

C-14 Reportable Conduct

NQS

QA. 2.2	Safety.
QA. 2.2.1	Supervision.
QA. 2.2.3	Child protection.
QA. 4.1	Staffing arrangements.
QA. 4.1.1	Organisation of educators.
QA. 4.2.2	Professional standards.
QA. 5.1.2	Dignity and rights of the child.
QA. 7.1.2	Management systems.
QA. 7.1.3	Roles and responsibilities.

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

Policy Statement

This Policy contributes to ensuring the safety of children who attend the centre and provide protections for staff. This outlines the way in which staff work together to comply with the requirements in relation to Reportable Allegations and Reportable Convictions (Reportable Conduct) under part 4 of the Children’s Guardian Act 2019. It recognises that complying with this legislation as an important strategy for promoting the safety and wellbeing of children. The behaviour of staff towards Children is monitored and any allegations that amount to Reportable Conduct will be reported to the Office of the Children’s Guardian as required. The ‘Head of Entity’ for the centre is the Nominated Supervisor/Director or the Responsible Person on duty in their absence, who recognises the importance of reporting obligations.

Related Policies

- CONCORD OSHC Policy A-3: Philosophy
- CONCORD OSHC Policy A-11: Maintenance of Records
- CONCORD OSHC Policy A-14: Complaints
- CONCORD OSHC Policy A-15: Role of Management Committee
- CONCORD OSHC Policy A-17: Privacy and Confidentiality
- CONCORD OSHC Policy A-19: Nominated Supervisor
- CONCORD OSHC Policy C-1: Staff Recruitment and Selection
- CONCORD OSHC Policy C-3: Staff Orientation and Induction
- CONCORD OSHC Policy C-10: Volunteers/students/visitors
- CONCORD OSHC Policy C-11: Staff Child Ratios
- CONCORD OSHC Policy C-12: Communication
- CONCORD OSHC Policy C-14: Complaints
- CONCORD OSHC Policy D-22: Child Protection and mandatory Reporting

Procedure

The Reportable Conduct Scheme (Scheme) applies to all staff and management committee members who hold a WWCC for their engagement with the Centre. The Scheme is allegations based and administered by the Office of the Children's Guardian.

If a staff member is not sure whether the conduct that they have seen is 'Reportable Conduct' they should raise the matter with the Director for their decision.

What is reportable conduct:

Conduct of a worker towards a child that relates to reportable allegations or reportable convictions that amount to reportable conduct.

A Reportable Allegation means an allegation that a staff or committee member (who holds a WWCC) has engaged in conduct that may be Reportable Conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment. It is important to bear in mind that the threshold for reporting a Reportable Allegation is lower than what is required to make a finding of Reportable Conduct. If an allegation is, on its face, a Reportable Allegation, it must be reported.

A Reportable Conviction means a conviction in NSW or elsewhere, of an offence involving Reportable Conduct. It includes a finding of guilt even if the court did not proceed to a conviction.

Reportable Conduct includes the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded:

- a) a sexual offence committed against, with or in the presence of a child;
- b) sexual misconduct with, towards or in the presence of a child;

- c) ill-treatment of a Child;
- d) neglect of a Child;
- e) an assault against a Child;
- f) an offence under s 43B of the *Crimes Act 1900* (NSW) for failing to reduce or remove the risk of a Child becoming a victim of abuse;
- g) any offence under s 316A of the *Crimes Act 1900* (NSW) for concealing a Child Abuse Offence; or
- h) behaviour that causes significant emotional or psychological harm to a Child.

Reportable Conduct Exemptions:

Reportable Conduct does **not** extend to:

- a) 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;
- b) 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; and
- c) conduct of a class or kind that the Children's Guardian has ruled does not need to be notified.

Reporting Concerns to the Nominated Supervisor/Director:

All Workers must immediately report all Reportable Allegations, Reportable Convictions, and all other allegations, complaints or convictions involving any inappropriate or unsafe conduct towards or in the presence of Children by another Worker, to the Director.

If that conduct potentially constitutes a Serious Indictable Offence or a Child Abuse Offence, the Worker has a legal obligation to report to the NSW Police.

Workers who are Mandatory Reporters should also consider, and if appropriate discuss with the Nominated Supervisor/Director, whether they should also make a report regarding a Child at Risk of Significant Harm to the Child Protection Helpline.

Director Reporting Obligations:

As 'Head of Entity' the Nominated Supervisor/Director must determine based on the information available as alleged whether the conduct amounts to 'Reportable Conduct'. They may contact the Office for Children's Guardian Reportable Conduct Unit for advice and guidance.

As this is an allegation-based scheme the matter must not be investigated prior to notifying the Office of the Children's Guardian.

