

Employment related child abuse allegations

Purpose¹

To give guidance to police responding to employment related criminal child abuse allegations against employees of agencies responsible for the provision of services to children and young people.

Procedures

As an employing agency is unable to conduct its own investigation until Police have either rejected the matter or completed their investigation, it is important that the employing agency is kept informed of the police investigation and any action that can be undertaken by the agency while Police are conducting their own investigation.

The following procedures outline some of the key issues to be addressed when responding to employment related criminal child abuse allegations.²

- In cases where the Local Area Command (LAC) decides that the matter should be referred to the Joint Investigation Response Team (JIRT), JIRT procedures should be followed. The employing agency must be notified within **48 hours** of transfer and provided with the contact details of the JIRT officer.
- If the matter was not referred to the LAC by the employing agency and the LAC is aware that the subject of the allegations is engaged in child related employment, then the LAC should notify the employer of the criminal allegations as soon as practicable to enable the employing agency to take appropriate risk management action.
- In cases where the Police referral is made by any source other than Community Services, the LAC should, as soon as practicable, confirm with the employing agency or other reported whether the matter has been reported to Community Services (and in the case of an agency referral, if not, why not).
- The LAC is to make a decision to accept or reject the investigation as soon as practicable, preferably within two business days, and advise the agency.
- If the matter will be investigated by Police, the employing agency should be provided with:
 - the contact details of the investigating officer,
 - expected timeframes for updates,
 - advice as to whether the employee can be advised of the nature of the allegations,
 - advice as to whether the employee can be informed of the Police investigation, and
 - any known information relating to the safety, welfare or well being of a particular child or young person/s if the investigating officer believes that the provision of the

¹ Full details of the legislative scheme, including definitions are at Appendix 1.

² It should be recalled that in all interactions with children and young people their safety, welfare and wellbeing is of paramount concern to police.

information would assist the employing agency to manage any risk to such persons that might arise in the agency's capacity as employer of the subject of the allegations.

Prior to providing such advice, Police will usually need to discuss these issues with the employing agency, to assist both parties to reach a shared understanding as to how best to protect the investigative process, while at the same time enabling the employer to fulfill its statutory and other common law responsibilities.

- If the LAC is unable to make a decision about whether to proceed with an investigation within two business days, the employing agency is to be contacted by a police officer from the LAC as soon as practicable after the expiry of the second business day for the purpose of informing the employing agency when it is likely to make such a decision.
- When an investigation is discontinued prior to the laying of charges, the investigating officer, or his or her nominee, is to inform the employing agency within **48 hours** of making the decision to discontinue the investigation. The investigating officer, or his or her nominee, is to provide information relating to the safety, welfare or well being of a particular child or young person/s if he or she reasonably believes that the provision of the information would assist the agency:
 - a) to make any decision , assessment or plan, 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/s.
 - b) manage any risk to the child or young person/s that might arise in the employing agency's capacity as an employer.
- For all matters the subject of ongoing investigation and/or prosecution, Police should provide an agency with regular updates on the progress of the investigation or prosecution. Police and the employing agency should reach and agreement as to the frequency of these updates.

Appendix 1

The Legislative Scheme

Part 3A of the *Ombudsman Act 1974* (the Act) relates to the Ombudsman's workplace child protection jurisdiction. The Ombudsman oversees designated and non-designated employers' handling of reportable allegations against their employees. Reportable allegations constitute sexual offences, sexual misconduct, assault, ill-treatment, neglect and behavior that causes psychological harm to children.

Designated employers include both government and non government agencies who are required to notify the Ombudsman of allegations arising in the course of their employee's work and non-work life.

Non-designated employers include all other government agencies (such as NSW Police Force) who are only required to report to the Ombudsman reportable allegations made about their employees that arise in the course of their employment with their agency.

Relevant section of *Ombudsman Act 1974 No 68*

Part 3A Child protection

25A Definitions

(1) In this Part:

child means a person under the age of 18 years.

designated government agency means any of the following:

- (a) the Department of Education and Training (including a government school), the Department of Community Services, the Department of Health, the Department of Sport and Recreation, the Department of Juvenile Justice or the Department of Corrective Services,
- (b) an area health service within the meaning of the *Health Services Act 1997*,
- (c) any other public authority prescribed by the regulations for the purposes of this definition.

designated non-government agency means any of the following:

- (a) a non-government school within the meaning of the *Education Act 1990*,
- (b) a designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998* (not being a department referred to in paragraph (a) of the definition of designated government agency in this subsection) or a licensed children's service within the meaning of that Act,
- (c) an agency providing substitute residential care for children,

- (d) any other body prescribed by the regulations for the purposes of this definition.

employee of an agency includes:

- (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 in the capacity of a volunteer).

head of an agency means the chief executive officer or other principal officer of the agency. The regulations may specify the person who is to be regarded as the head of a particular agency for the purposes of this definition.

investigation of a matter includes any preliminary or other inquiry into, or examination of, the matter.

reportable allegation means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

reportable conduct means:

- (a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- (b) any assault, ill-treatment or neglect of a child, or
- (c) any behaviour that causes psychological harm to a child,

whether or not, in any case, with the consent of the child. 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, or
- (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, or
- (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

Note. Examples of conduct that would not constitute *reportable conduct* include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

reportable allegation means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

reportable conviction means 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.

- (2) A reference in this Part to a designated government or non-government agency is a reference to a designated government agency or a designated non-government agency.
- (3) A reference in this Part to a reportable allegation or a reportable conviction extends to any such allegation or conviction in respect of a matter occurring before the commencement of this Part.

Information Provision

New laws that relate to the exchange of information about children and young people commenced on **30 October 2009**. Chapter 16A of the [*Children and Young Persons \(Care and Protection\) Act 1998*](#) prioritises the safety, welfare and wellbeing of a child or young person over an individual's right to privacy.

Chapter 16A allows government agencies – including NSW Police – and non-government organisations (NGOs) who are "prescribed bodies" to exchange information that relates to a child's or young person's safety, welfare or wellbeing, whether or not the child or young person is known to Community Services, and whether or not the child or young person consents to the information exchange. Up until now, information exchange has generally only been possible where the information was sent to or received from Community Services.