



NSW Police Force

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**EMPLOYMENT RELATED CHILD ABUSE ALLEGATIONS
Standard Operating Procedures**

Child Abuse Squad

Employment Related Child Abuse Allegations – Standard Operating Procedures

To provide guidance to NSW Police Force investigators (the Police) responding to child abuse allegations¹ against employees of relevant entities² (the Entity) that provide services to children and young persons.

Essential Summary

The purpose of this document is to assist police officers to understand their responsibilities when receiving a report of a child abuse allegation where the person of interest is employed by an Entity as listed under Schedule 1, section 13 of the Children’s Guardian Act 2019 No 25.

¹ Part 4 of the Children’s Guardian Act 2019 No 25

² As listed under Schedule 1, section 13 of the Children’s Guardian Act 2019 No 25

Document Control Sheet

Title	Employment Related Child Abuse Allegations Standard Operating Procedures
Subject	Advice and guidance for police officers who either receive and / or are investigating a child abuse allegation where the person of interest is employed in an “Entity” organisation
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1	2020	Child Abuse & Sex Crimes Squad	ORIGINAL
2	2021	Child Abuse & Sex Crimes Squad	<ul style="list-style-type: none"> • Transfer to Corporate template • Update to incorporate specific historical allegations • Inclusion of protective marking
3	2023	Child Abuse Squad	Update squad name

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1. Purpose and/or Scope

To provide guidance to NSW Police Force investigators (the Police) responding to child abuse allegations against employees of relevant entities (the Entity) that provide services to children and young persons.

2. Procedures

2.1. Context

The Office of the Children's Guardian (OCG) is now legislatively responsible for the management of the reportable conduct scheme (previously oversights by the NSW Ombudsman). Section 29 of the Children's Guardian Act 2019 No 25³ legislates that the Entity must make a report to the OCG regarding reportable allegations of child abuse⁴ committed by an employee (including volunteer or contractor) of that Entity.

An Entity is required to investigate the reportable allegations committed by an employee as per section 34 of the Children's Guardian Act 2019 No 25. Under section 33, if the Entity's investigation is likely to prejudice a Police investigation or court proceedings, the Entity (or the OCG) may suspend the investigation, pending notification of the outcome of the Police investigation.

If the Entity is unable to conduct its own investigation, it is important that the Entity is kept informed of the progress of the Police investigation. This is to enable any action, such as risk management strategies, can be taken by the Entity while Police are conducting their investigation.

2.2. Details

The following procedures outline in detail the key issues to be addressed by Police in responding to employment related child abuse allegations⁵.

1. In cases where the Police submit a mandatory child at risk of significant harm (ROSH) incident on COPS to the Department of Communities & Justice (DCJ) and / or the DCJ phone helpline, and, a matter falls within the notification criteria of the Children's Guardian Act 2019 No25, the Entity should be notified as soon as practicable within 48 hours of the report to the Police, by the respective Command.
2. If an historical child abuse matter has been referred to the Police for investigation and the involved employee is still employed by the Entity, the Police are to notify the Entity as soon as practicable and within 48 hours of the report to the Police, whether a criminal investigation will be instigated and details as specified in point 8.1 to 8.7.

³ Children's Guardian Act 2019 No 25 released on 1 March 2020

⁴ Under Part 4 of the Children's Guardian Act 2019 No 25

⁵ It should be recalled that in all interactions with children and young people, their safety, welfare and wellbeing is of paramount importance to the NSWPF

3. When a ROSH report is accepted via the Joint Referral Unit (JRU) for entry into the Joint Child Protection Response Program (JCPRP)⁶ the relevant Child Abuse Squad (CAS) of the Child Abuse Squad (CAS) is to notify the Entity of the Police investigation as soon as practicable and within 48 hours of acceptance at the JRU and provide the details of the allocated investigator to the Entity.
4. Where a ROSH report has been referred to a Command⁷ for a local response, the Command⁸ is to advise the Entity as soon as practicable of the Police investigation and within 48 hours of the matter being referred.
5. If the matter was not reported to the NSW Police Force by the Entity and the Police are aware the subject of the allegations is engaged in child related employment, then the respective Command⁹ will notify the relevant Entity of the criminal allegations as soon as is practicable so they can take appropriate risk management action.
6. The Police will liaise with the Entity to prevent the Entity taking any action that may prejudice the Police investigation.
7. In cases where the report to Police is made by a community source then the Police, will as soon as practicable, confirm with the employing Entity or other reporter whether the matter has been reported to DCJ as per mandatory reporting obligations under section 27 of the Children & Young Persons (Care & Protection) Act 1998.
8. The investigating Command is responsible for providing the following information to the Entity, taking into consideration Chapter 16A of the Children & Young Persons (Care & Protection) Act 1998, and information that may prejudice the Police investigation¹⁰:
 - 8.1. The contact details of the investigating officer
 - 8.2. The COPS Event reference number
 - 8.3. Expected timeframes for updates
 - 8.4. Advice on whether the employee can be advised of the nature of the allegations
 - 8.5. Advice on whether the employee can be informed of the Police investigation and
 - 8.6. Any known information relating to the safety, welfare or well-being of a particular child, young persons or a class of children / young persons if the Police believe the provision of the information would assist the Entity to manage any risk to such persons that might arise in the Entity's capacity as employer of the person of interest, unless that information may prejudice the police investigation¹¹¹²
 - 8.7. Prior to providing such advice, the Police will usually need to discuss these issues with the employing Entity, to assist both parties to reach a shared understanding to

