

Juliet Butterworth

From: Information and Privacy
Sent: Wednesday, 15 March 2023 11:12 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Formal Access Application - Notice of Decision - [REDACTED] - Our ref: GIPA22/[REDACTED]



15 March 2023

Our ref: GIPA22/[REDACTED]

Your ref: [REDACTED]

NOTICE OF DECISION

Good morning

I refer to your formal access application under the *Government Information (Public Access) Act 2009* (GIPA Act) that you lodged with the Department of Communities and Justice (the Department).

Decision

I am authorised by the principal officer of the Department to decide your access application under section 9(3) of the GIPA Act.

Under section 53 of the GIPA Act, the Department must undertake reasonable searches as may be necessary to find any of the government information applied for that was held by the Department when the application was received, using the most efficient means reasonably available to the Department. I can confirm that a thorough search has been conducted of the Department's records management systems for any information that falls within the scope of your request.

I have considered your request in view of the objectives of the GIPA Act where you have a legally enforceable right to obtain information, unless there is an overriding public interest against disclosure of the subject information. Further, I have also considered the requirements of section 74 of the GIPA Act, which provides that an agency may delete information from a record if the deleted information does not fall within the scope of the information applied for.

In the acknowledgement letter for this application, the Department proposed to remove third party personal information from the records. As you did not object to this, some third party personal information has been deemed to fall outside the scope of your request and has been redacted accordingly. [REDACTED]

In deciding your application, I was required to conduct a "public interest test" where the public interest considerations favouring disclosure of government information were weighed against those factors that do not favour disclosure. On this occasion, I have not identified any public interest factors against the disclosure of the information that you have requested.

Therefore, in accordance with section 58(1)(a) of the GIPA Act, I have decided to provide you with a complete copy of the information that falls within the scope of your request.

A copy of the relevant records will be sent to this inbox shortly via the application Kiteworks.

Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. You have three review options:

- An internal review lodged with the Department’s Open Government, Information and Privacy Unit, within 20 working days of the date of this Notice;
- An external review by the NSW Information Commissioner, within 40 working days of the date of this Notice; or
- An external review by the NSW Civil and Administrative Tribunal, within 40 working days of the date of this Notice.

Please do not hesitate to contact me in the first instance to discuss any concerns you have in relation to this decision, noting that you have been provided with a complete copy of the information requested.

Further information about your review rights can be located on the Information and Privacy Commission’s website at <https://www.ipc.nsw.gov.au/fact-sheet-your-review-rights-under-gipa-act>.

Please contact our office at infoandprivacy@dcj.nsw.gov.au, if you have any queries regarding this matter.

Kind regards,

Alicia McKenzie *she/her (pronouns)*
Solicitor
Open Government Information and Privacy
Department of Communities and Justice

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Working days Monday to Friday, 8:30am – 4:30pm



Communities and Justice



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

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DEPARTMENT OF JUVENILE JUSTICE

PROVISION OF A PROTECTIVE

ABUSE-FREE ENVIRONMENT

IN THE

DEPARTMENT OF JUVENILE JUSTICE

NOVEMBER 1997

CLIENT PROTECTION, POLICIES AND

PROCEDURES OF THE

DEPARTMENT OF JUVENILE JUSTICE

(Second Edition)

TABLE OF CONTENTS

	Page
FROM THE DIRECTOR GENERAL	
1. PURPOSE OF POLICY	1
2. PRINCIPLES	2
3. COMMON TERMS	2
4. LEGAL DEFINITIONS	3
5. CLARIFICATION OF THE CONCEPT OF ABUSE	3
6. SOME OF OUR BASIC LEGAL OBLIGATIONS REGARDING THE DEVELOPMENT AND PROTECTION OF DEPARTMENTAL CLIENTS	4
7. SOME DEPARTMENTAL STRATEGIES AIMED AT THE PREVENTION OF ABUSE	5
8. STAFF RESPONSIBILITIES FOR REPORTING ABUSE OR NEGLECT OF YOUNG PEOPLE IN DEPARTMENTAL CUSTODY/UNDER SUPERVISION	6
9. STAFF RESPONSIBILITIES FOR REPORTING ABUSE OR NEGLECT OF YOUNG PEOPLE NOT DIRECTLY UNDER DEPARTMENTAL SUPERVISION	7
10. WORKING WITH CLIENTS RELUCTANT TO PROCEED WITH ABUSE ALLEGATIONS INVOLVING CRIMINAL OFFENCES	8
11. DEALING WITH THE ALLEGED EMOTIONAL ABUSE OR NEGLECT OF DEPARTMENTAL CLIENTS BY STAFF MEMBERS	9
12. GENERAL DEPARTMENTAL PROCEDURES RELATED TO ABUSE - NEGLECT ALLEGATIONS	9
13. PROCEDURES RELATED TO FIGHTS AND MINOR ALTERCATIONS	10
14. CONFIDENTIALITY	12
15. ALLEGATIONS OF ASSAULT BY POLICE OFFICERS	12
	13

TABLE OF CONTENTS - continued

16.	ALLEGATIONS OF STAFF ASSAULTS BY CLIENTS	13
17.	RESPONSIBILITY FOR POLICY IMPLEMENTATION	14
18.	OPERATIONAL PROCEDURES FOR POLICY IMPLEMENTATION	14
19.	ACKNOWLEDGMENT OF STAFF MEMBER'S RESPONSIBILITIES UNDER THIS POLICY	21

FROM THE DIRECTOR GENERAL

The Department of Juvenile Justice has a responsibility to ensure the protection of young people under its supervision from all forms of abuse or neglect. It also has a duty to respond appropriately where an incident of abuse or neglect is alleged, and to take any necessary steps to ensure the future safety of the young person or any other young person likely to be victimised.

Young people admitted to detention must be certain they can serve their custodial sentence in a secure and humane juvenile justice centre, free from any abuse or neglect.

The Department of Juvenile Justice recognises that institutional environments, such as juvenile justice centres, can have a negative effect on some young people and that systems abuse can occur. Therefore, the department has a particular responsibility to ensure that its policies and programs are designed to minimise the harm which may arise from incarceration.

The department's community based services must be able to provide credible, accountable alternatives to custody to ensure that detention is used as a last resort.

Staff of our community based services, just as staff in juvenile justice centres, have a duty with our service delivery partners to ensure that young people under community supervision are protected from abuse and neglect.

To ensure the protection of our joint clients, the department expects that contracted community agencies, or agents, will act in accordance with the principles outlined in this document and the NSW Child Protection Council's *Interagency Guidelines for Child Protection Intervention*, 2nd edition, 1997.

This policy concerns all incidents of abuse or neglect which staff actually witness taking place or are told about by clients or other people. The policy covers abuse of clients by staff, abuse of clients by other clients, and abuse perpetrated by other people outside the juvenile justice service environment.

All departmental staff are required to familiarise themselves with the provisions of this policy and to ensure its implementation throughout our services.

Staff are also strongly advised to make themselves familiar with the invaluable information contained in the newly issued *Interagency Guidelines*, copies of which are available from your managers.

Each current and future employee of the Department of Juvenile Justice is required to sign a statement indicating their commitment to comply with this policy and associated procedures. The signed statement (a copy of which is attached as the final page of this document) must be procured by the relevant manager, and a copy of this signed statement will be placed on each staff member's personnel file.

Government Information (Public Access) Act 2009
This document has been released by
Open Government, Information and Privacy
NSW Department of Communities and Justice, Legal


KEN BUTTRUM

1. PURPOSE OF POLICY

The purpose of this policy is to provide a framework for the protection of juvenile clients and departmental staff from all forms of abuse and neglect, and to establish effective child protection strategies within the Department of Juvenile Justice.

2. PRINCIPLES

The following principles underpin this policy:

- **The best interests, safety and well being of our clients shall be paramount** in the development and implementation of all our policies, programs and procedures, and in all our casework decisions and practices.
- Clients have a right to departmental services free from all forms of **abuse and neglect, and focused on their development.**
- **Staff have a legal duty of care** to the clients of the department.
- Where a client is the victim of abuse or neglect, measures must be **immediately implemented to promote the physical, psychological and emotional well being and recovery of that client.**
- As stated in the legislation, **detention is an option of last resort** and for the minimum necessary period.
- Clients in detention centres require **special attention and protection because of their vulnerability.**
- The department will seek the **involvement of clients, their families and significant others in case management decisions**, and will provide all relevant information about the health and well being of clients to parents, caregivers or guardians.

3. COMMON TERMS

- 3.1 For the purpose of this policy "juvenile" refers to a client under the supervision or in the custody of the Department of Juvenile Justice.
- 3.2 For the purpose of this policy "abuse" refers to non-accidental physical injury, neglect, emotional abuse and sexual exploitation of young people.
- 3.3 For the purpose of this policy, "staff" refers to people employed by the Department of Juvenile Justice on a permanent, temporary, casual or fee for service basis (including sessional supervisors and mentors), and those involved in voluntary work for the department.

4. LEGAL DEFINITIONS

- 4.1 In section 3 (1) of the *Children (Care and Protection) Act 1987*, 'abuse', in relation to a child is defined as follows:
 - (a) assault (including sexually assault) the child; or
 - (b) ill-treat the child; or
 - (c) expose or subject the child to behaviour that psychologically harms the child,whether or not, in any case, with the consent of the child.
- 4.2 Abuse of a young person is an offence under section 25 of the *Children (Care and Protection) Act 1987*, which states:

a person who abuses a child, or causes or procures a child to be abused, is guilty of an offence.
- 4.3 Child abuse is also a term commonly used to refer to a range of sexual offences under Section 61(A)(1) of the *Crimes Act 1900* which result in harm to a young person and which involve behaviours to which a young person cannot give consent.
- 4.4 The laws concerning offences in sexual assault in the *Crimes Act 1900* are sexual intercourse, indecent assault and acts of indecency.

5. CLARIFICATION OF THE CONCEPT OF ABUSE

5.1 Physical Abuse

- (a) Refers to the conduct by another person that results in non-accidental injury of a client.
- (b) Physical abuse can include the use of illegal or excessive physical force, including corporal punishment, unauthorised use of restraining devices, improper use of segregation and confinement, and improper administration of medication or drugs.

5.2 Neglect

- (a) Refers to the failure of juvenile justice centre staff to provide the client with the basic physical and emotional necessities of life.
- (b) Neglect can include lack of appropriate supervision, poor provision of a client's food or other material needs, inadequate medical treatment and educational programs for clients in custody, or failure to provide protection for clients at risk.

5.3 Emotional Abuse

- (a) Refers to harm caused by excessive or unreasonable demands above the capacity of the client's assessed developmental level, or failure to provide a custodial environment encouraging a client's physical, emotional and social growth.
- (b) Emotional abuse can include scape-goating, rejection, humiliation and verbal abuse of the client.
- (c) Emotional abuse can also include failure to treat suicide threats seriously or sensitively, punishing a group for an individual's misbehaviour, unreasonably restricting a client's access to their family against the wishes of that client, misusing the reward/punishment system, and knowingly placing clients in situations where they are at risk of abuse.
- (d) Emotional abuse can also include the use of language to ridicule or intimidate a client (e.g. about the nature of their offence/alleged offence, personal appearance, performance at school etc); or the use of language to humiliate or denigrate clients or their family.
- (e) Derogatory comments about a client's origins, gender, sexual preferences, ethnicity, religion, or disabilities are also regarded as emotional abuse.

5.4 Child Sexual Abuse and Assault

- (a) Sexual abuse refers to the involvement of clients of the department in sexual acts where the client is exploited for the gratification of another's sexual needs or desires, and where they cannot give valid consent because of their age or their lack of power in the situation.
- (b) Sexual abuse can include genital exposure, exposure to prostitution or use of a client for prostitution purposes, exposure to pornography or use of a client for pornographic purposes, the threat of sexual abuse, and the deliberate exposure of a client to the sexual behaviours of others.
- (c) Sexual assault refers to specific offences under the NSW Crimes Act (1900).

6. SOME OF OUR BASIC LEGAL OBLIGATIONS REGARDING THE DEVELOPMENT AND PROTECTION OF DEPARTMENTAL CLIENTS

- 6.1 The *Children (Detention Centres) Act 1987* states that the welfare and interests of persons on remand or subject to control shall be given paramount consideration.
- 6.2 Under Section 14 of the *Children (Detention Centres) Act 1987* the Director General shall ensure that adequate arrangements exist:
 - (a) to maintain the physical, psychological and emotional well-being of detainees;
 - (b) to promote the social, cultural and educational development of detainees;
 - (c) to maintain discipline and good order among detainees; and
 - (d) to facilitate the proper control and management of detention centres.
- 6.3 The punishment for an offence imposed by a court is the only punishment for that offence. (The *Children (Detention Centres) Act 1987* Section 4 1(b)).
- 6.4 The use of any physical violence, striking, cuffing or shaking of a detainee must not be used, nor shall a detainee, without reasonable excuse be handcuffed or forcibly restrained as outlined in section 22 (1) and (2) of the *Children (Detention Centres) Act*. Illegal treatment of detainees is covered generally by section 22 and penalties are provided for persons who punish a detainee or cause a detainee to be punished in a manner that is prohibited by the Act.

6.5 The treatment of detainees in relation to the provision of alcohol, tobacco, adult films, work to be performed, segregation, complaints of misbehaviour, prohibited punishments, disclosure of information, health and medical attention, maintenance of physical well being, property, access to books, newspapers and magazines, visits, communication with family and legal representatives, education and training, religious observance, leave, use of force, reports on use of force and transfer between centres are prescribed under the *Children (Detention Centres) Act 1987* and the *Children (Detention Centres) Regulation 1995*.

6.6 All staff have a legal obligation under common and statute law to fulfil a duty of care to clients. Departmental staff, when responsible for clients, are said to be operating *in loco parentis* (ie. in the place of a parent). They thus have similar duties to care for the welfare of clients, where it is foreseeable that the clients may be at risk and where it is within their capabilities to take actions to avert the risk.

6.7 Confidentiality regarding clients must be maintained in accordance with relevant legislation, particularly the *Children (Criminal Proceedings) Act 1987* and the *Children (Detention Centres) Act 1987*.

6.8 It is incumbent on all staff to make themselves aware of and to comply with all legislation and policies governing departmental juvenile justice operations.

6.9 The department has a duty to provide independent legal advice/representation for a client where there are allegations of abuse or neglect against departmental staff.

7. SOME DEPARTMENTAL STRATEGIES AIMED AT THE PREVENTION OF ABUSE

7.1 Staff need to constantly monitor relationships and interaction between clients, colleagues and others (e.g. visitors) and be alert to indicators of abuse or neglect. (Staff are advised to read the chapter on the recognition of abuse and neglect contained in the Interagency Guidelines for Child Protection Intervention; see pg 42 ff).

7.2 Departmental staff are to provide information to juveniles regarding their rights to protection from all forms of physical, sexual and emotional abuse and neglect, and managers are to ensure that protective behaviour programs are implemented in all centres.

7.3 The department will fully support specialist personnel, such as the Ombudsman's staff and the Official Visitors, in monitoring the protection of our clients from all forms of abuse or neglect.

- 7.4 The department will employ appropriately qualified and experienced staff through:
- (a) competitive selection based on merit;
 - (b) skill testing for senior youth workers;
 - (c) health and criminal record screening;
 - (d) thorough referee, conduct and services and probity checks;
 - (e) induction programs for operational staff;
 - (f) competency based training;
 - (g) ongoing supervision and support.
- 7.5 The department will ensure staff training in the provision of developmental programs, the establishment of supportive professional working relationships with clients, and the maintenance of protective, abuse-free service environments.
- 7.6 Departmental services will incorporate a range of proactive case management strategies to maximise the level of client care and minimise the occurrence of client abuse and neglect including:
- (a) thorough initial client needs assessment;
 - (b) establishment of realistic case plans with clients (and significant others);
 - (c) placement of clients in appropriate programs, accommodation and custodial settings (within available resources);
 - (d) provision of gender, age and culturally appropriate programs and services;
 - (e) establishment of case monitoring, quality assurance and continuous improvement procedures.
- 7.7 If there is a danger to a client in a centre, segregation (under Section 19 of the *Children (Detention Centres) Act 1987*), should only be used as a measure of last resort, and then only for the protection of the client or other people. Segregation should only be used for the period that is necessary for staff to initiate measures to ensure an appropriate level of safety. The use of segregation must be in accordance with departmental policies, delegations and protocols.
8. STAFF RESPONSIBILITIES FOR REPORTING ABUSE OR NEGLECT OF YOUNG PEOPLE IN DEPARTMENTAL CUSTODY/UNDER SUPERVISION
- 8.1 All departmental staff are required to immediately report all allegations or incidents of abuse (physical, emotional or sexual), or neglect of clients to their manager or their delegates.
- 8.2 If any such allegation or incident involves the manager, the report is to be made to the next most senior person, such as the Cluster Director.

- 8.3 Such alleged incidents may have occurred during the period of departmental supervision or custody, or when a client is absent on leave or under escort.
- 8.4 In the case of such allegations, **the responsible manager is required to notify the local office of the Department of Community Services of the disclosure**, for that department's action in accordance with the Interagency Guidelines on Child Protection Intervention.
- 8.5 **If the disclosure suggests a criminal offence**, such as an assault or sexual assault, the departmental manager receiving such a report must **immediately refer the matter to the Police Service**, and inform the **local office of the Department of Community Services** of this action.
- 8.6 The Crimes Act makes it an offence to conceal a serious offence. **Failure to bring information about a serious offence to the attention of the Police is in itself, an offence** which attracts a sentence of imprisonment of up to two years.
- 8.7 The relevant departmental manager must **arrange for the provision of independent legal advocacy for any client alleged to have been abused**.
- 8.8 **The manager should seek and record the names of witnesses**, either departmental staff or clients, and **pass this information to the investigating Police officers** who will then determine the people to be interviewed in relation to the incident. Departmental staff members are **not to take statements from witnesses**.
- 8.9 If departmental staff have any concerns regarding the Police action into the investigation of the reported incident, these concerns should be discussed with the local Patrol Commander of the Police Service, by the manager.
- 8.10 If departmental staff have any concerns about the Department of Community Services' action regarding the alleged abuse, these concerns should be discussed with the relevant DCS Director of Operations, by the Cluster Director.

9. **STAFF RESPONSIBILITIES FOR REPORTING ABUSE OR NEGLECT OF YOUNG PEOPLE NOT DIRECTLY UNDER DEPARTMENTAL SUPERVISION**

- 9.1 If staff members are made aware of the alleged abuse or neglect of other young persons, for example the siblings or friends of clients, they are to pass on such information to their manager.

- 9.2 In the case of "hearsay" allegations, the responsible manager is required to notify the local office of the Department of Community Services of the disclosure, for that department's action in accordance with the Interagency Guidelines for Child Protection Intervention.
- 9.3 If the disclosure suggests a criminal offence, such as an assault or sexual assault, the departmental manager receiving such a report must immediately refer the matter to the Police Service, and inform the local office of the Department of Community Services of this action.

10. WORKING WITH CLIENTS RELUCTANT TO PROCEED WITH ABUSE ALLEGATIONS INVOLVING CRIMINAL OFFENCES

10.1 Due to the possibility of Police investigation and subsequent court action, the nature of the alleged offence, or the fear of reprisal by the alleged perpetrator, many young people are reluctant to proceed with allegations of abuse, especially sexual assault.

10.2 The departmental staff member to whom the disclosure is made should sensitively encourage the allegedly abused client to proceed with their allegations. The relevant manager is to ensure that the client is given sensitive, discreet, personal support, is offered counselling, and is provided with any necessary legal advice. The client is also to be offered appropriate ongoing counselling throughout the investigatory (and prosecution) processes, and afterwards if considered necessary.

10.3 Departmental staff are unable to promise that they will keep any such allegations of criminal offences secret, or that the Police will not be informed. Staff therefore should clearly explain their legal duty to report such criminal allegations to Police.

11. DEALING WITH THE ALLEGED EMOTIONAL ABUSE OR NEGLECT OF DEPARTMENTAL CLIENTS BY STAFF MEMBERS

11.1 Allegations of the emotional abuse or neglect of departmental clients under the age of sixteen years, by staff members, are to be referred to the local manager of the Department of Community Services, by our relevant manager.

11.2 The relevant managers of both departments will then discuss the matter and ensure the prompt investigation of such allegations by a Community Services staff member or another appropriately qualified person, external to the Department of Juvenile Justice.

- 11.3 The report flowing from the investigation will be handed to the local Community Services manager and discussed with the relevant Juvenile Justice manager with a view to determining any necessary further action.
- 11.4 Where the Department of Community Services declines to conduct an investigation into the alleged abuse or neglect, the relevant manager is to appoint an appropriately qualified staff member to complete a prompt investigation (refer to Director General's Instruction 169/97 on Procedures for Dealing with Allegations of Misconduct/Breaches of Discipline in DJJ).
- 11.5 When there are allegations of the emotional abuse or neglect of departmental clients over sixteen years, the relevant manager is to appoint an appropriately qualified staff member to complete a prompt investigation.
- 11.6 If after investigation, the allegation of such abuse or neglect by a departmental staff member is confirmed, that person should be subject to disciplinary proceedings in accordance with the provisions of the Public Sector Management Act.
- 11.7 The departmental manager is to ensure that the client allegedly subjected to abuse or neglect is provided with prompt independent legal representation and any necessary emotional support and counselling.

