported voluntarily (including in accordance with the Council's Code of Conduct).
- The allegation is made by an employee of Council.
- The allegation is made to the General Manager or the nominated Disclosure Officer.
- The allegation shows, or tends to show, reasonably serious child abuse allegations.

Council employees should note that if the content of the disclosure is frivolous or vexatious, or the motive of the reporting officer is frivolous or vexatious, the disclosure will not be treated as a protected disclosure. However, confidentiality will still be provided to the person making the disclosure.

## **REVIEW**

This policy shall be reviewed every four years or more frequently as required.