⁶ Joint Child Protection Response Program Criteria are used by the JRU to accept referrals into the JCPRP – the policing response is by the Child Abuse Squads of the Child Abuse Squad, State Crime Command

⁷ Under the JRU Criteria for Local Referral

⁸ Appropriate and authorised representative of the Commander

⁹ Appropriate and authorised representative of the Commander

¹⁰ Section 245D(4) of the Children & Young Persons (Care & Protection) act 1998

¹¹ Section 245D(4) of the Children & Young Persons (Care & Protection) act 1998

¹² Pursuant to Chapter 16A of the Children & Young Persons (Care & Protection) Act 1998

protect the investigative process, whilst at the same time enable the employer to fulfil its statutory and common law responsibilities¹³

9. When a Police investigation is suspended or closed prior to the commencement of any court proceedings, the Command¹⁴ is to inform the employing Entity as soon as practicable and within 48 hours:
 - 9.1. The decision to suspend or close the investigation;
 - 9.2. Of information relating to the safety, welfare or well-being of a child or young person if the provision of the information would assist the Entity;
 - 9.3. To make any decision, assessment or plan to initiate or conduct any investigation, or to provide any service for the safety, welfare or well-being of the child or young person
 - 9.4. Manage any risk of the child or young person that might arise in the Entity's capacity as an employer
10. Where an investigation and / or criminal prosecution is prolonged, the investigating Command should provide the Entity with regular updates on the progress of the investigation and / or prosecution. The Command and employing Entity should reach an agreement as to the frequency of the updates and whether the updates are delivered verbally or in writing.

¹³ Section 245D(4) of the Children & Young Persons (Care & Protection) act 1998

¹⁴ Authorised and appropriate representative of the Commander

Appendix 1

APPENDIX

A link to the Children's Guardian Act 2019 No25 is found here:

<https://www.legislation.nsw.gov.au/#/view/act/2019/25>

The Children's Guardian is the body responsible for administering the reportable conduct scheme and assisting in protecting and helping to keep children safe in organisations. The Children's Guardian exercises functions under the Child Protection (Working with Children) Act 2012 and administers the Child Safe Standards.

<https://www.kidsguardian.nsw.gov.au/about-us/who-we-are/our-legislation/legislative-changes>

The Children's Guardian Act 2019 No25 defines reportable conduct under Part 4 from 1 March 2020 as:

- A sexual offence (incorporating grooming offences)
- Sexual misconduct (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 section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act 1900
- Behaviour that causes significant emotional or psychological harm to a child

Relevant Entities are listed under Schedule 1 and Division 2 of the Children's Guardian Act 2019 No25:

Children's Guardian Act 2019 No 25

[Schedule 1](#)

Schedule 1 Schedule 1 entities section 13

1

the Department of Education, including a government school within the meaning of the [Education Act 1990](#)

2

the Ministry of Health

3

a local health district within the meaning of the [Health Services Act 1997](#)

4

a non-government school within the meaning of the [Education Act 1990](#)

5

a designated agency

6

an approved education and care service within the meaning of the [Children \(Education and Care Services\) National Law \(NSW\)](#) or the [Children \(Education and Care Services\) Supplementary Provisions Act 2011](#)

7

that part of Youth Justice within the Department of Communities and Justice comprising the group of staff who are principally involved in the administration of an Act administered by the Attorney General, and Minister for the Prevention of Domestic Violence and the Minister for Families, Communities and Disability Services

8

that part of the Department of Communities and Justice comprising the group of staff who are principally involved in the administration of an Act administered by the Minister for Families, Communities and Disability Services

9

a statutory health corporation within the meaning of the [Health Services Act 1997](#)

10

an affiliated health organisation within the meaning of the [Health Services Act 1997](#)

11

the Ambulance Service of NSW within the meaning of the [Health Services Act 1997](#)

12

the TAFE Commission within the meaning of the [Technical and Further Education Commission Act 1990](#)

13

an agency providing substitute residential care for children

Children's Guardian Act 2019 No 25

[Part 4 Division 2 Section 12](#)

12 Meaning of "relevant entity"

Relevant entity means—

(a) a Schedule 1 entity, or

(b) a public authority, or

(c) a religious body.