12. GENERAL DEPARTMENTAL PROCEDURES RELATED TO DEALING WITH ABUSE - NEGLECT ALLEGATIONS

- 12.1 Where staff witness an alleged incident of abuse or neglect or are told of such an incident and the client's health and safety is threatened, staff must act immediately to secure the client's safety.
- 12.2 If abuse or neglect allegations are made by, or involve departmental clients with special needs (such as a young person with an intellectual disability), managers are to ensure that they are provided, throughout the whole process, with appropriate advice and support which is sensitive to their special needs.
- 12.3 In the case of alleged abuse by another client, steps must be taken by the manager to ensure the safety and emotional well being of the abused client, and the separation of the client and the alleged perpetrator.

- 12.4 If transfer of a client is considered appropriate, the needs of the client **allegedly subject to abuse must be given prime consideration** before the transfer is finalised.
- 12.5 In the case of alleged abuse by a departmental staff member, the **manager is to consider the removal of the staff member** to a position where there is no client contact, or **if a criminal offence is alleged, the suspension of the staff member** following usual departmental disciplinary procedures after consultation with the Manager, Professional Conduct at Central Support Office.
- 12.6 Whenever abuse or neglect allegations are made, managers are, as **soon as practicable and within twenty four hours, to notify the relevant Cluster Director**, verbally in the first instance and then in writing on the appropriate incident advice form.
- 12.7 **Within 48 hours of the receipt of allegations, the relevant manager is to provide a comprehensive report to the Cluster Director**, detailing the allegations, the resultant action plan, and the supports placed around the client making the allegations.
- 12.8 In relation to abuse incidents and allegations, the client's **parent(s), guardian(s) or significant others must be informed by the relevant manager, except where the alleged perpetrator is one of these people**. When alleged abuse victims are over the age of sixteen years, they are to be consulted about the people to be informed of the incident.
- 12.9 The manager should **discuss the timing of the advice and who is the most appropriate person to inform the parent/s or guardians, with officers from the Department of Community Services or the Police Service**.
- 12.10 In the case of abuse by another detainee (or client), the **parent(s), guardian(s) or significant others of the alleged offending juvenile are to be informed by the manager**.
- 12.11 If the alleged perpetrator is an employee of the Department of School Education, the manager is to **notify the School Principal to ensure the separation of the alleged perpetrator and the client**.
- 12.12 If the alleged perpetrator is the School Principal, the relevant **departmental manager is to refer the matter to the appropriate District Superintendent of the Department of School Education for any necessary action**.

12.13 In cases alleging abuse by a staff member of the Department of School Education, the Cluster Director is to notify the relevant District Superintendent, DSE of the incident and the actions taken if DJJ staff make a referral to Police for investigation.

12.14 All details of alleged abuse or neglect must be fully documented at the local level by the manager and if physical injuries have been sustained or are suspected, the client is to be referred appropriately for medical assessment and reporting.

12.15 Where possible, in the case of physical assaults, the relevant manager should seek the victim's approval to have photographs taken of any external injuries. Two photographs should be taken, and one copy should be placed on the Allied Health File.

13. PROCEDURES RELATED TO FIGHTS AND MINOR ALTERCATIONS

13.1 Wherever young people gather or reside together, some fights or minor altercations are likely. Departmental managers are to ensure that procedures exist to minimise the likelihood of such incidents and to ensure that they are quickly resolved.

13.2 All alleged physical and sexual assaults, regardless of their nature, are to be reported to the Police. If the client does not wish to proceed with the matter, Police will determine what course of action should be taken.

14. CONFIDENTIALITY

14.1 When an incident of abuse or assault is disclosed to a staff member by a client, staff should not attempt to investigate by asking further questions. Police have warned that such action may risk contamination of evidence for criminal proceedings.

14.2 Any information gained by a staff member at the time of disclosure must not be shared with anyone apart from the manager, or in circumstances previously outlined in paragraph 8.2, the Cluster Director.

14.3 The staff member to whom the disclosure is made should reassure the client that the information will be treated confidentially, but must never promise that the information will remain secret.

14.4 Where a staff member receives and withholds information about alleged abuse or neglect, that young person or others may be exposed to unacceptable risks. As stated previously (see paragraph 8.6) it is an offence to conceal a serious criminal act.

14.5 Any staff member failing to adhere to these principles of confidentiality may be subject to disciplinary action.

15. ALLEGATIONS OF ASSAULT BY POLICE OFFICERS

15.1 All allegations of assault of clients by Police, either prior to or during departmental involvement, must be reported promptly to the Commander (Internal Affairs) in the NSW Police Service by the departmental manager responsible for the client's care when the allegation is made.

15.2 These reports must be in writing and are to be made by the departmental manager on the client's behalf.

15.3 This matter is more fully covered in the Director General's Instruction 103/95.

15.4 Serious complaints about Police treatment of a client should also be reported to the Ombudsman, by the manager.

15.5 Relevant staff should provide the client with sufficient help, advice and support to enable them to prepare, write and lodge the complaint to the Ombudsman themselves. Access by the client to legal advice should be facilitated, where necessary.

16. ALLEGATIONS OF STAFF ASSAULTS BY CLIENTS

16.1 Allegations or disclosures that a staff member has been assaulted by a client must be referred by the relevant departmental manager to the local Police, following appropriate consultation with the involved staff member.

16.2 If a departmental registered nurse is available, their assistance should be sought to render first aid, initially assess the injury and to arrange further medical treatment.

16.3 In the case of serious injury resulting from an alleged assault, the staff member should be immediately taken to a local medical centre or hospital for treatment.

- 16.4 Within 24 to 48 hours, the relevant manager is to ensure that critical incident debriefing has been offered to the staff victim and any staff witnesses.
- 16.5 Within the same period, the relevant manager is to ensure that similar support by the department's crisis team of psychologists is offered to the client involved and any client witnesses.
- 16.6 Ongoing counselling support is to be offered to the staff victim by the relevant manager through the contracted employee assistance provider.

17. RESPONSIBILITY FOR POLICY IMPLEMENTATION

- 17.1 Each departmental manager is responsible for implementing and ensuring compliance with this policy.
- 17.2 This policy is to be introduced through management staff meetings and well planned local staff training.
- 17.3 The policy will then be included in all future induction training and in the induction package distributed to newly employed staff members.
- 17.4 Departmental incident reports (refer to Director General's Instruction 153/96) are to clearly specify the type of abuse or neglect so that accurate statistics may be compiled by Central Support Office.

18. OPERATIONAL PROCEDURES FOR POLICY IMPLEMENTATION

- 18.1 Steps to be taken by STAFF following allegations of abuse or neglect.
 - (a) When you are being told about an event or behaviours which indicate abuse (whether it is physical, sexual or emotional) or neglect involving a departmental client, the client's brothers/sisters, the client's friends or the brothers/sisters of a client's friend, do the following:
 - Listen to what the young person tells you. Do not attempt to investigate by asking questions. Do not do or say anything that may make the situation worse and cause further harm to the young person; for example, asking probing questions, accusing parents/colleagues, or discussing the allegation with potential witnesses or colleagues.

- Do not promise the young person that you will keep their allegations secret. You can promise that the information will be treated confidentially.
 - After listening to the young person, you are advised to make notes about what you were told.
 - Inform your manager immediately of the allegation.
 - Where the allegation involves your manager, inform the Cluster Director immediately.
 - Where the allegation involves the Cluster Director, inform the Director of Operations immediately.
 - After talking the case over with your manager/Cluster Director, provide sensitive personal support to the young person and offer access to counselling, as believed appropriate by you and the manager.
 - Do not discuss the allegations with any other person.
 - Management will take further action on your information. Like you, they have a duty of care to the young person.
- (b) When you actually see an incident of abuse (whether it is physical, sexual or emotional) or neglect taking place involving a departmental client, the client's brothers/sisters, the client's friends, the brothers/sisters of a client's friend, do the following:
- Intervene to secure the safety of the young person.
 - Inform your manager immediately of the incident
 - Where the incident involves your manager, inform the Cluster Director immediately.
 - Where the incident involves the Cluster Director, inform the Director of Operations immediately.
 - Make notes of what you saw.
 - After talking the case over with your manager/Cluster Director, provide sensitive personal support to the young person and offer access to counselling, as believed appropriate by you and the manager.
 - Do not discuss the incident with any other person.
 - Management will take further action on your information. Like you, they have a duty of care to the young person.

18.2 Steps to be taken by MANAGEMENT where the allegation concerns abuse or neglect and there is no suggestion of a criminal offence.

(a) If the juvenile is under 16 years

• Secure the victim's safety by:

- ensuring the safety and well being of the abused juvenile and their separation from the alleged perpetrator
- referring the victim for medical assessment, if required
- consider giving the officer duties where there is no contact with clients, where the alleged perpetrator is a DJJ staff member
- notifying the School Principal to ensure the separation of the staff member and the juvenile, where the alleged perpetrator is a DSE employee.

• Contact the relevant people by:

- notifying the Cluster Director verbally at first and then by incident advice within 24 hours
- notifying the local office of DCS
- informing the victim's parents/caregivers, except where one of these is the alleged perpetrator
- where the alleged perpetrator is a client, informing the parents/caregivers of allegation against the young person
- notifying the appropriate District Superintendent, DSE in all alleged abuse cases involving DSE staff
- arranging independent legal advocacy for the young person.

• Gather the evidence by:

- fully documenting the alleged abuse or neglect at the local level
- providing a comprehensive written report to the Cluster Director within 48 hours.

• Initiate the investigation by:

- discussing prompt investigation of the allegation with the local DCS manager, where the alleged perpetrator is a DJJ employee
- investigator to be independent of DJJ and to report to DCS manager
- contacting the DCS manager within 48 hours of DJJ's notification to ascertain that department's intended action/progress

- appointing an appropriately qualified staff member to complete a prompt investigation, where DCS declines to proceed with an investigation.

- Take follow-up action by:

- referring the matter to the Cluster Director for disciplinary action in accordance with the Public Sector Management Act, where it appears that such action is warranted
- maintaining all records relating to the allegation and ensuring their safe keeping.

(b) If the juvenile is over 16 years

- Secure the victim's safety by:

- ensuring the safety and well being of the abused juvenile and their separation from the alleged perpetrator
- referring the victim for medical assessment, if required
- consider giving the officer duties where there is no contact with clients, where the alleged perpetrator is a DJJ staff member
- notifying the School Principal to ensure the separation of the staff member and the juvenile, where the alleged perpetrator is a DSE employee.

- Contact the relevant people by:

- notifying the Cluster Director verbally at first and then by incident advice within 24 hours
- consulting the young person about the people to be informed of the incident
- notifying the appropriate District Superintendent, DSE in all alleged abuse cases involving DSE staff
- where the alleged perpetrator is a client, informing the parents/caregivers of allegation against the young person
- arranging independent legal advocacy for the young person.

- Gather the evidence by:

- fully documenting the alleged abuse or neglect at the local level
- providing a comprehensive written report to the Cluster Director within 48 hours.

- Initiate the investigation by (to be done by the relevant manager):
 - appointing an appropriately qualified staff member to undertake the investigation, where the alleged perpetrator is a DJJ employee.
- Take follow-up action by:
 - referring the matter to the Cluster Director for disciplinary action in accordance with the Public Sector Management Act, where it appears that such action is warranted.
 - maintaining all records relating to the allegation and ensuring their safe keeping.

18.3 Steps to be taken by MANAGEMENT where the allegation suggests a criminal offence such as an assault or sexual assault.

(a) If the juvenile is under 16 years

- Secure the victim's safety by:
 - ensuring the safety and well being of the abused juvenile and their separation from the alleged perpetrator
 - referring the victim for medical assessment and reporting
 - consulting the Manager, Professional Conduct and then follow disciplinary procedures, where the alleged perpetrator is a DJJ staff member
 - notifying the School Principal to ensure the separation of the DSE employee and the juvenile, where the alleged perpetrator is a DSE employee.
- Contact the relevant people by:
 - notifying the Cluster Director verbally at first and then by incident advice within 24 hours
 - notifying Police
 - notifying, in writing, the Commander (Internal Affairs), Police Service, where the allegation concerns Police assault
 - notifying the local DCS office and advising it of strategies to support/protect the young person
 - informing the victim's parents/caregivers **except where one of these is the alleged perpetrator**

- where the allegation is made against a client, informing the parents/caregivers of the allegation against the young person
- notifying the appropriate District Superintendent, DSE in all cases involving DSE staff
- arranging independent legal advocacy for the young person.
- Gather the evidence by:
 - fully documenting the incident, but leave the taking of statements to the investigating Police
 - seeking the victim's approval to have photographs taken of any external injuries, where physical assault is alleged
 - providing a comprehensive written report to the Cluster Director within 48 hours.
- Take follow-up action by:
 - contacting Police within 48 hours of DJJ's notification to ascertain that service's intended action/progress
 - appointing an appropriately qualified staff member to complete a prompt investigation, where Police decline to proceed with an investigation regarding an allegation against a staff member
 - referring the matter to the Cluster Director for disciplinary action in accordance with the Public Sector Management Act, where it appears that such action is warranted
 - maintaining all records relating to the allegation and ensuring their safe keeping.
- (b) If the juvenile is over 16 years
 - Secure the victim's safety by:
 - ensuring the safety and well being of the abused juvenile and their separation from the alleged perpetrator
 - referring the victim for medical assessment and reporting
 - consulting the Manager, Professional Conduct and then follow disciplinary procedures, where the alleged perpetrator is a DJJ staff member
 - notifying the School Principal to ensure the separation of the DSE employee and the juvenile, where the alleged perpetrator is a DSE employee.

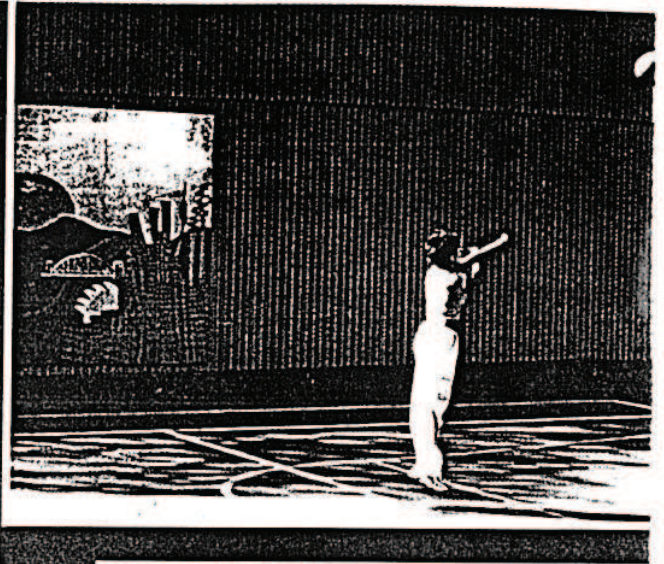
- Contact the relevant people by:
 - notifying the Cluster Director verbally at first and then by incident advice within 24 hours
 - notifying Police
 - notifying, in writing, the Commander (Internal Affairs), Police Service, where the allegation concerns Police assault
 - consulting the young person about people to be informed of the incident
 - where the allegation is made against a client, informing the parents/caregivers of the allegation against the young person
 - notifying the appropriate District Superintendent, DSE in all cases involving DSE staff
 - arranging independent legal advocacy for the young person.

- Gather the evidence by:
 - fully documenting the incident, but leave the taking of statements to the investigating Police
 - seeking the victim's approval to have photographs taken of any external injuries, where physical assault is alleged
 - providing a comprehensive written report to the Cluster Director within 48 hours.

- Take follow-up action by:
 - contacting Police within 48 hours of DJJ's notification to ascertain that service's intended action/progress
 - appointing an appropriately qualified staff member to complete a prompt investigation, where Police decline to proceed with an investigation regarding an allegation against a staff member
 - referring the matter to the Cluster Director for disciplinary action in accordance with the Public Sector Management Act, where it appears that such action is warranted
 - maintaining all records relating to the allegation and ensuring their safe keeping.

Note: Where the allegation of abuse or neglect involves a departmental manager, the Cluster Director is responsible for ensuring that these operational procedures are followed.

Client Protection Policy



Client Protection Policy



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Contents

FROM THE DIRECTOR GENERAL.....	2
NSW INTERAGENCY GUIDELINES 2000	3
Child Protection: The NSW Government Commitment	3
Principles For Child Protection Intervention	3
PART A PRELIMINARY	5
1. Purpose of policy	5
2. Layout of policy	5
3. Definitions.....	6
PART B PRINCIPLES.....	10
4. Client protection principles	10
5. Legal requirements.....	11
6. Concerns for a client's safety, welfare or well-being.....	12
7. Indicators of physical abuse	12
8. Indicators of neglect	14
9. Indicators of emotional abuse.....	14
10. Indicators of sexual abuse.....	15
11. How to promote the safety, welfare and well-being of clients.....	16
12. How to respond to concerns for a client's safety, welfare or well-being.....	17
PART C INTERNAL REPORTING.....	23
13. Mandatory reporting of abuse, neglect, or risk of harm	23
14. Mandatory reporting to Director-General: prohibited person	23
PART D EXTERNAL REPORTING.....	25
15 Reporting homelessness to the Department of Community Services.....	25
16. Mandatory reporting to DoCS: child who is at risk of harm.....	25
17. Reporting to DoCS: young person at risk of harm	26
18. Mandatory reporting to police: allegations of assault by police officers	26
19. Mandatory reporting to police: assault amounting to physical injury or sexual abuse	27
20 Vexatious complaints.....	27
21 Mandatory reporting to Ombudsman: abuse allegation or abuse conviction against an employee	27
22. Mandatory reporting to Commissioner for Children and Young People: disciplinary proceedings	29
23. Limited liability of employees who make reports	29
PART E MISCELLANEOUS.....	31
24. Mandatory employment screening: direct-contact employment.....	31
25. Implementing this policy	31
26. Monitoring and evaluating the Client Protection Policy.....	32
APPENDIX A.....	33
Acknowledgement of Responsibilities under the Department of Juvenile Justice Client Protection Policy	32
APPENDIX B – FORMS.....	33
APPENDIX C -REPORTING FLOWCHARTS.....	58
APPENDIX D -REFERENCES.....	61

FROM THE DIRECTOR GENERAL

The *Client Protection Policy* replaces the department's earlier *Provision of a Protective Abuse-Free Environment in the Department of Juvenile Justice*.

The introduction of a raft of new child protection legislation has prompted a thorough revision of the previous policy. The requirements for staff under this new legislation are more onerous than previously; for example, staff now are mandatory reporters to the Department of Community Services if they have reasonable grounds to suspect that a child is at risk of harm, and the department is a mandatory reporter to the Ombudsman if it becomes aware of an abuse allegation or conviction against an employee.

The Department of Juvenile Justice recognises that institutional environments, such as juvenile justice centres, can have a negative effect on some young people and that systems abuse can occur. Therefore, the department has a particular responsibility to ensure that its policies and programs are designed to minimise the harm that may arise from incarceration.

The department's community based services must also be able to provide credible, accountable alternatives to custody to ensure that detention is used as a last resort.

Staff of our community based services, just as staff in juvenile justice centres, have a duty with our service delivery partners to ensure that young people under community supervision are protected from abuse and neglect.

To ensure the protection of our joint clients, the department expects that contracted community agencies, or agents, will act in accordance with the principles outlined in this document and the 2000 edition of the *NSW Interagency Guidelines for Child Protection Intervention*.

This policy concerns all incidents of abuse or neglect which staff actually witness taking place or are told about by clients or other people. The policy covers abuse of clients by staff, abuse of clients by other clients, and abuse perpetrated by other people outside the juvenile justice service environment. It also concerns the mandatory reporting of employees who have an abuse allegation or conviction against them.

All departmental staff are required to familiarise themselves with the provisions of this policy and to ensure its implementation throughout our services.

Staff members are also strongly advised to make themselves familiar with the invaluable information contained in the newly issued Interagency Guidelines, copies of which are available from your managers and the departmental intranet.

Each current and future employee of the Department of Juvenile Justice is required to sign a statement indicating their commitment to comply with this policy and associated procedures. The signed statement (a copy of which is attached as the final page of this document) must be procured by the relevant manager, and a copy of this signed statement will be placed on each staff member's personnel file.



DAVID SHERLOCK
Director General

NSW INTERAGENCY GUIDELINES 2000

This policy should be read in conjunction with the *NSW Interagency Guidelines for Child Protection Intervention 2000*. Staff working directly with clients, and their managers, should familiarise themselves with the Interagency Guidelines as well as being thoroughly conversant with the department's Client Protection Policy.