If the matter is reportable to the Children's Guardian, the Nominated Supervisor/Director must notify the Children's Guardian of the matter immediately and no later than 7 business days after it becomes aware of the matter. A notification to the Children's Guardian must be made online, using the 7-Day Notification Form on the Children's Guardian website. The notification must include (but not be limited to) the following information:

- a) that the Nominated Supervisor/Director has received information about a Reportable Allegation or a Reportable Conviction;

- b) details of the conduct that is the subject of the report;
- c) the name of the employee and their date of birth and WWCC number;
- d) the contact details for the 'relevant entity' being the Centre and the 'head of the entity' being the Nominated Supervisor/Director.
- e) whether any notification has been made to police or to the Department of Communities and Justice and any report reference number;
- f) the nature of any initial risk assessment and/or risk management action being undertaken
- g) the names of any other relevant entities with which the employee is employed or engaged; and
- h) any other information requested or prescribed by the Children's Guardian.

If the Nominated Supervisor/Director decides that the matter is not reportable to the Children's Guardian, or if the Children's Guardian indicates the matter does not fall within its jurisdiction, the Nominated Supervisor/Director will exercise its discretion to determine whether an Internal Investigation or report to NSW Police should still be completed.

Not all allegations that are notified to the Nominated Supervisor/Director will reach the Threshold for Reportable Conduct. The Nominated Supervisor/Director should then consider if any breaches of code of conduct have occurred and whether any disciplinary or performance and training action is required for that staff member.

Immediate Actions relating to Person Subject of the allegation/s:

Promptly consider whether any steps need to be taken to manage risks associated with the Suspected Person. If the Nominated Supervisor/Director has engaged with NSW Police in relation to the allegations, clearance should be obtained from the NSW Police before any engagement with the Suspected Person. Once the Nominated Supervisor/Director has clearance to take actions in relation to the Suspected Person, they should promptly identify and assess the risks posed by the Suspected Person in their position or duties to the safety and wellbeing of a Child or Children under the care. Once the potential risks have been identified, the Nominated Supervisor/Director will discuss the matter with appropriate persons, including the management committee, to determine the appropriate action to mitigate those risks.

Factors to be considered in making this decision include, but are not limited to, the:

- nature and seriousness of the allegation;
- vulnerability of the Children that the Suspected Person would be in contact with in their position or duties;
- nature of the Suspected Person's position (e.g. level of contact with Children);
- level of supervision available for the Suspected Person;
- availability of support for, and supervision/monitoring of, the Suspected Person on a day-to-day basis if their duties are unchanged; and
- Suspected Person's disciplinary history.

In making a determination as to the appropriate action to mitigate risks, the director must take into consideration both the needs of the Child (and/or the complainant) and the Suspected Person.

Action to address risks may involve:

- a) removing the Suspected Person from their position or duties where they may have contact with a Child or Children; or
- b) suspending the Suspected Person from their position or altering duties so that they are not permitted to have contact with Children, pending the outcome of a more thorough investigation.

Note: Procedural fairness will be followed in any investigation. Staff will be advised that the response to an allegation of abuse will be fair, transparent and timely and meet the demands of confidentiality where required. A decision to suspend or remove a Suspected Person on the basis of a risk assessment should not influence the investigation, particularly the findings of an investigation. It merely reflects the seriousness of allegations or risks that have been identified pending a determination of facts by the investigator. Until the investigation is completed and a finding is made, any action, such as moving an employee to alternate duties, is not considered to be an indication that the alleged conduct by the employee did occur.

Before taking steps in relation to any Suspected Person (such as altering duties or standing the person aside from their position pending investigation of the allegation), the Suspected Person must be notified of the allegation.

Investigation:

For matters that are reported to the Office for Children's Guardian an investigation must be initiated. The Management Committee will work with the Nominated Supervisor/Director to determine the best investigative pathway.

Where the matter has been reported to the NSW Police or the Department of Communities and Justice the Nominated Supervisor/Director will await the outcome and direction from these agencies before proceeding with an investigation.

To ensure procedural fairness during the investigation the person subject to the allegations will;

- a) be provided notification that an allegation has been raised about their conduct (without providing the full details) and that the matter is to be reported to the Children's Guardian
- b) be given an opportunity to respond to the detailed allegations once all information has been gathered in relation to the allegations including; alleged victim, witnesses.
- c) Be given the opportunity to have a support person present
- d) Be given the opportunity to have the matter reviewed
- e) Have their Confidentiality maintained

Outcome and Reporting

The person subject to the allegations will be provided with a written letter advising of the outcomes of the investigation and the steps that will be taken.

Within 30 days of receipt of the information about Reportable Conduct, the Nominated Supervisor/Director must:

- a) provide the Children's Guardian with a report on its investigation and outcome (**Entity Report**); or

- b) provide the Children’s Guardian with an **interim report** on its investigation, outlining the further action it intends to take; or
- c) a reason for not providing a final Entity Report and an estimated time frame within which the report will be provided.

Following the investigation there should be a final risk assessment completed and the Child Safe Risk Management Plan updated.

The centre will consider any systemics or learnings from the investigation and implement practice improvements as necessary.

Sources

- Children’s Guardian Act 2019
- 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
- Commission for Children and Young People Act 1998
- Child Protection (Prohibited Employment) Act 1998
- NSW Office of the Children’s Guardian

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