Notable changes from 1 March 2020 is that all religious bodies are now incorporated into the scheme and those who have contact with children are required to hold a Working with Children Check (WWCC). There is an obligation to report on conduct re:

- A minister, priest, rabbi, mufti or other like religious leader or spiritual officer of the organisation
- A person in any other role in the organisation involving activities primarily related to children, including youth groups, youth camps, teaching children and childcare

Children and Young Persons (Care and Protection) Act 1998 No 157

- 27 Mandatory reporting
- (1) This section applies to—
 - (a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children, and
 - (b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children, and
 - (c) a person in religious ministry, or a person providing religion-based activities to children, and
 - (d) a registered psychologist providing a professional service as a psychologist.
- (2) If—
 - (a) a person to whom this section applies has reasonable grounds to suspect that a child is at risk of significant harm, and
 - (b) those grounds arise during the course of or from the person's work or role specified in subsection (1),
- it is the duty of the person to report, as soon as practicable, to the Secretary the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

- (3) A person to whom this section applies satisfies his or her obligations under subsection (2) in relation to two or more children that constitute a particular class of children if the person reports that class of children to the Secretary together with—
- (a) a description that is sufficient to identify all the children who constitute the class, and
- (b) the grounds for suspecting that the children of that class are at risk of significant harm.
- (4) In this section—
- children’s services means either or both of the following (subject to the regulations)—
- (a) an education and care service within the meaning of the [Children \(Education and Care Services\) National Law \(NSW\)](#),
- (b) a State regulated education and care service within the meaning of the [Children \(Education and Care Services\) Supplementary Provisions Act 2011](#).

Children’s Guardian Act 2019 No 25

- [Part 4 Division 3 Section 29](#)
- 29 Children’s Guardian to be given notification of reports
- (1) This section applies if the head of a relevant entity—
- (a) receives a report in relation to an employee of the relevant entity, or
- (b) otherwise becomes aware of a reportable allegation in relation to an employee of the relevant entity or a conviction that is considered to be a reportable conviction.
- (2) The head of the relevant entity must give the Children’s Guardian a written notice (a notification) about the reportable allegation or conviction considered to be a reportable conviction that states—
- (a) that a report has been received in relation to an employee of the relevant entity, and
- (b) the type of reportable conduct the subject of the report, and
- (c) the name of the employee, and
- (d) the name and contact details of the relevant entity and the head of the relevant entity, and
- (e) for a reportable allegation—whether the Commissioner of Police has been notified of the allegation, and
- (f) if a report has been made under section 24 of the [Children and Young Persons \(Care and Protection\) Act 1998](#)—that the report has been made, and
- (g) the nature of the relevant entity’s initial risk assessment and risk management action, and
- (h) any other information prescribed by the regulations.
- (3) The notice must also include the following, if known to the head of the relevant entity—
- (a) details of the reportable allegation or conviction considered to be a reportable conviction,
- (b) the date of birth and working with children number, if any, of the employee the subject of the report,
- (c) for a reportable allegation of which the Commissioner of Police has been notified—the police report reference number,
- (d) if a report has been made under section 24 of the [Children and Young Persons \(Care and Protection\) Act 1998](#)—the report reference,
- (e) the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.
- (4) The head of the relevant entity must give the Children’s Guardian the notice within 7 business days after the head of the entity is made aware of the report, unless the head of the relevant entity has a reasonable excuse.
- Maximum penalty—10 penalty units.
- (5) The head of the relevant entity may give the employee the subject of the report written notice that a report about a reportable allegation or conviction considered to be a reportable conviction has been made.
- (6) The Children’s Guardian may publish guidelines in relation to the matters that are appropriate for the head of a relevant entity to have regard to in deciding whether to provide the employee with written notice under subsection (5).
- (7) In this section—
- working with children number has the same meaning as in the [Child Protection \(Working with Children\) Act 2012](#).