The following excerpts from the Interagency Guidelines set out the broad policy direction for the department's Client Protection Policy.

Child Protection: The NSW Government Commitment¹

The NSW Government believes that one of the primary concerns of any community should be the health and well-being of its children and young people. Children and young people should be able to grow up in an environment which enables them to develop physically, intellectually and socially in conditions of freedom and dignity.

The NSW Government is committed to a coordinated and comprehensive response to promote the protection of children and young people. Effective care and protection incorporates community action to:

- Prevent and reduce the abuse and neglect of children or young people in the community
- Provide support to families experiencing difficulties
- Respond to reports of risk of harm so that the safety of children and young people is effectively addressed and appropriate support is provided
- Ensure offenders are appropriately sanctioned

The Government recognises that there are common features that enable consistent procedures to be developed and implemented within a best practice framework. It also recognises that physical abuse, emotional abuse, neglect and child sexual assault will require different and specialised responses.

Principles For Child Protection Intervention

Child abuse is a complex and serious problem that may occur in the lives of children, young people and their families. Often it occurs in environments that are isolated and stressful and affects those who are most vulnerable. Child abuse refers to non-accidental physical injury, neglect, psychological harm or sexual exploitation of children and young people and requires different and specialized response. In its most serious forms abuse can lead to death or long term harm to the physical or emotional well-being of a child or young person.

¹ *NSW Interagency Guidelines for Child Protection Intervention*, 2000 edition, page 1.

The NSW Government recognizes that there are common features that enable consistent procedures to be developed and implemented within a good practice framework and has adopted the following principles to guide agency decisions on child protection and provide a framework for individual agency policies, practices and procedures:

- The safety, welfare and well-being of the child or young person are paramount
- Children and young people must be given the opportunity to participate at a level appropriate to their age and development in decisions which significantly impact on their lives
- Child protection decisions must take account of the culture, disability, language, religion and sexuality of the child or young person, family and carers
- Families must be given an opportunity to participate in decisions which affect the safety, welfare and well-being of a child or young person
- In acting to protect a child or young person, practitioners or agencies should maintain the child's or the young person's relationships and sense of identity and should intervene only as far as is required to secure their safety, welfare and well-being
- Children and young people who are unable to live with their families will be provided with an environment which meets their care, support, education and health needs
- Government agencies will work in partnership with each other, with non-government organisations and with the child or young person and their family to secure and sustain their safety, welfare and well-being
- Government and non-government agencies will follow policies and practices that ensure staff are screened for employment and are properly qualified, trained and supervised.

PART A – PRELIMINARY

1. Purpose of policy

- 1.1 The purpose of this policy is to provide for the protection of persons under supervision or in custody of the department, and in particular:
 - (a) to give guidance and direction to employees of the department on how to protect the safety, welfare and well-being of clients of the department; and,
 - (b) to meet the department's reporting obligations in relation to children and young people who are, or may be, abused, neglected or at risk of harm.
- 1.2 This policy should be read in conjunction with the department's *Code of Conduct*² and related policies for a fuller picture of the ethical and professional standards which this department aspires to.
- 1.3 From 1 July 2001 onwards the present policy replaces the department's earlier client protection policy, known as the policy on the *Provision of a Protective Abuse-Free Environment in the Department of Juvenile Justice*.³
- 1.4 Detailed procedures in relation to this policy can be found in the Operational Procedures Manual for Juvenile Justice Centres.

2. Layout of policy

- 2.1 This policy is influenced by a number of statutory reporting requirements for staff. Note that:
 - (a) reporting requirements differ depending on whether a report concerns
 - (i) an abused, neglected, or at-risk *client*, or
 - (ii) an *employee* who harms or presents a threat of harm to a client of the department;
 - (b) reporting requirements differ depending on the nature of the harm or potential harm;
 - (c) different statutory reporting requirements are for different legal age groups ("child", "young person", etc.).⁴
- 2.2 Principles for client protection are dealt with in Part B. Part C – Internal Reporting and Part D – External Reporting outline the various reporting requirements.
- 2.3 A table shown in sub-paragraph 12.13 of this policy summarises the reporting options, and refers the reader on to the relevant paragraphs of Parts C and D.
- 2.4 Employees are expected to have a good knowledge of Part B, and to be aware of their obligations to report, as explained in Parts C and D.

² Department of Juvenile Justice, *Policy Document No. 5* (January 1998).

³ Department of Juvenile Justice, *Policy Document No. 3* (January 1998).

⁴ See definitions, below.

- 2.5 Standard reporting forms and a reporting flowchart are at the end of this policy.

3. Definitions

- 3.1 The legal context determines the exact definition of some terms used in this policy. In particular, the definition of *child* under the *Children and Young Persons (Care and Protection) Act 1998* (CYP Act) is *a person who is under the age of 16 years. A young person under the CYP Act is a person who is aged 16 years or above but who is under the age of 18 years.* Note that this **differs** from the *Ombudsman Act 1974*, where a *child* is defined as *a person under the age of 18 years.*

- 3.2 In this policy:⁵

abuse⁶ means any intentional action by a person (whether or not an employee of the department) that has resulted in or appears likely to result in:

- (a) the physical injury or sexual abuse⁷ of a child or young person; or
- (b) a child or young person suffering emotional or psychological harm of such a kind that their emotional or intellectual development is, or is likely to be, significantly damaged; or
- (c) the physical development or health of a child or young person being significantly harmed.

abuse allegation⁸ means an allegation of abuse of a child or young person made against a person, or an allegation of misconduct that may involve such abuse.

abuse conviction⁹ means any conviction of a person, in New South Wales or elsewhere, of an offence involving abuse of a child or young person, an 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.

at risk of harm¹⁰ means a *current concern*¹¹ for the safety, welfare or well-being of a child or young person (which in this case may include the sibling or child of the person who is under supervision or in custody of the department) because of the presence of any one or more of the following circumstances:

⁵ The definitions of *abuse*, *at risk of harm*, *child*, *neglect*, and *young person* have been adapted from the *Children and Young Persons (Care and Protection) Act 1998* ("the CYP Act"). The definition of *child* under the CYP Act is a person who is under the age of 16 years.

⁶ Cf. s. 227, CYP Act. This definition of "abuse" is equivalent to, and possibly broader than the definition of the same term in s. 25A of the *Ombudsman Act 1974* (see "Part 3A – Child Protection"), which latter definition is identical to that in s. 33 of the *Commission for Children and Young People Act 1998*.

⁷ Physical or sexual abuse may include an assault, and can exist despite the fact that **consent has been given**.

⁸ As in s. 25A of the *Ombudsman Act 1974*.

⁹ As in s. 25A of the *Ombudsman Act 1974*.

¹⁰ Cf. s. 23, CYP Act.

¹¹ "Current concern" is not defined in the CYP Act. It should be understood in its ordinary meaning, and in contrast with a concern about something that happened in the past but which does not give rise to a concern in the present that harm currently is occurring or is likely to occur in the near future.

- (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;
- (b) the child's or young person's caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care;
- (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated;
- (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;
- (e) a caregiver of the child or young person 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.

For further help the *Interagency Guidelines for Child Protection Intervention* provide a comprehensive reference to what constitutes risk of harm under the CYP Act.

child means a person aged less than 16 years.

client means any person (including any child or young person) who is under supervision or in custody of the department.

department means the New South Wales Department of Juvenile Justice.

direct-contact employment¹² means any employment that involves direct contact of an employee with a child or young person where the contact is not directly supervised.

Director-General, unless otherwise stated, means the Director-General of the department.

DET stands for the Department of Education and Training.

DoCS stands for the Department of Community Services.

employee of the department means a person engaged by the department to work for or provide services to the department or its clients on a permanent, temporary, casual, fee-for-service, or voluntary basis (and includes a mentor).

employment screening¹³ is any or all of the following procedures with respect to a person who is employed or who has applied to be employed in direct-contact employment:

- (a) a check for any relevant criminal record¹⁴ of the person, for any relevant apprehended violence orders¹⁵ made against the person, or for any relevant disciplinary proceedings completed against the person;

¹² Cf. "child-related employment" in s. 33 of the *Commission for Children and Young People Act 1998*.

¹³ See s. 34 of the *Commission for Children and Young People Act 1998*.

¹⁴ As defined in s. 34 of the *Commission for Children and Young People Act 1998*.

¹⁵ As defined in s. 34 of the *Commission for Children and Young People Act 1998*.

- (b) any other relevant probity check relating to the previous employment or other activities of the person;
- (c) an assessment of the risk to children or young persons involved in the direct-contact employment (for which the person is being considered) arising from anything disclosed by such a check, having regard to all the circumstances of the case;
- (d) the disclosure of the results of any such check or risk assessment to any person who determines whether the person is to be employed in that direct-contact employment (or to a person who advises or makes recommendations on the matter).

homelessness A child or young person is homeless if they are living without family assistance in any of the following circumstances:

- (a) No accommodation at all, 'roofless'
- (b) Only temporary or transient accommodation
- (c) Emergency, refuge or crisis accommodation
- (d) Other long term supported accommodation for homeless people such as hostels or transitional accommodation.

A child or young person living in accommodation where they do not have access to basic utilities (power, running water) may also be regarded as **homeless**.

manager means a manager of a Juvenile Justice Centre, or a manager of a Juvenile Justice Community Services office, or a manager of an Intensive Programs Unit, a Local Area Manager for Youth Justice Conferencing or a manager of an administrative section of Central Support Office.

neglect¹⁶ means neglect by a person (whether or not an employee of the department) to provide, without reasonable excuse, adequate and proper food, nursing, clothing, medical aid, or lodging to a client in the person's care.

Ombudsman means the New South Wales Ombudsman.

penalty unit is a fine imposed by a court, usually in multiples of one unit, whose value changes from time to time; currently, one penalty unit represents \$110.00.

prohibited person has the same meaning as in section 5 of the *Child Protection (Prohibited Employment) Act 1998*; in essence it means a person convicted of a "serious sex offence".¹⁷

¹⁶ Cf. s. 228, CYP Act.

¹⁷ Subject to certain qualifications, s. 5 of the *Child Protection (Prohibited Employment) Act 1998*, defines **serious sex offence** as: "(a) an offence involving sexual activity or acts of indecency in New South Wales and that was punishable by penal servitude or imprisonment for 12 months or more, or (b) an offence, involving sexual activity or acts of indecency, that was committed elsewhere and that would have been an offence punishable by penal servitude or imprisonment for 12 months or more if it had been committed in New South Wales, or (c) an offence under sections 91D-91G of the *Crimes Act 1900* (other than if committed by a child prostitute) or a similar offence under a law other than a law of New South Wales, or (d) an offence under section 578B or 578C (2A) of the *Crimes Act 1900* or a similar offence under a law other than a law of New South Wales, or (e) an offence of attempting, or of conspiracy or incitement,

relevant disciplinary proceedings¹⁸ means disciplinary proceedings (in New South Wales or elsewhere) against an employee by the department or by a professional or other body that supervises the professional conduct of the employee, being completed proceedings involving:

- (a) abuse of a child or young person, or sexual misconduct by the employee; or
- (b) acts of violence committed by the employee in the course of employment.

young person means a person aged 16 or 17 years.

to commit an offence referred to in the preceding paragraphs, or (f) any other offence, whether under the law of New South Wales or elsewhere, prescribed by the regulations."

¹⁸ As in s. 33 of the *Commission for Children and Young People Act 1998*.

PART B – PRINCIPLES

4. Client protection principles

4.1 Principles relevant to the work of employees of (in particular) juvenile justice centres are:

- (a) the objects of the *Children (Detention Centres) Act 1987*, especially subsection 4(2)(a), which states: “the welfare and interests of persons on remand or subject to control shall be given paramount consideration”;
- (b) the obligation of each employee “to maintain the physical psychological and emotional well-being of detainees”¹⁹ (a delegation of a duty of the Director-General); and
- (c) the principles embodied in the national standards,²⁰ most of which (directly or indirectly) are concerned with client protection.

4.2 Principles relevant to the work of **all employees** are:²¹

- (a) the department aims to provide an environment that protects the safety, welfare and well-being of clients. Its services and facilities aim to foster the health, developmental needs, spirituality, self-respect, and dignity of its clients;
- (b) employees must provide clients with such protection as is reasonable in the circumstances and necessary for their safety, welfare, and well-being;
- (c) clients are to be given opportunities to express their own views on matters concerning their well-being, and those views are to be given due weight in accordance with each client’s developmental capacity and the circumstances;
- (d) the family or others connected with a client through a familial or other close or intimate bond should, where appropriate, be invited to contribute to plans and decisions affecting the safety, welfare, and well-being of the client;
- (e) in all protective decisions and actions undertaken in accordance with this policy, account must be taken of the culture, disability, language, and religion of each client;
- (f) if a client becomes subjected to abuse or neglect, or is at risk of harm, employees are to respond with such measures as are reasonable in the circumstances and necessary to re-establish or promote the safety, welfare, and well-being of the client;

¹⁹ Subs. 14(a), *Children (Detention Centres) Act 1987*.

²⁰ See Australasian Juvenile Justice Administrators, *Standards for Juvenile Custodial Facilities* (March 1999).

²¹ Based in part on the objects and principles of the CYP Act (ss. 8 and 9). See also *Commission for Children and Young People Act 1998*, s. 10 (“Principles governing work of Commission”); and *Young Offenders Act 1997*, s. 7 (“Principles of scheme”).

- (g) employees have statutory and other responsibilities to report²² their concerns if the safety, welfare, or well-being of clients has been compromised.

5. Legal requirements²³

5.1 This policy has its basis in the following NSW legislation:

- *Children (Detention Centres) Act 1987*;
- *Children (Community Service Orders) Act 1987*;
- *Children and Young Persons (Care and Protection) Act 1998*;
- *Ombudsman Act 1974*;
- *Commission for Children and Young People Act 1998*; and
- *Child Protection (Prohibited Employment) Act 1998*.

5.2 Employees have common-law and statutory duties of care towards clients of the department:

- (a) the general nature of the work of many employees, as well as specific legislative provisions, requires that some responsibilities that would normally rest with a parent, guardian or caregiver fall to staff. Where it is reasonably within their power, employees must look after the safety, welfare, and well-being of clients;
- (b) Failure of an employee to discharge his or her duty of care, or otherwise to act within the law, leaves the employee individually or the department (or both) open to criminal or civil action.

5.3 In addition, there are statutory provisions that create *offences* specific to juvenile justice administration. For example, an employee who is found guilty of:

- (a) using one or more “prohibited punishments”, as described in section 22 of the *Children (Detention Centres) Act 1987*, or
- (b) without lawful authority delivering or attempting to deliver to a detainee any alcohol, drugs or other thing of any kind²⁴, or
- (c) without lawful excuse disclosing any information obtained in connection with his or her employment²⁵;

may incur a fine of 10 penalty units or be imprisoned for a period of up to 12 months or both.

²² See Parts C and D of this policy.

²³ An employee may contact the Legal Unit for more information on the legal liability of employees in matters of client protection, however officers of that unit are not in a position to provide detailed legal advice on the subject.

²⁴ S. 37B of the *Children (Detention Centres) Act 1987*.

²⁵ S. 37D of the *Children (Detention Centres) Act 1987*, and, ss. 65 and 66 of the *Young Offenders Act 1997*. Also note that the *Privacy and Personal Information Protection Act 1998* has harsh penalties (up to a maximum of 100 penalty units and two years in prison) that may be given to employees, or former employees, who deliberately disclose, or offer to give out, personal information outside of their lawful powers.

- 5.4 If disciplinary action is to be taken under the *Public Sector Management Act 1988* against an employee found guilty of failing to discharge his or her duty of care or any other statutory breach, the process to be taken will follow the *Public Sector Management Act*, its Regulations and associated guidelines.

6. Concerns for a client's safety, welfare or well-being

- 6.1 Refer to paragraph 3 of this policy for detailed definitions of "abuse", "neglect", and "at risk of harm".
- 6.2 Additional to concerns about clients, employees may have concerns about other children or young people who may have current contact with the alleged abuser. Staff also have the obligation to report a current concern that a young sibling or child of the client is at risk of harm.
- 6.3 A client is considered to be at risk of harm if a they have been placed *at real risk of suffering harm* from a breach of their safety, welfare, or well-being, even though actual harm is yet to result.
- 6.4 Some indicators of abuse or neglect describe harm inflicted in the distant past. An employee can act on a client's disclosure that, for example, he or she was sexually abused in the distant past, if this raises a current concern for the safety, welfare or well-being of the child or young person.
- 6.5 This policy provides the framework principally for response to actual harm or prevention of imminent harm in the present. Note that the definition of "at risk of harm", for example, limits the application of the concept to situations where there is "current concern".
- 6.6 "Current concern" means that *at the time of making a report* employees are worried about the safety, welfare or well-being of the child or young person.
- 6.7 Staff should obtain a copy of the *Interagency Guidelines for Child Protection 2000*²⁶ if they require further detail on identifying abuse or neglect.

7. Indicators of physical abuse

- 7.1 Physical abuse refers to 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, or severe beating or shaking.
- 7.2 Physical assault occurs regardless of the adult's intention to harm and regardless of the child or young person's consent. Assault can include pushing, shoving, throwing objects, spitting, hitting, smacking, and threatening behaviour (either verbal or action).
- 7.3 Actual physical harm does not have to occur in order for an assault to have occurred. 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

²⁶ *New South Wales Interagency Guidelines for Child Protection Intervention*, 2000 edition, issued by the NSW Commission for Children and Young People, pages 74-75.

if the circumstances indicate that the act may have been a reasonably foreseeable consequence of their action.²⁷

- 7.4 Indicators of *physical abuse* in parents or caregivers include:
- (a) direct admission that they have injured or fear that they may injure the child;
 - (b) family history of violence, including previous harm to children;
 - (c) history of their own mistreatment as a child;
 - (d) repeated presentations of the child to health or other services with injuries, ingestions or with minor complaints.
- 7.5 Indicators of *physical abuse* in children or young people include:
- (a) bruising; burns and scalds;
 - (b) dislocations and sprains;
 - (c) lacerations and welts from excessive restraint;
 - (d) explanation offered by the client is not consistent with the injury;
 - (e) ruptured internal organs without a history of major trauma;
 - (f) drowsiness, vomiting, fits, or retinal haemorrhages, suggesting head injury;
 - (g) signs of genital mutilation.
- 7.6 In the context of a juvenile justice centre, abuse includes the use of excessive or illegal force, such as corporal punishment and improper use of instruments of restraint or equipment intended for defence (such as shields).
- 7.7 Abuse is likely to result from an employee's misuse of his or her powers to segregate, punish, or search a detainee; or from improper administration of medication or drugs to a client.
- 7.8 Types of employee "misconduct that may involve child abuse" have been reported to the NSW Ombudsman from a number of government agencies. Misconduct means misbehaviour or wrongdoing. The guidelines²⁸ identify the following as this type of misconduct:
- (a) breach of boundaries or code of conduct
 - (b) inappropriate use of power relationship
 - (c) targeting children for specialised treatment
 - (d) exposing children to pornography
 - (e) inappropriate touching (not sexual)
 - (f) inappropriate language
 - (g) an inappropriate relationship (not sexual) between an adult and a child that breaches community standards

²⁷ NSW Ombudsman, *Child Protection: Responding to Allegations of Child Abuse Against Employees*, March 2001, pages 34-35.

²⁸ NSW Ombudsman, *Child Protection: Responding to Allegations of Child Abuse Against Employees*, March 2001, pages 37-38.

- (h) watching children undress, e.g., in change rooms or toilets
- (i) purchasing expensive gifts for a targeted child
- (j) providing alcohol or drugs to children
- (k) taking children to own home in breach of agency guidelines

8. Indicators of neglect

8.1 Indicators of *neglect* in parents or caregivers include:

- (a) failure to provide adequate food, shelter, clothing medical attention, hygienic home conditions, or leaving child or young person inappropriately without supervision;
- (b) inability to respond emotionally to a child or young person;
- (c) abandoning a child or young person;
- (d) failure to provide psychological nurturing.

8.2 Indicators of *neglect* in children or young people include:

- (a) poor standards of hygiene leading to social isolation;
- (b) extended stays at school, public places, others' homes;
- (c) extreme longing for adult affection;
- (d) a flat and superficial way of relating;
- (e) anxiety about being dropped or abandoned;
- (f) untreated physical problems;
- (g) delay in developmental milestones.

8.3 In the context of the department's services generally, neglect may occur if an employee fails to appropriately supervise a client, or fails to provide or arrange for medical treatment or educational programs.

9. Indicators of emotional abuse

9.1 Indicators of *emotional abuse* in parents or caregivers include:

- (a) Persistent scape-goating, rejection, humiliation, or ridicule;
- (b) making excessive or unreasonable demands of a child (for example, demands over and above the capacity of a child's assessed developmental level);
- (c) persistent hostility and severe verbal abuse;
- (d) belief that a child or young person is bad or "evil";
- (e) using inappropriate physical or social isolation as punishment;
- (f) exposure to domestic violence.

9.2 Indicators of *emotional abuse* in children or young people include:

- (a) feelings of worthlessness;

- (b) inability to value others;
 - (c) lack of trust in people and expectations;
 - (d) extreme attention-seeking behaviour;
 - (e) behavioural disorders, such as disruptiveness, aggressiveness or bullying.
- 9.3 In the context of the department's operations, emotional abuse includes:
- (a) pressure by an employee on a client for the purpose of effecting the withdrawal or suppression of an allegation of abuse or neglect against that employee or against another person;
 - (b) misusing a centre's incentive scheme to effect punishment, or
 - (c) cultural vilification or other slander of a client or his or her family and friends;
 - (d) persistent derogatory comments about the client's personal appearance;
 - (e) making inappropriate comments about the child's morals;
 - (f) making inappropriate comments about the child's offence history.

10. Indicators of sexual abuse

- 10.1 Indicators of *sexual abuse* in parents, caregivers, siblings, relatives, acquaintances or strangers include:
- (a) exposing a child to prostitution or child pornography or using a child for pornographic purposes;
 - (b) intentional exposure of a child to the sexual behaviour of others;
 - (c) ever having committed or been suspected of child abuse;
 - (d) inappropriate curtailing or jealousy regarding age-appropriate development of independence from the family;
 - (e) coercing child to engage in sexual behaviour with other children;
 - (f) verbal threats of sexual abuse;
 - (g) denial of an adolescent's pregnancy by family;
 - (h) perpetration of spouse abuse or child physical abuse.
- 10.2 Indicators of *sexual abuse* in children or young people include:
- (a) self-destructive behaviour;
 - (b) drug dependency;
 - (c) suicide attempts;
 - (d) self-mutilation;
 - (e) persistent running away from home;
 - (f) unexplained accumulation of money or gifts;
 - (g) anorexia or bulimia;

- (h) bleeding from genitalia or anus;
 - (i) sexually-transmitted diseases;
 - (j) adolescent pregnancy.
- 10.3 Sexual assault includes any sexual act or sexual threat imposed on a child or young person. Adults, adolescents or older children who sexually assault children or young people exploit their dependency and immaturity. Coercion, which may be physical or psychological, is intrinsic to child sexual assault and differentiates it from consensual sex with a peer.
- 10.4 Careful consideration is necessary because although a child or young person may perceive sexual activity as consensual because of the way the other person involved has promoted it, the situation may be one of sexual abuse and exploitation. The apparent consent of a child or young person may not mean that abuse did not occur.
- 10.5 Sexual relations between an employee and a client or ex-client are strictly forbidden, even if the client or ex-client consents to or invites such a relationship. All employees should be aware that an employee-client sexual relationship, even if it does not lead to a police charge, and even if it does not result in abuse within the meaning of this policy, will almost certainly lead to the dismissal of the employee involved.

11. How to promote the safety, welfare and well-being of clients

- 11.1 An employee will contribute to the minimisation of the risk and seriousness of incidents of client abuse or neglect in the department by the following:
- (a) Requesting and attending training in all departmental policies, and in particular client protection;
 - (b) Understanding and following the department's client policies and procedures and related legislation. Staff should have easy access to all policy and procedures documents and should never depart from officially approved procedures unless it would be unreasonable or contrary to policy not to;
 - (c) Ensuring that clients are aware of their rights – statements of such rights may be found, for example, in the *Children (Criminal Proceedings) Act 1987*, the *Children (Detention Centres) Act 1987* and its Regulation, the national standards for juvenile detention centres²⁹, and the orientation handbooks for detainees;
 - (d) Supporting the work of the various agencies or programs to which the department is accountable, such as the Ombudsman and the Official Visitors;
 - (e) Ensuring that clients' individual needs are formally assessed and periodically updated. Staff responsible for case planning should ensure that each client has a realistic case plan³⁰ developed,

²⁹ See Australasian Juvenile Justice Administrators, *Standards for Juvenile Custodial Facilities* (March 1999).

³⁰ See the department's *Case Management Policy* (January 1998).

- implemented, and kept up to date through a consultative process that includes the client, and each client should be placed in suitable programs and accommodation;
- (f) Not allowing an unprofessional culture to develop at the workplace. Staff should raise concerns with their supervisor or more senior officer if they think a situation may warrant a Protected Disclosure,³¹ or a direct approach to the Ombudsman or the Independent Commission Against Corruption;
 - (g) In the presence of clients or colleagues, avoiding swearing and language that is considered inappropriate or unprofessional in the Public Service.
- 11.2 A manager will contribute to the minimisation of the risk and seriousness of incidents of client abuse or neglect in the departmental unit for which he or she is responsible by ensuring the continuous and thorough implementation of this policy.

12. How to respond to concerns for a client's safety, welfare or well-being

- 12.1 This paragraph outlines general principles rather than procedures to be followed in every situation. Details of procedures are available in the Operational Procedures Manual for Juvenile Justice Centres.
- 12.2 An employee may become aware that a client has suffered abuse or neglect in one of a number of ways: he or she may witness an incident directly; or conclude from various signs that abuse has occurred; or hear about an alleged incident from a client or from another person, etc.
- 12.3 How an employee responds will depend in part on how the employee has come to learn about the matter: for instance, the first priority of an employee who witnesses an assault on a client is likely to differ from the reaction of an employee who hears about a recent assault from a client.
- 12.4 A client who has suffered abuse or neglect may for a number of reasons (including fear) be reluctant to take any action against the alleged perpetrator. At the same time, the department's policy is to provide for its clients an environment free from abuse and neglect. An employee should, therefore, always offer encouragement to a client who has suffered or claims to have suffered abuse or neglect to inform the proper authority, in most cases the police.
- 12.5 A person bringing an allegation of child abuse is more likely to describe a situation or pass on information they received rather than state, "this is an allegation". They may even call the matter a complaint. Sometimes they may not even realise they are describing an allegation of child abuse³².
- 12.6 An employee who believes that he or she is the subject of an allegation of abuse or neglect of a client must not seek to discuss the matter with the person making the allegation. Instead, he or she must immediately report

³¹ See the department's *Internal Reporting Policy* (November 1997).

³² NSW Ombudsman, *Child Protection: Responding to Allegations of Child Abuse Against Employees*, March 2001, page 40.

- his or her belief to his or her supervisor and fully cooperate with any investigation that might ensue.³³
- 12.7 An employee who has gained information about an incident or allegation of abuse, neglect, or risk of harm, whether as a witness to the incident or by way of disclosure or by other means, must keep the information confidential. Action for breach of discipline may be taken by the department against an employee who fails to treat information of this kind confidentially.³⁴
- 12.8 While employees must sensitively encourage clients to make disclosures and follow through with their abuse/neglect allegations, employees are also required by law to make a report to external organisations in certain circumstances (see Part D), whether or not a client consents to the reports being made. Therefore an employee must not promise a client to keep his or her abuse/neglect allegation secret.
- 12.9 Where a client's safety or well-being has been compromised as a result of an assault, threatened assault, or some other injurious act or omission:
- (a) an employee must, wherever possible and whilst safeguarding their own safety, act immediately to secure the client's safety, or restore his or her well-being;
 - (b) where the perpetrator or suspected perpetrator of the harm is present, the employee must separate him or her from the client who is at risk of harm, or who has been subjected to abuse, as a matter of priority. This may, depending on circumstances, involve seeking assistance from other employees or the police; and
 - (c) the employee should complete any relevant form, such as forms 1 to 4 in Appendix B.
 - (d) If the alleged perpetrator is an employee, the local manager is to obtain advice from the Legal Unit regarding action to be taken to separate the employee from the client who is the subject of the allegation. Depending on circumstances, the employee could be relocated to another unit or centre, or directed to remain at home on pay.
- 12.10 An employee must encourage and assist a client who is at risk of harm or has suffered or claims to have suffered abuse or neglect to:
- (a) contact an appropriate person (who should be of the client's choosing) to *support* the client to deal with the situation or incident, particularly if the client has an intellectual disability or experiences difficulties in communication;
 - (b) be examined by a *health-care professional* (if the incident occurs in a juvenile justice centre, the centre nurse) in the case of apparent or suspected physical injury (photographs should be taken, with the client's approval, of any physical injuries);

³³ See also paragraph 21 of this policy.

³⁴ See s. 74 of the *Public Sector Management Act 1988*.

- (c) see a *counsellor* (the counsellor may be an employee of the department or of another agency) for the purpose of addressing any psycho-social effects of the harm experienced.
- 12.11 An employee to whom a disclosure is made must ask the client for (and record) the names of employees, clients, or other persons who may have witnessed the alleged incident; but the employee is not to take statements from witnesses, as this will be done by the person assigned to investigate the allegation.
- 12.12 An employee should not attempt to investigate an assault or allegation of assault causing physical injury or sexual abuse by questioning the client or other people, as this may prejudice the evidence in any subsequent criminal proceedings.

12.13 Reporting:

Reporting is **MANDATORY** unless stated otherwise
Your Regional Director must be kept informed of all matters

Matter:	Go to paragraph:	Report to:	Reporting form to use
Abuse, neglect, risk of harm	13	Regional Director via manager	Form 1 (Incident advice)
An assault on a child or young person (physical injury or sexual abuse)	19	Police via manager	Form 1 (Incident advice) or Form 2 (alleged assault of young person in police custody)
Allegation of assault by a police officer	18	Police Internal Affairs via manager	Form 2
A <u>child</u> at risk of harm	16	DoCS Helpline via manager	Form 3
A <u>young person</u> at risk of harm	17	DoCS Helpline via manager (not mandatory) ³⁵	Form 3
An abuse allegation or conviction against an employee	21	Ombudsman via manager <i>and</i> Director-General	Form 4 (NSW Ombudsman Child Protection Notification)
A prohibited person	14	Director-General via manager	No form
A child or young person who is homeless ³⁶	15	DoCS Helpline via manager (not mandatory)	No form
A relevant disciplinary proceeding	22	Commissioner C&YP via Director-General.	No form

³⁵ DoCS has indicated that, where the employee has reasonable grounds to suspect that a young person is at risk of harm, a report should be made even though reporting is not mandatory. The expressed wishes of the young person should be considered in determining how to investigate / assess the report (section 31 of the CYP Act). DJJ staff should seek the young person's opinion on the making of a report to DoCS and that information should be passed on to DoCS in the report.

³⁶ If a child is homeless AND at risk of harm, refer to paragraph 16 – mandatory reporting.

- 12.14 Note that a single matter may give rise to more than one reporting obligation. For example, if an employee assaults a child causing physical injury, reports according to paragraphs 19 (Form 1) and 21 (Form 4) must be made.
- 12.15 Action³⁷ may be taken by the department against an employee who, without reasonable excuse, fails to make an internal report or external report as required according to this policy.
- 12.16 Depending on the age of the child or young person at risk of harm or subjected to abuse or neglect and the nature of the incident or harm alleged, one or more agencies may become involved in investigations relating to the matter. As a rule:
- (a) the police will investigate (or decline to investigate) physical or sexual assault or abuse;
 - (b) the Ombudsman may decide to investigate an "abuse allegation" (even if it has been investigated by the police, DoCS or the Department of Juvenile Justice);
 - (c) DoCS may investigate a risk-of-harm allegation;
 - (d) a manager or other senior officer of the department may assign an employee to investigate an allegation in the circumstances mentioned in sub-paragraph 12.17 (below) or in any other circumstances that suggest misconduct or breach of discipline by an employee;
 - (e) with the approval of the Director-General, the Legal Unit may direct or undertake fact-finding inquiries, or undertake preliminary inquiries, in accordance with the *Public Sector Management Act 1988*. In cases where the allegations refer to a DET employee, that department's Child Protection Investigation Unit may also become involved in the inquiries.
- 12.17 If:
- (a) the police or another agency mentioned in Part D of this policy declines to investigate a notification of abuse, neglect, or risk of harm; and,
 - (b) the incident was caused by the actions or alleged actions of one or more employees;
- the manager or more senior officer of the departmental unit responsible for the supervision or custody of the client may decide to commence an internal investigation.³⁸
- 12.18 A client, who in the course of investigation of an allegation of abuse, neglect, or risk of harm made by that client, complains of mistreatment by an investigating employee, police officer, or other member of the Public Service, should be encouraged to contact the Ombudsman to lodge a

³⁷ See s. 74 of the *Public Sector Management Act 1988*.

³⁸ See Director-General's Instruction 169/97: *Procedures for Dealing with Allegations of Misconduct/Breaches of Discipline in the Department of Juvenile Justice*.

complaint if they are not satisfied with internal attempts to resolve the complaint.

12.19 Employees will be afforded procedural fairness in the event of an allegation being made against them. This means that:

- (a) before completing an investigation of an allegation of child abuse against an employee, the employee will be informed of the substance of any allegation against them and provided with a reasonable opportunity to put their case forward; and
- (b) if an adverse finding is made, the employee will be allowed to add a dissenting statement.

12.20 When conducting investigations into allegations against employees the department will:

- (a) act fairly and without bias
- (b) conduct all investigations without undue delay
- (c) ensure that the case is not investigated or determined by someone with a conflict of interest
- (d) ensure the outcome is supported by evidence
- (e) keep information obtained during investigations confidential.

Employees have a right to complain to the Legal Unit or the Director Operations if they are unhappy with the conduct of an internal investigation of an allegation against them.

Employees may also complain to the Ombudsman if, after complaining to the Legal Unit or the Director Operations, they are still unhappy with the outcome of investigations against them.

PART C – INTERNAL REPORTING

13. Mandatory³⁹ reporting of abuse, neglect, or risk of harm

- 13.1 In the case of an incident or allegation of abuse, neglect, or risk of harm, the manager of the unit in which the matter arose must:
- (a) as soon as practicable and within twenty-four hours, notify the Regional Director of the incident or allegation, verbally in the first instance, then in writing, using an incident advice form;⁴⁰
 - (b) within forty-eight hours of the incident or allegation, provide the Regional Director with a comprehensive report on the matter, including supporting documentation, such as photographs.
- 13.2 It is generally necessary for the manager to inform the subject's parents or guardian (or, in their absence, another relative or person with a close bond to the client who is the subject of alleged abuse) of the incident or allegation, although not if the proposed person is also the alleged perpetrator.
- 13.3 If the alleged perpetrator is another client, that client's parents or guardian (or, in their absence, another relative or person with a close bond to that client) should be informed of the incident or allegation.
- 13.4 A report in accordance with sub-paragraphs 13.2 or 13.3 need not be made if the client is aged 16 years or over and objects to the making of the proposed report. Note, however, that caution should be exercised. If there is any doubt, a report should be made. The young person's opinion should be sought and included in any report made.
- 13.5 If the incident is alleged to have occurred in a juvenile justice centre and the alleged perpetrator is an employee of DET based at a juvenile justice centre, the manager must notify the centre's school principal of the incident or allegation, or, if the school principal is the subject of the allegation, the Director of the Child Protection Investigation Unit of DET should be notified. The Director of the Child Protection Investigation Unit of DET will follow DET procedures to notify the local Community Services Centre.

14. Mandatory⁴¹ reporting to Director-General: prohibited person⁴²

- 14.1 The provisions of the *Child Protection (Prohibited Employment) Act 1998* make it an offence for a "prohibited person" to remain in⁴³ child-related employment (maximum penalty: 100 penalty units or imprisonment for 12 months, or both).⁴⁴

³⁹ Under s. 74 of the *Public Sector Management Act 1988*, action can be taken by the department against an employee who, without reasonable excuse, fails to make a report as required by this policy.

⁴⁰ See Appendix A, Form 1.

⁴¹ Under s. 74 of the *Public Sector Management Act 1988*, action can be taken by the department against an employee who, without reasonable excuse, fails to make a report as required by this policy.

⁴² See also "Mandatory reporting to Ombudsman: abuse conviction", below.

⁴³ Also to "apply for", or "undertake".

⁴⁴ See s. 6 of the *Child Protection (Prohibited Employment) Act 1998*.

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- 14.2 An employee who believes that he or she is or might be a prohibited person must inform the Director-General immediately.
- 14.3 An employee who believes that another employee is a prohibited person must inform the manager or more senior officer of the departmental unit to which the employee is presently attached, who must in turn convey this information to the Director-General.
- 14.4 Upon becoming aware that an employee is or may be a prohibited person, the Director-General will seek the advice of the manager of the Legal Unit.⁴⁵ The Legal Unit will arrange for notification to the Children's Commission.

⁴⁵ See also "Mandatory employment screening: direct contact employment", at paragraph 24 below.

PART D – EXTERNAL REPORTING

15 Reporting homelessness to the Department of Community Services

- 15.1 Any person *may* report the homelessness of a child⁴⁶ or young person⁴⁷ (with the young person's consent) to the DoCS Helpline.
- 15.2 An employee who wishes to report that a child or young person is homeless should report the matter to their manager or senior officer.
- 15.3 A manager or more senior officer who makes a report about child or young person who is homeless must keep a record both of the report and of the DoCS call reference number in a secure location.
- 15.4 Reporting of homelessness only of a child or young person is not mandatory, whereas the reporting of a child who is homeless **and** at risk of harm is **mandatory**.

16. Mandatory reporting to DoCS: child who is at risk of harm⁴⁸

- 16.1 If:
 - (a) an employee has reasonable grounds to suspect that a child is at risk of harm; and
 - (b) that suspicion arises in the course of the employee's work for the department;

The employee must, as soon as practicable, record details on Form 3 and report the matter to their manager or more senior officer⁴⁹.

- 16.2 Upon receipt of a report in accordance with sub-paragraph 16.1 (above), the manager or more senior officer must, as soon as practicable, convey the information by phone to the DoCS Helpline.
- 16.3 A manager or more senior officer of the department who forms a suspicion in accordance with sub-paragraph 16.1 must, as soon as practicable, record the details on Form 3 and convey the information by phone to the DoCS Helpline.
- 16.4 A manager or more senior officer who makes a report in accordance with sub-paragraphs 16.2 and 16.3 must keep a record of the report and of the notification details in a secure location.
- 16.5 Failure, without reasonable excuse, of an employee to act in accordance with the provisions of paragraph 16 of this policy may result in prosecution for an offence that carries a maximum penalty of 200 penalty units.⁵⁰

⁴⁶ See section 120 of the CYP Act.

⁴⁷ See section 121 of the CYP Act.

⁴⁸ This section applies to "children" only: s. 27, CYP Act.

⁴⁹ See Appendix A, Form 3.

⁵⁰ S. 27, CYP Act.

17. Reporting to DoCS: young person at risk of harm⁵¹

17.1 If:

- (a) an employee of the department has reasonable grounds to suspect that a young person is at risk of harm; and
- (b) that suspicion arises in the course of the employee's work for the department;

the employee should record the details on Form 3 and report the matter to their manager or more senior officer. As soon as practicable, the manager or more senior officer should report the name of the young person, and the grounds for suspecting that the young person is at risk of harm, to the DoCS Helpline⁵².

17.2 If possible, the employee should seek the young person's opinion on the making of a report to DoCS and that information should be passed on to DoCS in the report.

17.3 A manager or more senior officer of the department who forms a suspicion in accordance with sub-paragraph 17.1 should, as soon as practicable, convey the information to the DoCS Helpline.

17.4 A manager or more senior officer who makes a report in accordance with sub-paragraphs 17.1 or 17.3 must keep a record both of the report and of the notification details in a secure location.

18. Mandatory⁵³ reporting to police: allegations of assault by police officers

18.1 All allegations of assault of clients by police, either prior to or during departmental involvement, must be reported promptly to the Commander (Internal Affairs) in the Police Service by the manager responsible for the client's care when the allegation is made.

18.2 The reports are to be made in writing⁵⁴ and are to be made by the manager on the client's behalf.

18.3 The manager should report serious complaints about police treatment of a client to the Ombudsman.

18.4 Relevant staff should provide the client with help, advice and support sufficient to enable them to prepare, write and lodge their complaint to the Ombudsman. Staff must also assist the client in accessing legal advice where necessary.

⁵¹ See s. 24, CYP Act.

⁵² It is a matter for DoCS to determine how to investigate or assess the report, and DoCS has indicated that all reports should be conveyed to the Helpline even though reporting is not mandatory.

⁵³ Under s. 74 of the Public Sector Management Act, action can be taken by the department against an employee who, without reasonable excuse, fails to make a report as required by this policy.

⁵⁴ See Appendix A, Form 2.

19. Mandatory reporting to police: assault⁵⁵ amounting to physical injury or sexual abuse

- 19.1 Any incident or allegation of assault of a client causing physical injury or of sexual abuse of a client must be reported to the police by the manager of the unit in which the matter arose.
- 19.2 The report should be made verbally and may be accompanied by the incident advice form.⁵⁶
- 19.3 The manager must keep a record of the report details in a secure location.