Children and Young Persons (Care and Protection) Act 1998 No 157

- Chapter 16A
- Chapter 16A Exchange of information and co-ordination of services
- 245A Object and principles of Chapter
- (1) The object of this Chapter is to facilitate the provision of services to children and young persons by agencies that have responsibilities relating to the safety, welfare or well-being of children and young persons—
- (a) by authorising or requiring those agencies to provide, and by authorising those agencies to receive, information that is relevant to the provision of those services, while protecting the confidentiality of the information, and
- (b) by requiring those agencies to take reasonable steps to co-ordinate the provision of those services with other such agencies.
- (2) The principles underlying this Chapter are as follows—
- (a) agencies that have responsibilities relating to the safety, welfare or well-being of children or young persons should be able to provide and receive information that promotes the safety, welfare or well-being of children or young persons,
- (b) those agencies should work collaboratively in a way that respects each other's functions and expertise,
- (c) each such agency should be able to communicate with each other agency so as to facilitate the provision of services to children and young persons and their families (including, where applicable, prioritised access to services to children and young persons at risk of significant harm and to their families),
- (d) because the safety, welfare and well-being of children and young persons are paramount—
- (i) the need to provide services relating to the care and protection of children and young persons, and
- (ii) the needs and interests of children and young persons, and of their families, in receiving those services,
- take precedence over the protection of confidentiality or of an individual's privacy.
- 245D Request for information
- (1) A prescribed body (the requesting agency) may request another prescribed body to provide the requesting agency with any information held by the other body that relates to the safety, welfare or well-being of a particular child or young person or class of children or young persons.
- (2) Any such request may be made for the purposes of assisting the requesting agency—
- (a) to make any decision, assessment or plan or to initiate or conduct any investigation, or to provide any service, relating to the safety, welfare or well-being of the child or young person or class of children or young persons (including, where applicable, to provide prioritised access to any service to a child or young person or class of children or young persons at risk of significant harm), or
- (b) to manage any risk to the child or young person (or class of children or young persons) that might arise in the agency's capacity as an employer or designated agency.
- (3) If a prescribed body receives a request under this section, the prescribed body is required to comply with the request if it reasonably believes, after being provided with sufficient information by the requesting agency to enable the other body to form that belief, that the information may assist the requesting agency for any purpose referred to in subsection (2).
- (4) A prescribed body is not required to provide any information that it has been requested to provide if the body reasonably believes that to do so would—
- (a) prejudice the investigation of a contravention (or possible contravention) of a law in any particular case, or
- (b) prejudice a coronial inquest or inquiry, or
- (c) prejudice any care proceedings, or
- (d) contravene any legal professional or client legal privilege, or
- (e) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or
- (f) endanger a person's life or physical safety, or
- (g) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention (or possible contravention) of a law, or
- (h) not be in the public interest.

- (5) If a prescribed body refuses to provide information in accordance with a request under this section, the prescribed body must, at the time it notifies the requesting agency of the refusal, provide the requesting agency with reasons in writing for refusing the request.

Children's Guardian Act 2019 No 25

Part 4 Division 4 Section 33

33 Concurrent investigations or proceedings

- (1) This section applies if the Commissioner of Police or the Director of Public Prosecutions advises the Children's Guardian, or the head of a relevant entity, that an investigation or determination under this Part is likely to prejudice a police investigation or court proceeding.
- (2) The Children's Guardian or head of the relevant entity may—
 - (a) suspend the investigation or a determination until otherwise advised, and
 - (b) after consulting the police officer in charge of the investigation or the Director of Public Prosecutions, take steps to manage any risks while the investigation or determination is suspended, and
 - (c) if the investigation or determination was being conducted by the head of a relevant entity—
 - (i) advise the Children's Guardian about the suspension under this section, and
 - (ii) advise the Children's Guardian of the steps being taken to manage risks.
- (3) Before making a decision about whether or not to suspend an investigation or determination, the Children's Guardian, or head of the relevant entity, must consult with the Commissioner of Police, or the Director of Public Prosecutions, who provided the advice under subsection (1).
- (4) If the Children's Guardian or head of the relevant entity decides not to suspend the investigation or determination, the Children's Guardian must ensure the investigation is conducted in a way that does not prejudice the police investigation or the court proceeding.
- (5) An investigation or determination by a relevant entity, suspended by operation of this section, is taken to be exempt from the requirement to provide an entity report or an interim report until the period of 30 days after the suspension has ended.
- (6) This section does not affect the operation of any other Act.
- (7) For the purposes of this section—
 - (a) a reference to a police investigation includes a reference to an investigation by the Australian Federal Police, an international investigation the Australian Federal Police are aware of, or a police investigation in another State or Territory, and
 - (b) a reference to a court proceeding includes a reference to a court proceeding in another State or Territory, and
 - (c) a reference to the Commissioner of Police or the Director of Public Prosecutions includes a reference to a person holding the equivalent office in another State or Territory.

Children's Guardian Act 2019 No 25

Part 4 Division 5 Section 34

34 Investigation or determination by head of relevant entity

- (1) As soon as practicable after receiving a report, the head of the relevant entity must—
 - (a) investigate, or arrange for an investigator to investigate, the reportable allegation, or
 - (b) determine whether the conviction considered to be a reportable conviction is a reportable conviction.
 - (2) During an investigation or a determination, an employee the subject of a reportable allegation or a conviction considered to be a reportable conviction may give the head of the relevant entity a written submission concerning the allegation or conviction for the purpose of determining what, if any, disciplinary or other action should be taken in relation to the employee.
 - (3) The investigation or determination must be completed within a reasonable time.
- Note.
Section 138 requires information to be reported in particular circumstances.