20 Vexatious complaints

- 20.1 Where a complaint or report, made in accordance with this policy, is deemed to be frivolous, vexatious or founded on improper motives, the matter is to be referred to the Manager, Legal Unit.
- 20.2 Upon receipt of such a referral, the Manager, Legal Unit, will assess all available information and make a determination as to the appropriateness of any further action. This may include disciplinary action, referral to an external agency (NSW Police Service, ICAC or Ombudsman), or counselling of the person or persons involved.
- 20.3 Under the *Protected Disclosures Act 1994*, protection is not available for disclosures which are frivolous or vexatious.

21 Mandatory⁵⁷ reporting to Ombudsman⁵⁸: abuse allegation or abuse conviction against an employee

- 21.1 As a result of the *Ombudsman Amendment (Child Protection and Community Services) Act 1998*, the NSW Ombudsman is responsible for the monitoring and handling of child abuse allegations and convictions against employees of government and certain non-government agencies. The Ombudsman will determine whether an investigation into a child abuse allegation or conviction against an employee was properly conducted, and whether appropriate action was taken as a result of the investigation.
- 21.2 The Ombudsman has a different reporting threshold to DoCS. Reports to DoCS need to be made at a point at which there are "reasonable grounds to suspect" that a child or young person has been, or is at risk of harm. However, the Ombudsman must be notified of any allegation against a person employed or engaged by the department whether or not you believe that the abuse has taken place.

⁵⁵ Examples of assault from the *Crimes Act 1900*, are s. 59: Assault occasioning actual bodily harm; s. 61A Sexual assault; s. 61B Sexual assault with intent to have sexual intercourse; s. 61L Indecent assault; s. 61M Aggravated indecent assault; s. 61N Act of indecency, s. 61O Aggravated act of indecency.

⁵⁶ See Appendix A, Form 1.

⁵⁷ Under s. 74 of the *Public Sector Management Act 1988*, action can be taken by the department against an employee who, without reasonable excuse, fails to make a report as required by this policy.

⁵⁸ See s. 25C of the *Ombudsman Act 1974*.

- 21.3 Under the *Ombudsman Act 1974*, the definition of employee⁵⁹ is as follows:
- (a) anyone employed by an agency who receives a group certificate for taxation purposes, whether or not their position requires them to work with children;
 - (b) anyone engaged by the agency to provide services to children, including:
 - contractors and subcontractors
 - volunteers
 - work experience participants, and
 - student placements, e.g., TAFE or tertiary students.

Under the *Ombudsman Act 1974*, it is not only those people in child-related employment who are covered by the Act. **Anyone** employed or engaged by the agency is covered by the reporting requirements of the *Ombudsman Act 1974*.

- 21.4 For an allegation to be notified to the Ombudsman, the following components are necessary:
- (a) The person who is subject of the allegation must be a current employee, as defined in sub-paragraph 21.3, at the time the allegation was made and must be identifiable; and
 - (b) The allegation must refer to a description of behaviour that may constitute child abuse; and
 - (c) The client who is the subject of the alleged abuse was under 18 years of age at the time of the alleged offence or behaviour.
- 21.5 The Department of Juvenile Justice is a “designated agency” under the *Ombudsman Act 1974*. This means that the department must notify the Ombudsman of any allegation or conviction of child abuse against an employee regardless of **where** the alleged abuse occurred, i.e., either in the course of their employment or outside working hours.⁶⁰
- 21.6 Duties of *employees*:
- (a) an employee who becomes aware of an “abuse allegation” or “abuse conviction” against another employee must, as soon as practicable, report the allegation to the manager or more senior officer of the departmental unit to which the employee is presently attached;
 - (b) upon becoming aware of an abuse allegation or abuse conviction against an employee, a manager or more senior officer must, as soon as practicable, convey the information to the Director-General through the Manager, Professional Conduct using Form 4.⁶¹

⁵⁹ This definition is different to, and broader than, the definition under the *Child Protection (Prohibited Employment) Act 1998*.

⁶⁰ NSW Ombudsman, *Child Protection: Responding to Allegations of Child Abuse Against Employees*, March 2001, page 24.

⁶¹ See Appendix A, Form 4.

21.7 Duties of *Director-General*:

- (a) the Director-General must notify the Ombudsman of any abuse allegation or abuse conviction against an employee of which the Director-General becomes aware;
- (b) the Director-General must make this notification even if the department does not propose to take any action against the employee, and must supply the reasons why it intends or does not intend to take any action;
- (c) the notification must be made as soon as practicable, but in any event within 30 days of the Director-General becoming aware of the abuse allegation; and
- (d) the Director General must retain records of information that are required for notification under this paragraph.

21.8 An employee against whom the report is made is entitled to make written submissions to the Director General concerning the allegation or conviction.

22. Mandatory reporting to Commissioner for Children and Young People: disciplinary proceedings⁶²

- 22.1 The Director-General must notify the Commissioner for Children and Young People of the name and other identifying particulars of any employee against whom "relevant disciplinary proceedings" have been completed (irrespective of the finding in those proceedings).
- 22.2 The Director-General must retain records of information that is required for notification under paragraph 22.

23. Limited liability of employees who make reports

- 23.1 If, in accordance with paragraph 16 or 17 of this policy ("reporting to DoCS"), an employee in good faith makes a report or notification in relation to a child or young person at risk of harm, the employee is protected from negative legal consequences by operation of section 29 of the *Children and Young Persons (Care and Protection) Act 1998*.⁶³
- 23.2 Similarly, if such a report or notification is made according to paragraph 21 of this policy ("reporting to Ombudsman"), an employee is not liable for defamation or other civil liability incurred because of the disclosure.⁶⁴
- 23.3 An employee requiring further information or advice on the limited liability of employees referred to in sub-paragraphs 23.1 or 23.2 should contact a union representative or a solicitor.⁶⁵

⁶² See s. 39 of the *Commission for Children and Young People Act 1998*.

⁶³ S. 29 states, in part: "...If, in relation to a child or young person, a person makes a report in good faith ...

(a) the making of the report does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and

(b) no liability for defamation is incurred because of the report, and

(c) the making of the report does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy, and

(d) the report, or evidence of its contents, is not admissible in any proceedings as evidence against the person who made the report or any other person..."

⁶⁴ See s. 25H of the *Ombudsman Act 1974*.

⁶⁵ An employee may also contact the Legal Unit for information, however officers of that unit are not in a position to offer detailed advice on the subject.

PART E – MISCELLANEOUS

24. Mandatory employment screening: direct-contact employment⁶⁶

- 24.1 This paragraph applies to any decision by an employee or panel of employees to employ (on behalf of the department) a person in “direct-contact employment”.
- 24.2 The employee or panel must carry out, or arrange for the carrying out of all the relevant procedures of “employment screening” of the preferred applicant before recommending or finalising the appointment of the preferred applicant to direct-contact employment. Panels should contact Human Resources Branch to arrange for employment screening on the preferred applicant for the position within the department.
- 24.3 Some or all of the procedures of employment screening may be deferred in a particular case if the employee or panel recommending or finalising the appointment can establish that it was not reasonably practicable to carry out those procedures in the circumstances. In that case, those procedures are to be carried out as soon as reasonably practicable after the person is employed.
- 24.4 The Director-General must notify the Commissioner for Children and Young People of the name and other identifying particulars of any person whose application for direct-contact employment with the department was rejected primarily because of a risk assessment in employment screening.⁶⁷ Such notifications should be referred to Legal Branch.

25. Implementing this policy

- 25.1 Managers will be responsible for ensuring that
- (a) all their staff members are issued with a copy of the Client Protection Policy;
 - (b) all their staff members receive a policy briefing and/or a self-paced policy learning kit; and
 - (c) all their staff sign the form acknowledging their responsibilities under the policy and that form is placed on their P file.
- 25.2 Managers will be responsible for briefing their team members on the Client Protection Policy. This briefing may be by way of group briefing session or by way of completion of self-paced policy learning kits. Prior to the briefing session, all staff must have previously read the policy and signed the attached form stating that they have read and understood the policy.
- 25.3 All staff must read and understand this policy. Staff with client contact must have a detailed understanding of this policy. Staff without client contact must have an understanding of the principles and purpose of the policy.

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⁶⁶ See s. 37 of the *Commission for Children and Young People Act 1998*.

⁶⁷ See s. 40 of the *Commission for Children and Young People Act 1998*.

- 25.4 Regional Directors will be required to report to the Director General on progress with distribution of the policy and signing of acknowledgement forms.
26. **Monitoring and evaluating the Client Protection Policy**⁶⁸
- 26.1 The Department of Juvenile Justice is one of the government agencies that have a role in the Interagency Guidelines for Child Protection. These agencies are committed to developing and maintaining a monitoring and evaluation system to ensure that key policy objectives of the *Children and Young Persons (Care and Protection) Act 1998* are met and sustained.
- 26.2 When making risk of harm, homelessness, or other reports to the DoCS Helpline, DJJ staff are required to keep a record of reports made⁶⁹ and issues regarding feedback that DoCS is required to give.
- 26.3 To facilitate the monitoring of the policy, DJJ staff members are required to keep the following records:
- (a) All requests to DoCS for services;
 - (b) Outcome of the requests for services from DoCS;
 - (c) Outcomes of requests for non-government agencies' services;
 - (e) The effectiveness of exchange of information between DJJ and DoCS.

⁶⁸ Section 265 of the *CYP Act* requires that a review of the Act is to be undertaken as soon as possible after the period of 5 years from the date of assent to the Act. The review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

⁶⁹ Form 3

APPENDIX A

Acknowledgement Of responsibilities under the Department of Juvenile Justice Client Protection Policy

I, **Out of Scope**, hereby acknowledge that I have read the departmental policy "Client Protection Policy". I also acknowledge that I have been encouraged and given the opportunity to put questions about any aspect of the policy to the officer of the department whose signature below attests that he/she has witnessed my signing of this acknowledgement.

I therefore understand my responsibilities under this policy are that:

- I. I have a duty of care to all juvenile clients of the department and that I must exercise that duty of care in respect of any client with whom I have contact, or about who I obtain information in the course of my employment;
- II. I must act to protect juvenile clients from any form of physical, sexual or emotional abuse or neglect by:
 - a) Providing information to juvenile clients about their rights to protection from abuse and neglect, which includes informing them of departmental staff who are in a position to take action for their protection;
 - b) Reporting to an appropriate senior officer (as determined by departmental or local unit policy) all allegations or incidents of abuse or neglect of juvenile clients, irrespective of the date on which the abuse or neglect is alleged to have occurred or the present age of the juvenile client who suffered the alleged abuse or neglect;
 - c) Reporting to the manager of the unit in which I am employed any information that I may receive in the course of my duties regarding the alleged abuse or neglect of any child or young person (other than a departmental client).
- III. I acknowledge that I am a "mandatory reporter" of child abuse.
- IV. I acknowledge that I am a mandatory reporter of employees who are prohibited persons as defined in the *Child Protection (Prohibited Employment) Act 1998*, or who have an abuse allegation or conviction as defined in the *Ombudsman Act 1974*.

Signed by **Out of Scope** Witnessed by _____

Name (printed) **Out of Scope** Name (printed) _____

Designation _____ Designation _____

Date 28.1.03 Date _____

APPENDIX B – FORMS

Form 1 Incident Advice Form JJ-A005 for Centres 34
Incident Advice Form CS040 for Community Services offices 38

Form 2 Alleged assault of young person in police custody 41

Form 3 Mandatory reporting to Department of Community Services..... 43

Form 4 Ombudsman Notification Form 47

Form 1 continued

Part B: JJ-A005

Juvenile Justice Centres INCIDENT ADVICE Report Writing Checklist

In completing the Incident Advice and the Comprehensive Report, please ensure the following are addressed:

Staff assault on detainee

- circumstances leading up to the incident
- concise and accurate details of the incident
- witnesses
- injuries/medical treatment - copy of medical report
- counselling provided
- adherence to policy/legislation
- assessment of staff action
- action taken/recommendations
- roster of staff member for next 3 days

Notifications: Cluster Director, DCS, Police,
parent/guardian

Detainee assault on staff member

- circumstances leading up to the incident
- concise and accurate details of the incident
- witnesses
- level of supervision (no. of supervisors & whether considered satisfactory)
- injuries/medical treatment - copy of medical report
- counselling provided
- adherence to policy/legislation
- assessment of staff action
- action taken/recommendations

Notifications: Cluster Director, Police, parent/guardian

Detainee assault on detainee

Use detainee section for both alleged victim and alleged perpetrator. If more than one perpetrator complete a separate advice for each.

- circumstances leading up to the incident
- concise and accurate details of the incident
- witnesses
- level of supervision (no. of supervisors & whether considered satisfactory)
- injuries/medical treatment - copy of medical report
- counselling provided
- adherence to policy/legislation
- action taken/recommendations

Notifications: Cluster Director, DCS, Police,
parent/guardian

Substance use/possession

- circumstances leading up to the incident
- concise and accurate details of the incident
- witnesses
- level of supervision (no. of supervisors & whether considered satisfactory)
- injuries/medical treatment - copy of medical report
- counselling provided
- adherence to policy/legislation
- assessment of staff action
- action taken/recommendations

Notifications: Cluster Director, Police, parent/guardian

Injuries/accidents

- circumstances leading up to the incident
- concise and accurate details of the incident
- witnesses
- level of supervision (no. of supervisors & whether considered satisfactory)
- injuries/medical treatment - copy of medical report
- counselling provided
- adherence to policy/legislation
- assessment of staff action
- action taken/recommendations

Notifications: Cluster Director, DCS, parent/guardian

Escapes

- circumstances leading up to the escape
- concise and accurate details of the escape
- witnesses
- level of supervision (no. of supervisors & whether considered satisfactory)
- injuries/medical treatment - copy of medical report
- adherence to policy/legislation
- assessment of staff action
- action taken/recommendations
- roster of staff member/s for next 3 days

Notifications: Cluster Director, McCabe, Police, JJO,
parent/guardian

Self harm/attempted suicide

- circumstances leading up to the incident, including client's emotional state
- concise and accurate details of the incident, including how he/she obtained the instrument/s of self harm
- Client's current emotional state, and any possible triggers for recurrence of self-harming behaviour
- witnesses
- level of supervision (no. of supervisors & whether considered satisfactory)
- injuries/medical treatment - copy of medical report
- counselling provided
- adherence to policy/legislation
- assessment of staff action
- action taken/recommendations
- current level of supervision of the detainee
- further action intended

Notifications: Cluster Director, DCS, parent/guardian, crisis support

Comprehensive Report:

- forwarded to the Cluster Director, **if requested**, as soon as possible and within 24 hours of the incident, unless notified otherwise
- include copies of statements and incident/accident report form (JJ-M004) where applicable
- place original on incident file (do not include copy on detainee's "D" File, although originals of related reports should be attached).

Alternate form 1 continued

CS040

Please complete a separate form for each juvenile involved in the incident.

Checklist 1 - Incident details**Checklist 2 - Client History**

(Not required for client protection notifications)

- | | |
|--|--|
| <ul style="list-style-type: none"> * full details of incident * injuries/medical condition * current location of client * current legal status * charges to be faced * future court appearances * counselling * action taken/recommendation * further action intended | <ul style="list-style-type: none"> * Name * Date of birth * Status prior to this incident <ul style="list-style-type: none"> - offences - legal status - level of supervision - departmental status * Response to supervision leading up to incident (e.g., No. of hours completed on CSO's) * Date of last contact * Staff response/adherence to Departmental standards/policy |
|--|--|

COMPREHENSIVE REPORT TO BE FORWARDED TO CENTRAL SUPPORT OFFICE AS SOON AS POSSIBLE AND WITHIN 24 HOURS OF THE INCIDENT, UNLESS NOTIFIED OTHERWISE. A COPY OF THE COMPREHENSIVE IS TO BE PLACED ON THE CLIENT'S C FILE.

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Form 2
 Juvenile Justice
 JJ-A014
 Part A

ALLEGED ASSAULT OF YOUNG PERSON IN POLICE CUSTODY

Young person's name:		D.O.B.:	
Home Address:			
Earliest possible release date:		Legal Status:	
NEXT COURT APPEARANCE			
Court:		Date:	
Date of alleged assault:		Time: (am / pm)	
Alleged assault occurred at:			
Police involved: (name or police station)			
Witnesses to alleged assault:	YES	NO	
Names of witnesses:			
Date alleged assault reported to DJJ staff:		Centre/IPU/JJCS:	
BRIEF PARTICULARS OF INJURY: (attach copies of Incident Advice (JJ-A005) and Incident/Accident Report (JJ-M004). Photographs to be retained by the Centre)			
Injury sighted by DJJ staff?	YES	NO	Staff member:
Designation:		Contact number:	
Date form completed:		Time: (am / pm)	
SIGNATURES:			
Staff member:		Date:	
Complainant/Young Person:		Date:	
* If the young person does not wish to sign the form, give brief reasons in the young person's own words:			

TO:	Internal Affairs Assistant Commissioner's Office Police Headquarters KPMG Building, Level 3 45 Clarence Street SYDNEY NSW 2000 Fax: (02) 8234 5634 Phone: (02) 8234 5699		

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Form 2 continued
 JJ-A014
 Part B

DEPARTMENT OF JUVENILE JUSTICE

Juvenile Justice Centre:	
Address:	
Phone:	
Fax:	
DATE:	

ATTENTION: Internal Affairs
 Assistant Commissioner's Office
 Police Headquarters
 KPMG Building, Level 3
 45 Clarence Street
 SYDNEY NSW 2000

By fax: (02) 8234 5634

Re: ALLEGED ASSAULT OF YOUNG PERSON IN POLICE CUSTODY

Young Person:	
In custody at: (Juvenile Justice Centre)	

Please find attached a written complaint concerning an alleged assault upon the above named juvenile while in police custody.

This information has been referred by this Department on behalf of the complainant/young person, however the Department does not wish to be regarded as the complainant in this matter.

The earliest expected release date for the young person is ____ / ____ / ____.

Forwarded for appropriate attention in terms of Part 8A of the *Police Service Act 1990* (as amended).

Yours sincerely

Name:

Designation:

(Attach to report of Alleged Assault of Young Person in Police Custody (JJ-A014))

Form 3

Mandatory reporting to Department of Community Services

The CYP Act allows for a report to be made to the DoCS Helpline when a child or young person is at *risk of harm* or *homeless*. See the definitions in paragraph 3 of this policy if you are unsure of the meaning of these terms.

Reports should be made to the DoCS Helpline. When you make a report, make sure any relevant information about the child or young person, such as family structure, is available. This will assist DoCS staff at the Helpline.

The person making the report to DoCS must keep a full copy of all information given to DoCS in a secure location.

<p>1. Details of child or young person who is subject of alleged risk of harm:</p> <p>Name _____</p> <p>Date of birth _____</p> <p>Home address _____</p> <p>(If you cannot give the above details, describe the child or young person and their current whereabouts or give a place where they regularly go, eg, youth club, etc.)</p> <p>ATSI identification: <input type="radio"/> Aboriginal <input type="radio"/> Torres Strait Islander <input type="radio"/> Other <input type="radio"/> Unknown (TICK ONE)</p>

<p>2. If you can answer YES to one of the following questions, you may need to make a report to DoCS. Proceed to step 3.</p> <p>Do you suspect, on reasonable grounds that the child or young person is at <i>risk of harm</i> (see definitions)?</p> <p>OR Is the child or young person homeless?</p>

<p>3. If you can answer YES to one or more of the following questions, you MUST contact the DoCS Helpline:</p> <p>Are the child or young person's basic physical needs NOT being met? OR at risk of not being met?</p>	<p style="font-size: small;">Government Information (Public Access) Act 2009</p> <p style="font-size: x-small;">This document has been released by Open Government, Information and Privacy NSW Department of Communities and Justice, Legal</p>
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This form must be filed in the office of the manager of your unit. DO NOT REMOVE OR COPY INFORMATION ENTERED ON THIS FORM

3. If you can answer YES to one or more of the following questions, you MUST contact the DoCS Helpline:

Are the child or young person's basic psychological needs NOT being met?

OR at risk of not being met?

Does the child or young person require health care? **AND**

Have their parents failed to arrange for necessary health care **AND** are unable or unwilling to?

Is the child or young person being physically abused or ill treated? **OR**

at risk of being abused or ill treated?

Does child or young person live in a household where there is domestic violence?

AND as a consequence, are they at risk of suffering serious physical harm **OR**
serious psychological harm?

Have the child or young person's parents/caregivers behaved in such a way towards them that the child or young person has suffered serious psychological harm? **OR**

is at risk of suffering serious psychological harm?

Is a *child* homeless and at risk of harm?

4. If you answer YES to the next question, you MUST make a report to DoCS, even if you are not a mandatory reporter:

Are you providing residential accommodation to a *child* living away from home without parental permission?

5. If you answer YES to the following question about the homelessness of a young person you should make a report to DoCS:

Is a *young person* homeless **AND** you have their permission to make a report?

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This form must be filed in the office of the manager of your unit. DO NOT REMOVE OR COPY INFORMATION ENTERED ON THIS FORM.

Record DoCS Call Reference Number here _____

To make a report under the Children and Young Persons (Care and Protection) Act 1998 about children or young people who are at risk of harm or who are homeless phone the DoCS Helpline:

13 DoCS (13 36 27) - mandated reporters phone line.

The DoCS Helpline will take a verbal report from you.

All mandated reporters will receive acknowledgement of report from DoCS.

Form 4

CHILD PROTECTION NOTIFICATION FORM

Effective From May 7, 1999

IMPORTANT! PLEASE NOTE THE FOLLOWING:

1. For the purpose of this notification form, an **allegation** of child abuse against an employee of your agency also refers to a **conviction** for a child abuse offence against an employee of your agency.
2. Should you have any questions regarding the information required by this notification form, please contact a member of the **Child Protection Team at the NSW Ombudsman on (02) 9286 1000 or toll free 1800 45 1524.**
3. This notification form is primarily intended to determine the nature of the allegation, and to obtain details about what you have done to date in relation to the allegation. The investigation of a child abuse allegation needs to be conducted carefully and sensitively. It is important to understand that the oversight role of the Ombudsman does not mean that you have to undertake your own investigation in situations where you normally would not. You may already have procedures in relation to the subject of his notification, make clear at the appropriate question.

Where the form asks for details of witnesses or other evidence obtained, please do not regard this as indicating that you must undertake significant inquiries. These questions are asked merely to determine what, if any, inquiries have been conducted by your agency to this point.

It is important that any investigation conducted by you or somebody on your behalf does not have the potential to prejudice any criminal or care and protection proceedings relating to the allegation. **If you are unsure as to how extensive your inquiries should be, you should contact your local Department of Community Services Centre or the Child Protection Enforcement Agency on 9690 4199.**

4. Upon completion of the notification form, it must be placed in a sealed envelope marked 'Strictly Confidential: For the attention of the Child Protection Team' and **hand delivered to the NSW Ombudsman, Level 3, 580 George Street, Sydney.** Alternative arrangements for the **secure** delivery of the notification form must be made and confirmed with the Child Protection Team prior to transmission.

NSW Ombudsman:
Level 3, 580 George St
Sydney NSW 2000

Telephone typewriter (TTY):
02 9264 8050

General Enquiries:
02 9286 1000

E-mail:
nswombo@nswombudsman.nsw.gov.au

Toll free (outside Sydney Metro Area): 1800 451 524

Website:
<http://www.nswombudsman.nsw.gov.au>

NSW Ombudsman

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Ombudsman Notification Form

Part 1: Details of agency

1.1 Name of agency Your Case/Ref.:

1.2 Type of agency:

Designated government agency OR Designated non government agency:

Public authority (other than a designated government agency) non government school

agency)

child care centre

substitute residential care service

1.3 Nature of service provided by your agency.....

1.4 Does your agency have a policy or procedures specifically relating to allegations of child abuse made against employees or members of staff? Yes/No

(If the agency has not already supplied the Ombudsman with a copy of the most current policies or procedures, please attach.)

1.5 Total no. paid employees (incl. Part-time/casual)

1.6 % in child-related employment

1.7 Head of Agency

1.8 Position title.....

1.9 Address:.....

1.10 Telephone no..... 11 Facsimile no.....

1.12 Email address.....

Signature..... Date.....

(If another officer of the agency is preferred as the contact for any further inquiries in relation to this notification from the Ombudsman, please provide their details below.) (Unless other arrangements have been made, formal correspondence from the Ombudsman will be addressed to the nominated Head of agency.)

1.13 Contact officer name:

1.14 Position title:

1.15 Address:

1.16 Telephone no 1.17 Facsimile no.

1.18 Email address

Please identify the person in your agency who is responsible for investigating the allegation(s) or who is responsible for liaison with any other agency that may be investigating the allegation(s):

1.19 Investigating officer

1.20 Position title

1.21 Address

1.22 Does this notification relate to any other notification(s) you have made to the Ombudsman? If yes, provide the Ombudsman reference number(s) or other identifying details.....

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Part 2: Details of the person against whom the allegation has been made

- 2.1 Does this notification contain allegations of child abuse against more than one employee? Yes/No
- 2.1a If Yes, how many?..... (Please copy this page for each employee)
- 2.2 Family name:
- 2.3 Given names:
- 2.4 Sex.....
- 2.5 Date of birth.....
- 2.6 Home address.....
- 2.7 Home phone.....
- 2.8 Position title at time allegation made:
- 2.9 Employee identification no. (if relevant):
- 2.10 Current employment status with agency (tick all applicable):
 - Permanent Casual Part-time
 - Contractor Foster carer Volunteer
 - Other (state)
- 2.11 Current work address
- 2.12 Work phone
- 2.13 Is the employee aware that an allegation has been made against them? Yes/No/Unknown
- 2.13a If yes, who informed the employee:
 - Your agency (Name of person):.....
 - Another agency (state which):.....
 - Other (describe):.....
 - Unknown:.....
 - Date informed:.....
- 2.13b Is the employee aware of:
 - Full details of allegation
 - Type of allegation or broad nature only
 - Only that there has been an allegation, not the type
- 2.14 Has counselling or other support been offered/provided to the employee? Yes/No/Unknown
- 2.15 If Yes, what kind?.....
- 2.16 If No, why?.....

Part 3: Details of the alleged victim(s)

- 3.1. Does this notification contain allegations of child abuse upon more than one child or young person? Yes/No
- 3.1a If Yes, how many? (Please copy and complete this page for each child)
- 3.2 Family name:.....
- 3.3 Given names:.....
- 3.4 Sex.....
- 3.5 Date of birth or current age.....
- 3.6 Age of the child at the time of the alleged abuse (if different to above).....
- 3.7 Is the child
 Aboriginal? Yes/No/Unknown
 Torres Strait Islander? Yes/No/Unknown
 From a non-English speaking background? Yes/No/Unknown
- 3.8 Does the child have a disability or disorder? Yes/No/Unknown
- 3.8a If yes, (tick all relevant and describe)

<input type="radio"/> Intellectual.....	<input type="radio"/> Physical.....
<input type="radio"/> Sensory.....	<input type="radio"/> Behavioural.....
<input type="radio"/> Other.....	

- 3.9 Home address.....
- 3.10 Home phone.....
- 3.11 Is the child a State ward? Yes/No/Unknown
- 3.12 Are the child's parents or guardians aware of the allegations?
 Yes/No/Unknown/Not applicable
- 3.12a If No, why not?.....
- 3.12b If Yes, who informed them? Child Unknown
 Your agency (name of person)..... Date informed.....
- 3.13 Has counselling or other support been offered/provided to the alleged victim? Yes/No
- 3.13a If Yes, what kind?.....
- 3.13b If No, why not?.....

Part 4: Details of the allegation(s)

4.1. Does this notification concern more than one incident of alleged abuse? Yes/No

4.1a If Yes, how many?

(Use this page for the primary or most serious allegation and copy for additional incidents)

4.2 Date of alleged incident:

4.3 Location of alleged incident:

4.4 Description of alleged incident (attach documentation where available):
.....
.....
.....
.....
.....

4.5 Type of alleged abuse (tick all relevant to incident described above)

Physical:

- Hitting/kicking
- Shaking/throwing
- Pushing/shoving/grabbing/pinching/poking
- Inappropriate restraint/excess force
- Indirect – use of object or substance or threat

Psychological/Emotional:

- Persistent hostility/rejection
- Exposure to violence (including domestic violence)
- Scapegoating
- Humiliation/belittling

Sexual:

- Assault (indecent touching/molestation; intercourse)
- Deliberate exposure to sexual behaviour/sexual exhibitionism/exploitation/pornography
- Obscene language/gestures
- Harassment (inappropriate words/correspondence/gestures)

Neglect:

- Clothing/food
- Medical
- Shelter
- Supervision
- Environment not supportive

Misconduct which may constitute child abuse:

- Unwarranted/inappropriate touching (not indecent)
- Inappropriate relationship with child (not sexual)
- Inappropriate comments/jokes of a sexual nature
- other/ ill treatment

4.5a If allegation only involves misconduct or psychological abuse, what indication is there of harm to the child?

4.6 Date your agency became aware of the allegation(s)

4.7 Name of person initially informed

4.7a Position title and location

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* An incident may include multiple allegations occurring concurrently (eg the child was grabbed by the arm and pushed into a wall)
See Interagency Guidelines for possible indicators of harm (harm is not a component of other abuse)

Part 5: Action taken or proposed in respect of the allegation(s)

5.1. Has Dept of Community Services (DoCS) been informed by your agency? Yes/No/unknown/Not applicable

5.1a Date of report to DoCS.....

5.2 Is DoCS investigating this allegation? Yes/No/unknown

5.2b If yes, name of DoCS officer.....

5.2c Which Community Service Centre or Joint Investigation Team?.....

5.2c Contact number (if known).....

5.3 Have the police been informed? Yes/No/unknown/not applicable

5.3a Are the police investigating this allegation? Yes/No/unknown

5.3b If Yes, name of police officer.....

5.4b Which police station or Command?.....

5.4c Contact number (if known).....

5.5 Have prior allegations of child abuse been made against the employee? Yes/No/Unknown

5.5a If Yes, when was the most recent?

- Within 2yrs
- 2-5yrs ago
- More than 5yrs ago

5.5b What was the result or finding of the investigation into that allegation?

.....
.....

5.6 What action has been taken or is proposed by the agency in respect of the employee pending completion of investigation?

No action (state why).....

Increased supervision (describe)

Restriction on current duties (specify).....

Transferred to alternate duties (specify)

Suspended with pay

Suspended without pay

Not re-engaged

Not relevant as matter finalised

5.6a Is this standard procedure when responding to allegations of child abuse made against your employees? Yes/No/not applicable

(Refer to 1.4 – have you sent the Ombudsman the latest copy of your relevant policy or procedures?)

Part 6: Findings

If the investigation of the allegation is completed, please attach supporting final documentation and complete the following:

6.1 Describe the allegations that were put to the employee (or attach copy of relevant documents):

Allegation 1

.....
.....
.....
.....

Employee response:

.....
.....
.....
.....

Finding:

.....
.....
.....
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Allegation 2

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Employee response:

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Finding:

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.....
.....

Allegation 3

.....
.....
.....
.....

Employee response:

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.....
.....

Finding:

.....
.....
.....

6.1a If no allegations were put to the employee, please state why not (e.g. person self-reported the incident):

.....
.....
.....
.....
.....

6.2 State the reason(s) for your finding(s)

.....
.....
.....
.....
.....

6.3 Describe action taken by agency in respect to the person subject of the allegation:

.....
.....
.....
.....
.....

6.4 What other issues relate to this allegation or arose during the investigation of the allegation which your agency considers relevant?

.....

.....

.....

.....

.....

.....

6.5 What other action has been taken or is proposed by your agency with respect of or as a result of this allegation or investigation?

.....

.....

.....

.....

.....

.....

6.7 Date investigation completed.....

6.8 Name and signature of person completing notification to Ombudsman

.....

6.9 Date notification completed

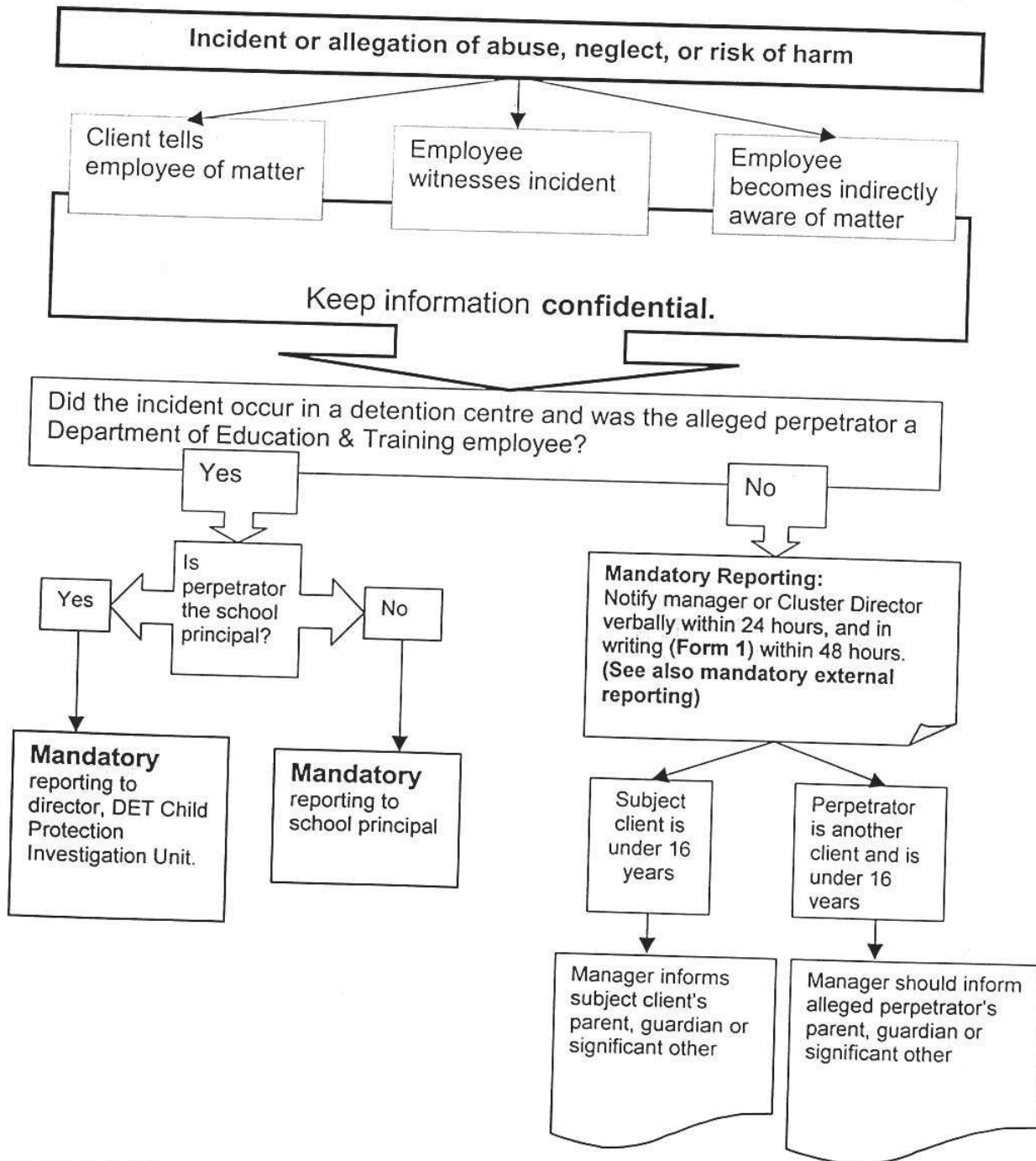
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APPENDIX C – REPORTING FLOWCHARTS

Internal mandatory reporting: client who is subject of alleged abuse, neglect or risk of harm	57
External mandatory reporting: client who is subject of alleged abuse, neglect or risk of harm	58
Internal mandatory reporting: employee ("prohibited person")	59
External mandatory reporting: employee with abuse allegation or conviction	60

INTERNAL MANDATORY REPORTING FLOW CHART

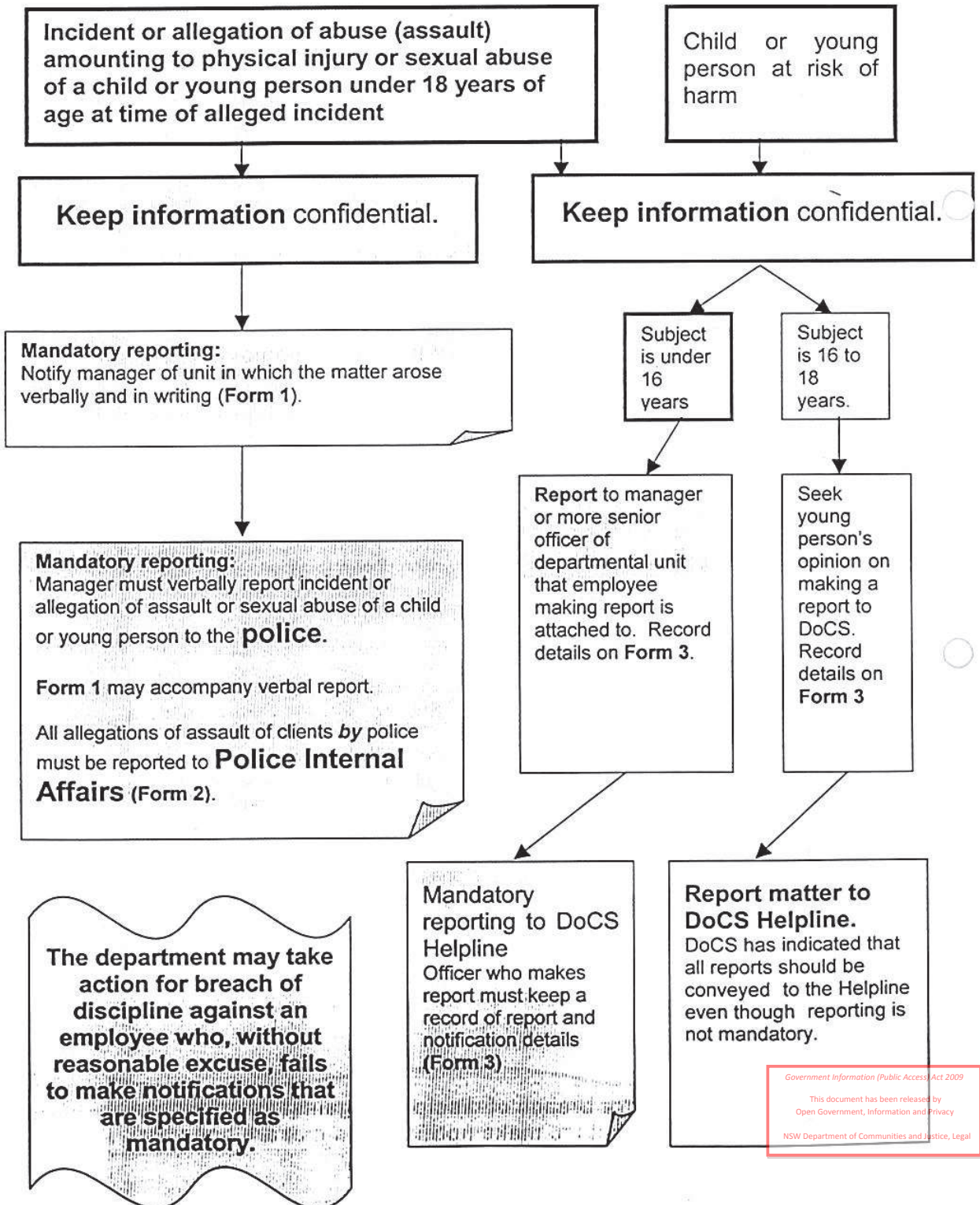
CLIENT SUBJECT OF HARM ALLEGATION



The department may take action for breach of discipline against an employee who, without reasonable excuse, fails to make notifications that are specified as mandatory.

EXTERNAL MANDATORY REPORTING FLOW CHART

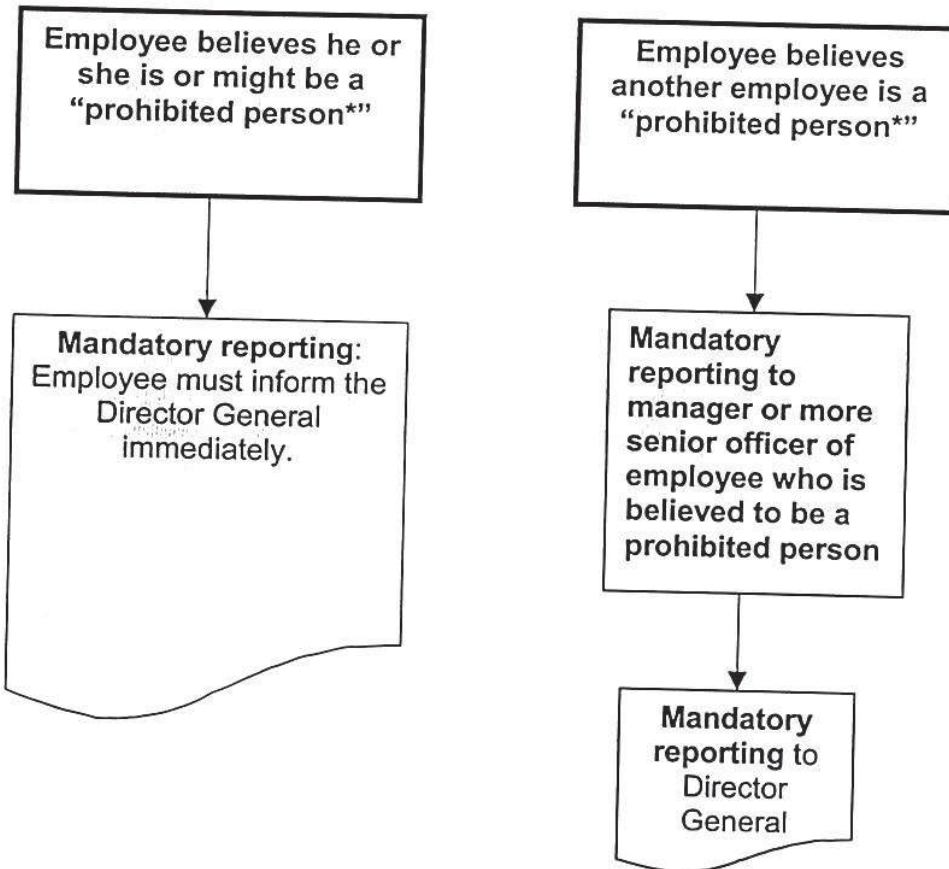
CHILD OR YOUNG PERSON SUBJECT OF HARM ALLEGATION



INTERNAL MANDATORY REPORTING FLOW CHART

PROHIBITED PERSON

A "prohibited person" has the same meaning as in s 5 of the *Child Protection (Prohibited Employment) Act 1998*, in essence it means a person convicted of a serious sex offence. See also external reporting requirements regarding reporting an employee with an abuse allegation or conviction, which has a broader definition (*Ombudsman Act 1974*).

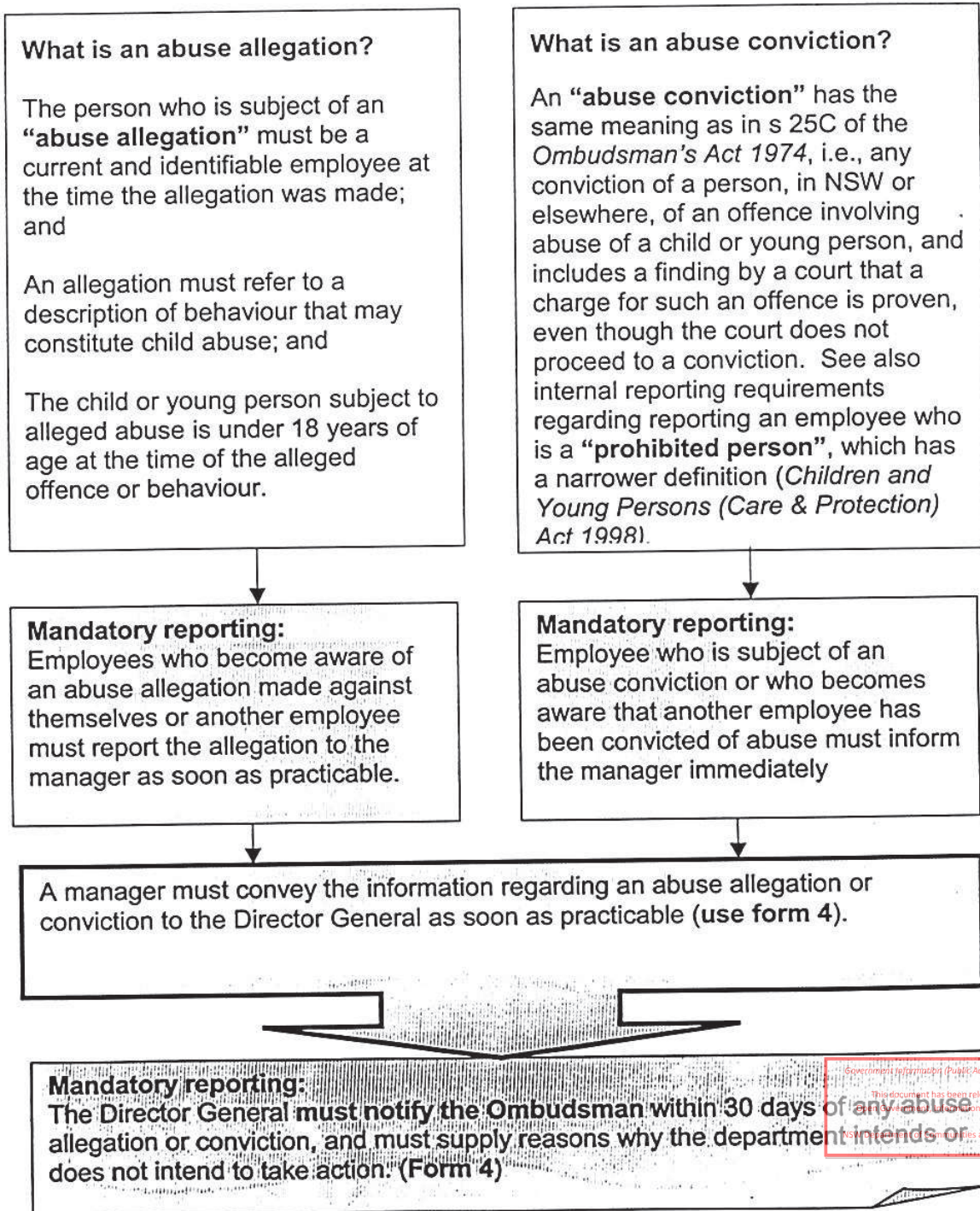


The department may take action for breach of discipline against an employee who, without reasonable excuse, fails to make notifications that are specified as mandatory.

EXTERNAL MANDATORY REPORTING FLOW CHART

EMPLOYEE WITH ABUSE ALLEGATION OR CONVICTION

Note: The department may take action for breach of discipline against an employee who, without reasonable excuse, fails to make notifications that are specified as mandatory.



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APPENDIX D – REFERENCES

NSW Legislation

Child Protection (Prohibited Employment) Act 1998

Children (Community Service Orders) Act 1987

Children (Community Service Orders) Regulation 2000

Children (Detention Centres) Act 1987

Children (Detention Centres) Regulation 2000

Children and Young Persons (Care and Protection) Act 1998

Commission for Children and Young People Act 1998

Crimes Act 1900

Ombudsman Act 1974

Public Sector Management Act 1988

Young Offenders Act 1997

Departmental policies and procedures

NSW Department of Juvenile Justice (1997), *Procedures for Dealing with Allegations of Misconduct/Breaches of Discipline in the Department of Juvenile Justice* (D-G's instr. 169/97).

NSW Department of Juvenile Justice, *Provision of a Protective Abuse-Free Environment in the Department of Juvenile Justice*, Policy Document No. 3, Issued January 1998. (Policy document No. 3 is superseded by Client Protection Policy).

NSW Department of Juvenile Justice, *Code of Conduct*, Policy Document No. 5, Issued January 1998.

NSW Department of Juvenile Justice, *Policy and Procedures for Resolution of Client Complaints*, Policy Document No. 8, Issued January 1999.

Other sources

Australasian Juvenile Justice Administrators (1999). *Standards for Juvenile Custodial Facilities*, March ed.

NSW Child Protection Council (1997). *Interagency Guidelines for Child Protection Intervention*, 2nd ed.

Convention on the Rights of the Child, United Nations General Assembly Resolution 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept.2 1990.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), General Assembly Resolution 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).



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NSW Department of Information and Communications

CONTACTS

To make a report under the *Children and Young Persons (Care and Protection) Act 1998* about children or young people who are at risk of harm or who are homeless phone the **DoCS Helpline**:

13 DoCS (13 36 27) is the **mandatory reporters** phone line.

The Helpline number for clients and the general public is 13 21 11.

The DoCS Helpline will take a verbal report.

All mandated reporters will receive acknowledgement of report from DoCS.

NSW Ombudsman:
Level 24, 580 George Street
Sydney NSW 2000

General Enquiries: 02 9286 1000
Toll free (outside Sydney Metropolitan Area):
1800 451 524

E-mail:
nswombo@nswombudsman.nsw.gov.au

Website:
<http://www.nswombudsman.nsw.gov.au>

Questions regarding the Ombudsman's notification form should be referred to a member of the **Child Protection Team at the NSW Ombudsman** on the numbers shown above

CLIENT

PROTECTION

POLICY

reporting

guidelines



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NSW Department of Communities and Justice, Legal

Client Protection

A guide for staff about mandatory and non-mandatory reporting of child abuse, neglect or risk of harm.

All direct care staff and their managers are required by law to report child abuse. Employees are required to comply with a number of different statutes, thus making the reporting requirements somewhat complex. This guide attempts to simplify these reporting requirements.

Details can be found in the department's Client Protection Policy and the NSW Interagency Guidelines for Child Protection Intervention issued by the NSW Commission for Children and Young People.

Reporting forms are available from the department's Client Protection Policy and on the intranet.

A person who reports is protected from legal action

If an employee makes a report or notification in good faith in relation to a child or young person at risk of harm,

the employee is protected from any negative legal consequences. See section 29 of the *Children and Young Persons (Care and Protection) Act 1998* (the "CYP Act").

Also, if an employee makes a report or notification is to the Ombudsman, they are not liable for defamation or other civil liability incurred because of the disclosure. See section 25H of the *Ombudsman Act 1974*.

Terminology used in child protection legislation

"Abuse" means any intentional action by a person that has resulted in or appears likely to result in

- the physical injury or sexual abuse of a child or young person
- a child or young person suffering emotional or psychological harm of such a kind that the emotional or intellectual development of the child or young person is likely to be, significantly damaged; or
- the physical development or health of a child or young person **being significantly** harmed.

"At risk of harm" means a current concern for the safety, welfare or well-being of a child or young person (which may include the sibling or child of the person who is under supervision or in custody of the department) because of the presence 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 child's or young person's caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care;
- 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 caregiver of the child or young person 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;

"Current concerns" means at the time of making the report the reporter is concerned about the safety, welfare or wellbeing of the child or young person.

"Neglect" means neglect by a person to provide, without reasonable excuse, adequate and proper food, nursing, clothing, medical aid, or lodging to a child or young person in the person's care.

"Prohibited person" means a person convicted of a serious sex offence.

MANDATORY REPORTING

Note that a single matter could give rise to more than one reporting obligation.

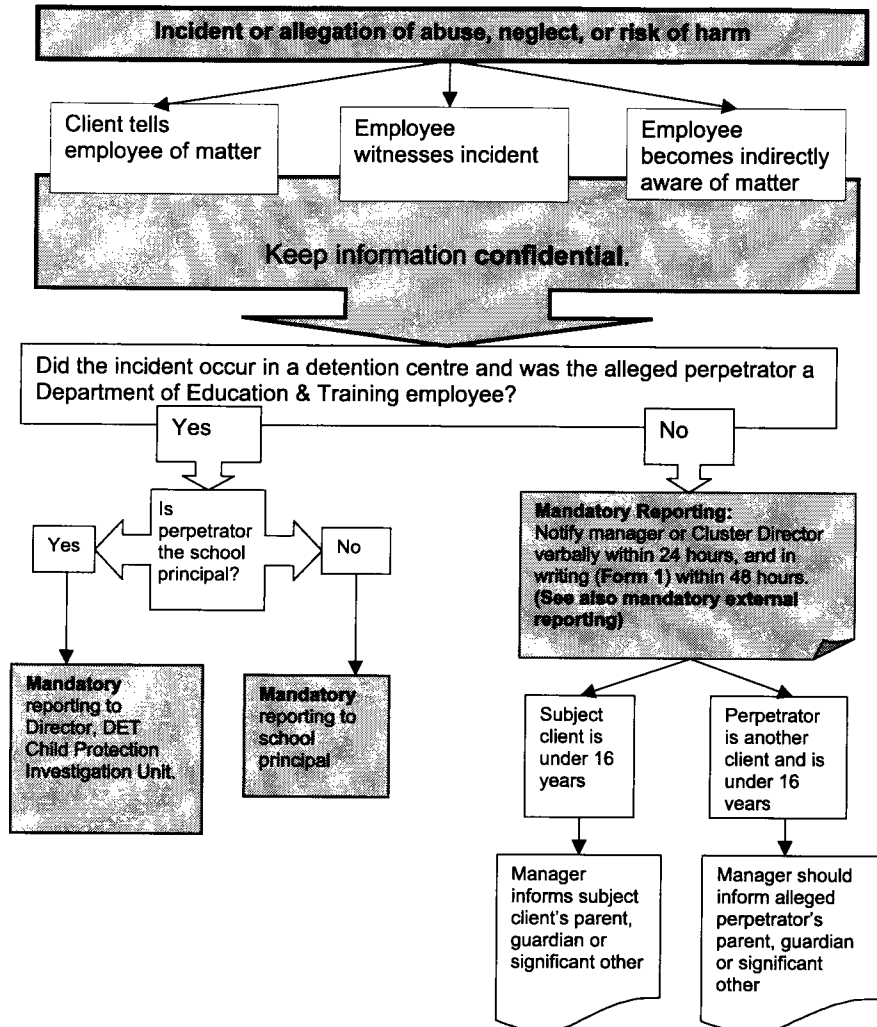
Mandatory internal reporting

Internal reporting of incidents or allegations of abuse, neglect or risk of harm involving clients is required by departmental policy.

All incidents or allegations of abuse, neglect, or risk of harm must be reported to the manager. When an incident is reported to the manager, they must report it verbally to the Regional Director within 24 hours, and then in writing on a DJJ incident advice

INTERNAL MANDATORY REPORTING FLOW CHART

CLIENT SUBJECT OF HARM ALLEGATION



The department may take action for breach of discipline against an employee who, without reasonable excuse, fails to make notifications that are specified as mandatory.

form (JJ-A005 or CS040 – available on the intranet).

Within 48 hours of an incident occurring or allegation being made, the manager must provide the Regional Director with a comprehensive report on the matter, including supporting documentation, such as photographs.

The manager will generally inform the subject's parents or guardian of the incident or allegation.

If the alleged perpetrator is another client, that client's parents or guardian should be informed of the incident or allegation.

The client's parents need not be informed if the client is aged 16 years or over and objects to the making of the report.

If the incident or allegation involves a Department of Education and Training staff member, the Child Protection Investigation Unit of that department must be notified.

Mandatory reporting to the Director-General of a prohibited person

Under the *Child Protection (Prohibited Employment) Act 1998*, it is an offence for a "prohibited person" to remain in child-related employment.

An employee who believes that he or she is or might be a prohibited person must inform the Director-General immediately.

An employee who believes that another employee is a prohibited person must inform the manager or more senior officer of the departmental unit to which the employee is presently attached, who must in turn convey this information to the Director-General.

Upon becoming aware that an employee is or may be a prohibited person, the Director-General will seek the advice of the manager of the Legal Unit. The Legal Unit will arrange for notification to the Children's Commission.

Mandatory reporting to police of assault amounting to physical injury or sexual abuse

The manager of a unit where there is

- an incident or allegation of assault of a client causing physical injury or
- an incident or allegation of sexual abuse of a client

must report the incident or allegation to the police.

The report should be made verbally and may be accompanied by the DJJ incident advice form.

The manager must keep a record of the report details in a secure location.



INTERNAL MANDATORY REPORTING FLOW CHART

Mandatory reporting to the Department of Community Services of a child who is at risk of harm

Under the CYP Act, a "child" is defined as a person aged less than 16 years.

If there are reasonable grounds to suspect that a child is at risk of harm and that suspicion arises in the course of work for the department, the employee must, as soon as practicable, record details on Form 3 available from the Client Protection Policy or the Intranet and report the matter to their manager or more senior officer.

Failure to report the matter may result in prosecution.

When the manager or more senior officer receives the report, they must, as soon as practicable, phone the Department of Community Services Helpline with the report.

The manager or more senior officer who makes a report must keep a record of the report and of the notification details in a secure location.

Mandatory reporting to police: allegations of assault by police officers

All allegations of assault of clients by police, either prior to or during departmental involvement, must be reported promptly to the Commander (Internal Affairs) in the Police Service by the manager responsible for the client's care when the allegation is made.

The reports are to be made in writing on Form 2 (JJ-A014) from the Client Protection Policy or the intranet and are to be made by the manager on the client's behalf.

The manager should report serious complaints about police treatment of a client to the Ombudsman.

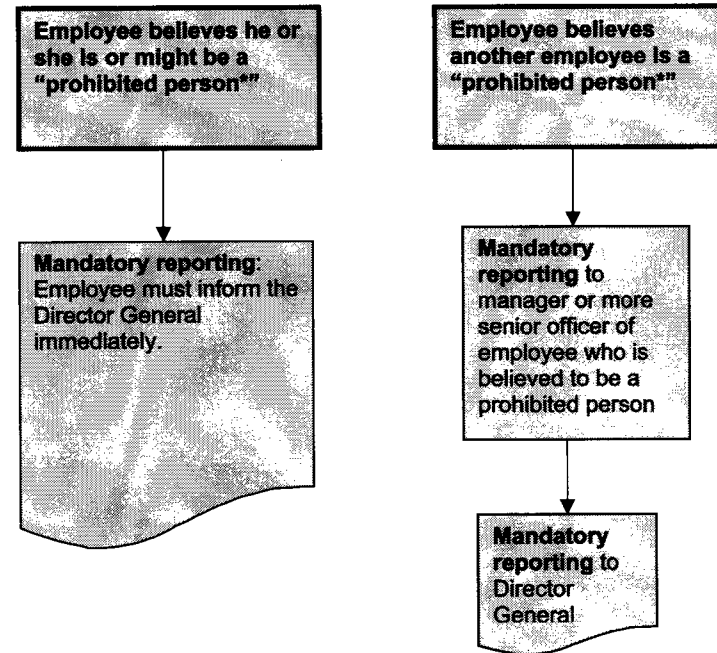
Relevant staff should provide the client with help, advice and support sufficient to enable them to prepare, write and lodge their complaint to the Ombudsman. Staff must also assist the client in accessing legal advice where necessary.

Mandatory reporting to the Ombudsman of a child abuse allegation or conviction against an employee

The Ombudsman has a different reporting threshold to the

PROHIBITED PERSON

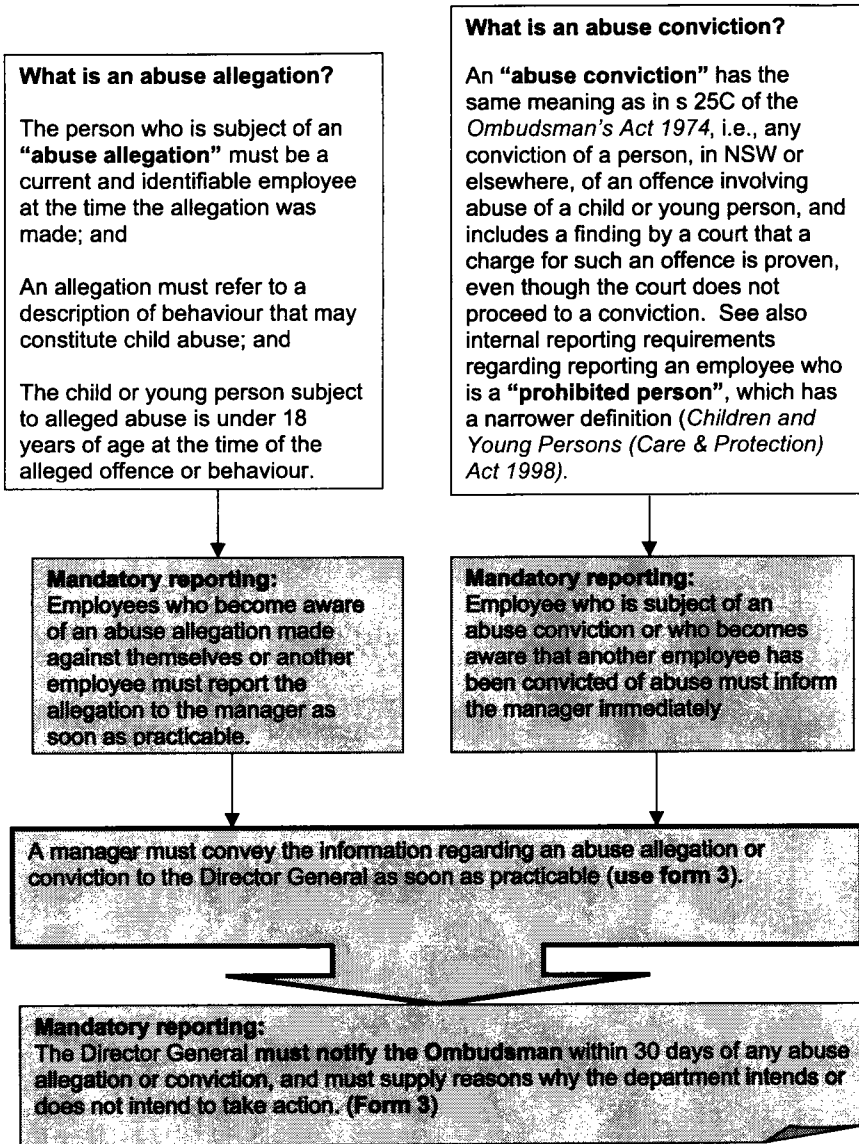
A "prohibited person" has the same meaning as in s 5 of the *Child Protection (Prohibited Employment) Act 1998*, in essence it means a person convicted of a serious sex offence. See also external reporting requirements regarding reporting an employee with an abuse allegation or conviction, which has a broader definition (*Ombudsman Act 1974*).



The department may take action for breach of discipline against an employee who, without reasonable excuse, fails to make notifications that are specified as mandatory.

EXTERNAL MANDATORY REPORTING FLOW CHART

EMPLOYEE WITH ABUSE ALLEGATION OR CONVICTION



Department of Community Services. The Ombudsman must be notified of any allegation against a person employed or engaged by the department *whether or not* the person notifying believes that the abuse has taken place. Compare this to the reporting requirement for DoCS, where the reporter needs to have **“reasonable grounds to suspect”** that a child or young person has been, or is, at risk of harm.

Note also that the Ombudsman defines a **“child”** as a person under the age of 18 years.

A child abuse allegation or child abuse conviction made against a DJJ employee must, as soon as practicable, be reported to the manager or more senior officer.

The manager or more senior officer must, as soon as practicable, convey information about the employee with a child abuse allegation or child abuse conviction against them to the Director-General through the Manager, Legal Unit using Form 4 from the Client Protection Policy or the Intranet.

The DJJ employee against whom the report is made is entitled to make written submissions to the Director General concerning the allegation or conviction.

The Director-General must notify the Ombudsman of any child abuse allegation or child abuse conviction against an employee of which the Director-General becomes aware.

The Director-General must make this notification even if the department does not propose to take any action against the employee, and must supply the reasons why it intends or does not intend to take any action.

The notification must be made as soon as practicable, but in any event within 30 days of the Director-General becoming aware of the abuse allegation.

The Director General must retain records of the notification.

Mandatory reporting to Commissioner for Children and Young People of “relevant disciplinary proceedings”

The Director-General must notify the Commissioner for Children and Young People of the name and other identifying particulars of any employee against whom **“relevant disciplinary proceedings”** have been completed (irrespective of the finding in those proceedings). **“Relevant disciplinary proceedings”** means disciplinary proceedings (in New South Wales or elsewhere) against an employee by the department or by a professional or other body that supervises the professional conduct of the employee, being completed proceedings involving:

- abuse of a child or young person, or sexual

misconduct by the employee; or

- acts of violence committed by the employee in the course of employment.

NON-MANDATORY REPORTING

Non-mandatory reporting to the Department of Community Services

Child or young person who is homeless

Any person *may* report the homelessness of a child to the DoCS Helpline. See section 120 of the CYP Act.

An employee who wishes to report that a child is homeless should report the matter to their manager or senior officer.

A manager or more senior officer who makes a report about child who is homeless must keep a record both of the report and of the DoCS call reference number in a secure location.

(If a child is homeless AND at risk of harm, reporting is MANDATORY.)

Note also that under s 120 of the CYP Act, any person *may* report the homelessness of a young person, with the consent of the

young person, to the DoCS Helpline.

Young person at risk of harm

Under the CYP Act, a *young person* is a person aged 16 years or above but who is under the age of 18 years.

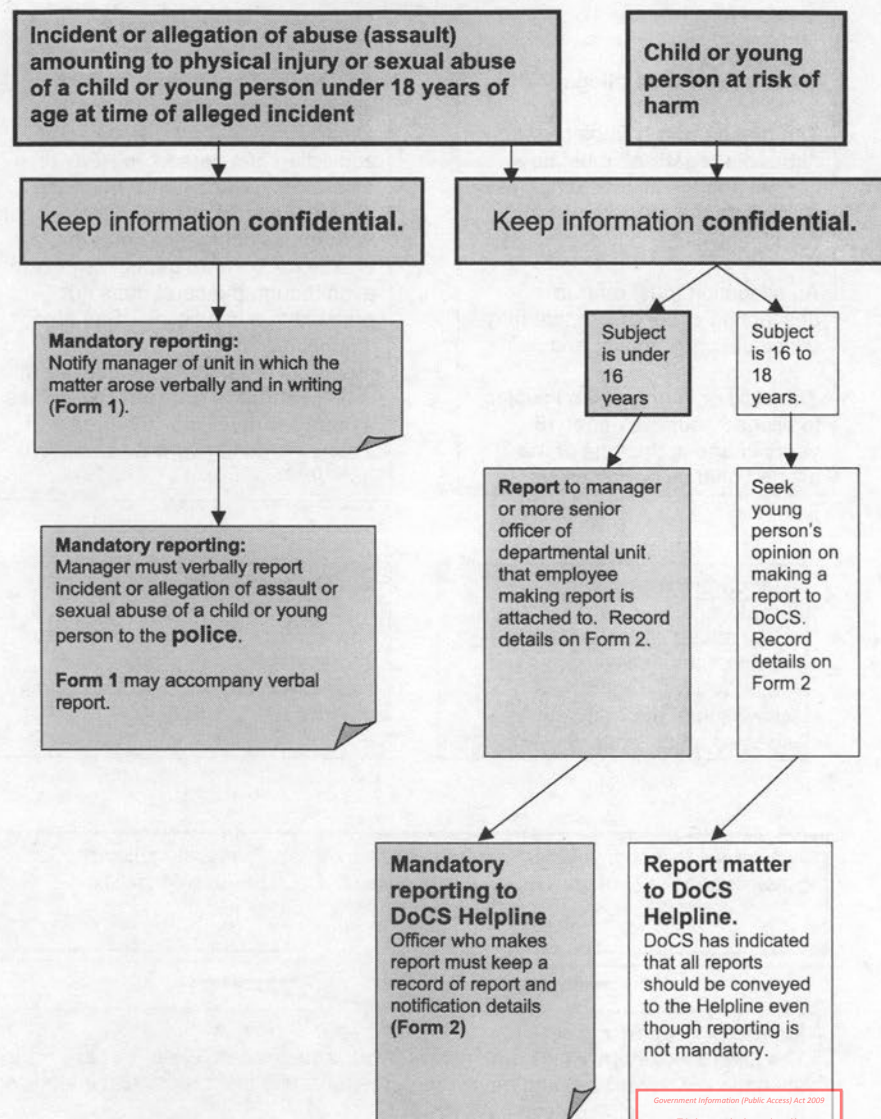
If an employee of the department has reasonable grounds to suspect that a young person is at risk of harm, and that suspicion arises in the course of the employee's work for the department, the employee should record the details on Form 3 available from the Client Protection Policy or the Intranet and report the matter to their manager or more senior officer. As soon as practicable, the manager or more senior officer should report the name of the young person, and the grounds for suspecting that the young person is at risk of harm, to the DoCS Helpline.

If possible, the employee should seek the young person's opinion on the making of a report to DoCS and that information should be passed on to DoCS in the report.

A manager or more senior officer who makes a report about a young person at risk of harm must keep a record both of the report and of the notification details in a secure location.

EXTERNAL MANDATORY REPORTING FLOW CHART

CHILD OR YOUNG PERSON SUBJECT OF HARM ALLEGATION





Client Protection & Wellbeing Policy

DOCUMENT CONTROL

Client Protection & Wellbeing

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NSW Department of Communities and Justice, Legal

Table of Contents

1. Introduction	3
2. Purpose	3
3. Scope	3
4. Objectives	4
5. Legal requirements	4
5.1 Statutory Duty of Care	5
6. Employee Misconduct and Work Performance Issues	6
7. Child Protection Intervention	6
7.1 Aboriginal and Cultural Considerations	7
8. Reporting	7
Mandatory Reporting	7
8.1 Mandatory Reporting of Child at Risk of Significant Harm	7
8.2 Under the care of the Minister for Community Services	8
8.3 Unborn child	8
8.4 Homelessness	8
8.5 Exchange of information and coordination of services	8
8.6 Reportable allegation or reportable conviction against an employee	9
8.7 Employee Disciplinary Proceedings	11
8.8 Department of Education and Communities	11
8.9 Allegations of assault or other reportable conduct by police officers	11
8.10 Assault amounting to physical injury or sexual abuse	12
8.11 Confidentiality and safeguard for reporters	12
9. Disciplinary Action/Removal from Office	12
9.1 Public sector employees	12
9.2 Conference convenors	12
9.3 Non-Juvenile Justice Employees	13
10. Record Keeping: Allegations and Action taken	13
11. Implementing this Policy	14
12. Monitoring and Evaluating the Policy	14
12.1 Review of the policy	14
APPENDIX 1 Definitions	15
APPENDIX 2 References and Resources	22
Version Control and Change History	23

1. Introduction

Juvenile Justice NSW is responsible for the management of young offenders in the community or in custody. It is committed to the promotion of the safety, welfare and wellbeing of children and young people. Juvenile Justice also shares responsibility with service delivery partners to ensure that children and young people are protected from abuse and neglect.

Juvenile Justice recognises that institutional environments, such as Juvenile Justice centres, can have a negative effect on children and young people and that system abuse¹ can occur. Juvenile Justice has a responsibility to ensure that policies and practices are designed to minimise harm that may occur during a period in custody and that systems are in place to identify, report and address harm if it does occur.

This policy should be read in conjunction with the:

- Juvenile Justice *Code of Conduct* and related policies; [Code of conduct](#)
- *Child Wellbeing and Child Protection – NSW Interagency Guidelines*.
Hyperlink to webpage: [Guidelines](#)

The Juvenile Justice *Client Protection and Wellbeing Policy 2014* replaces the *Client Protection Policy 2013*.

2. Purpose

The purpose of this policy is to promote the welfare and protection of children and young people who are clients² of Juvenile Justice NSW and in particular to ensure that employees and non-Juvenile Justice employees³ (including but not limited to external consultants, contractors, volunteers, students, Official Visitors and chaplains):

- are aware of Juvenile Justice protocols and professional obligations in respect to the safety, welfare and wellbeing of clients; and
- ensure that employees are aware of Juvenile Justice and NSW legislative mandatory reporting obligations, in relation to clients who are, or may be, abused, neglected and at risk of significant harm.

3. Scope

The policy covers allegations of reportable conduct by employees, abuse of clients by other clients and abuse perpetrated by people outside the juvenile justice service environment. It also concerns mandatory notification to the NSW Ombudsman of reportable allegations or convictions against an employee.

¹ 'Systems abuse' refers to the 'harm done to children in the context of policies or programs that are designed to provide care or protection. The child's welfare, development or security are undermined by the actions of individuals or by the lack of suitable policies, practices and procedures within systems or institutions' (Cashmore, J., & Bussey, K. 1994, *The Credibility of Child Witnesses: Judicial Views*, School of Behavioural Sciences, Macquarie University)

² See Definitions

³ A non-employee is anyone who delivers a service to a Juvenile Justice client in the community or detention centre regardless of their employment status.

The policy concerns all incidents of abuse or neglect that an employee witnesses against a child or young person. This includes all incidents where employees have reasonable grounds to suspect that a child or young person is at risk of significant harm, including instances that are reported by clients or by other people.

This policy applies to all employees and non-employees, whether engaged on a permanent, temporary, casual or volunteer basis. This includes, but is not limited to non-employees in contact with Juvenile Justice clients, external consultants, contractors, volunteers, students, Official Visitors and Chaplains.

Juvenile Justice must ensure that partner⁴, contracted or registered participating agencies and individuals that fall within the scope of this policy are aware of the requirements relating to the provisions of the *Children and Young Persons (Care and Protection) Act 1998*, the *Ombudsman Act 1974* and the *Commission for Children and Young People Act 1998* and other relevant legislative instruments relating to child protection.

4. Objectives

The key objectives of the policy and associated guidelines are to ensure that:

- (a) Employees, non-employees in contact with Juvenile Justice clients and others covered by the scope of this policy are aware of their responsibilities in promoting the safety, welfare and wellbeing of clients;
- (b) appropriate organisational and work place policies and procedures are in place to ensure the safety, welfare and wellbeing of clients;
- (c) systems are in place to address concerns about employees conduct and others covered by the scope of this policy;
- (d) organisations who receive funding from Juvenile Justice NSW are aware of their responsibilities under the *Children and Young Person (Care and Protection) Act 1998* and the *Commission for Children and Young People Act 1998*; and
- (e) Juvenile Justice NSW statutory reporting requirements are fulfilled.

5. Legal requirements

The following NSW legislative instruments form the basis of this policy, including but not limited to:

- (a) *Children and Young Persons (Care and Protection) Act 1998*;
- (b) *Children (Community Service Orders) Act 1987*;
- (c) *Children (Criminal Proceedings) Act 1987*;
- (d) *Children (Detention Centres) Act 1987*;
- (e) *Commission for Children and Young People Act 1998*;
- (f) *Crimes Act 1900*;

⁴ Any agency: for profit or not for profit non-government agency to which a referral is made with respect to a client under the age of 18.

- (g) *Ombudsman Act 1974 Part 3A*;
- (h) *Public Interest Disclosures Act 1994*;
- (i) *Public Sector Employment and Management Act 2002*;
- (j) *Young Offenders Act 1997*.

The key pieces of child protection legislation in NSW are:

- *Children and Young Persons (Care and Protection) Act 1998*;
- *Commission for Children and Young People Act 1998*;
- *Ombudsman Act 1974 [Part 3A]*;
- *Child Protection (Working with Children) Act 2012*.

Juvenile Justice employees are mandatory reporters⁵ according to the *Children and Young Persons (Care and Protection) Act 1998*. They must make a report to the Child Protection Helpline if they have reasonable grounds to suspect that a child is at risk of significant harm.

Juvenile Justice is a designated government agency for the purposes of the *Ombudsman Act 1974*. The NSW Ombudsman must be notified of any reportable allegation or reportable conviction against an employee of which Juvenile Justice becomes aware.

The *Child Protection (Working with Children) Act 2012* prohibits Juvenile Justice from employing a barred person in child-related work. Section 11 of this Act requires a national police check and review of findings of misconduct involving children. The result of the check and review results in either a clearance to work with children for five years or a bar against working with children.

5.1 Statutory Duty of Care

Employees have a duty of care⁶ towards Juvenile Justice clients, in that it is reasonably within their power, they must ensure the safety, welfare, and wellbeing of clients. Failure of an employee to discharge his or her duty of care, or otherwise to act within the law, may result in the employee or Juvenile Justice (or both) being liable to criminal or civil action.

In addition, statutory provisions exist that create offences specific to Juvenile Justice administration. For example, an employee who conducts him/herself in the following manner is guilty of an offence and is liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both:

- punishes a detainee, or causes a detainee to be punished, in a manner prohibited; or
- without lawful authority delivers or attempts to deliver a detainee alcohol, drugs or other contraband of any kind; or

⁵ section 27 of the Children and Young People (Care and Protection) Act 1998

⁶ Juvenile Justice Code of Conduct 2010

- without lawful excuse discloses any information obtained in connection with his or her employment.

6. Employee Misconduct and Work Performance Issues

Juvenile Justice is committed to ensuring that fair and effective systems exist for managing unsatisfactory work performance, unacceptable conduct or workplace behaviour, misconduct, reportable conduct or misconduct that may involve reportable conduct involving employees.

The Public Service Commission Personnel Handbook Appendix A provides direction if employees⁷ fail to comply with relevant legislation or the Juvenile Justice code of conduct, rules, regulations, policies and procedures or who fail to reach or maintain acceptable standards of performance.

Juvenile Justice NSW Directors and Managers are not required to do any formal investigation. Their role is limited to obtaining and forwarding information to the Employment Relations & Professional Conduct Unit for consideration by the Professional Conduct Committee.

7. Child Protection Intervention

Child abuse and neglect are complex and serious problems that can have detrimental and far-reaching consequences for children and young people and their families.

Child and young people abuse⁸ refers to intentional action that has resulted in or appears likely to result in the:

- (a) physical injury or sexual abuse of a child or young person; or
- (b) child or young person suffering emotional or psychological harm of such a kind that the emotional or intellectual development of the child or young person is, or is likely to be, significantly damaged; or
- (c) physical development or health of a child or young person being significantly harmed.

Children and young people neglect⁹ refers to situations where the child or young person's basic needs (e.g. supervision, medical care, nutrition, shelter or education) have not been met, or are at risk of not being met, to such an extent that it can be reasonably expected to have a significant adverse impact on the child or young person's safety, welfare or well-being. This lack of care could be constituted by a single act or omission or a pattern of acts or omissions. The carer may or may not be the parent.¹⁰

⁷ Excluding Youth Justice Conference Convenors

⁸ According to section 227 of the Children (Care and Protection) Act 1998

⁹ According to section 228 of the Children (Care and Protection) Act 1998

¹⁰ NSW Government, Interagency Guidelines, Child Wellbeing and Child Protection, Fact Sheet: Making a child protection report – How do I know if a child or young person is being abused or neglected?

The definition in the *Ombudsman Act 1974* of sexual abuse and misconduct, assault, ill-treatment, neglect and behaviour causing psychological harm differs from the definitions of child and young people abuse and neglect in the *Children (Care and Protection) Act 1998*. The employment context sets a different threshold for reportable conduct (see section 8.3).

7.1 Aboriginal and Cultural Considerations

Culture and experience influence parenting and care giving practices. Mandatory reporting should not occur for behaviours or practices that are culturally unfamiliar unless the reporter considers that the impact or effects of these place a child at risk of significant harm.

Conversely, behaviours that are suspected of causing risk of significant harm should not be minimised or dismissed on cultural grounds.

The principles in relation to care and protection for Aboriginal and Torres Strait Islander people are contained in Chapter 2, Part 2 of the *Children and Young Persons (Care and Protection) Act 1998*. This includes the promotion of self-determination through programs and strategies, as well as participation in decision making by Aboriginal communities and families.

Any information, such as cultural, linguistic, refugee, migration and/or settlement factors that may assist in the assessment of a case should always be included in a report to the Child Protection Helpline.

8. Reporting

Mandatory Reporting

8.1 Mandatory Reporting of Child at Risk of Significant Harm

Employees of Juvenile Justice are mandatory reporters¹¹ and must complete the Mandatory Reporter Guide (MRG) to determine whether their concern about a child¹² constitutes a suspected risk of significant harm (ROSH). It is mandatory to report a child up to the age of 16 years. The legislation allows the reporting of concerns about young people aged 16-17 years. Employees are encouraged to report a vulnerable young person over the age of 16 who is unable to make an informed decision.

The interactive online MRG forms part of the common assessment framework for all agencies working with children or young people and is intended to assist mandatory reporters to determine whether a case meets the threshold for risk of significant harm. The MRG assists critical thinking; it does not prohibit a mandatory reporter from a course of action he/she believes is appropriate.

Decision trees can be accessed to assist with the most common issues a mandatory reporting officer will need to consider. Decision trees are available for a wide range

¹¹ According to section 27 of the Children and Young People (Care and Protection) Act 1998

¹² The Children and Young Persons (Care and Protection) Act 1998 only make it mandatory to report a child up to the age of 16 years as a person who is under the age of 16 years

of issues of concern about a child or young person or carers' concerns are accessed at: www.keepthemsafe.nsw.gov.au. [Keep Them Safe](#)

8.2 Under the care of the Minister for Community Services

If none of the MRG Decision trees apply but you are concerned about a child/young person who is in the care of the Director-General or under the parental responsibility of the Minister for Community Services,¹³ you must advise the Child Protection Helpline regardless of the MRG outcome. These instances include, but are not limited to:

- child or young person is pregnant;
- child or young person has run away;
- child or young person is missing;
- child or young person is homeless;
- child or young person is seriously injured or has been involved in a critical incident;
- reportable conduct by Community Services employee (including foster carer).

8.3 Unborn child

Employees who have reasonable grounds to suspect, before the birth of a child, that the child may be at risk of significant harm after his or her birth *may* make a report to the Child Protection Helpline.

8.4 Homelessness

A child (under 16) who is homeless or living away from home without their carer's permission is considered to be at risk of significant harm and a report should be made to the Child Protection Hotline.

However, if applying the MRG to a young person over 16 years due to concerns of homelessness and there are no other risk issues, a mandatory reporter must have a young person's consent to report homelessness to the Child Protection Helpline. Employees are encouraged to report a vulnerable young person over the age of 16 who is unable to make an informed decision.

8.5 Exchange of information and coordination of services

Chapter 16A¹⁴ provisions allow government and non-government agencies to share or exchange information about concerns relating to the safety, welfare and wellbeing of a child or young person, or of a class of children or young people to assess risks, make decisions and identify and deliver appropriate services. Consent is not necessary but should be sought where possible.

¹³ According to section 79 of the Children and Young People (Care and Protection) Act 1998

¹⁴ Currently the legislation only allows the exchange of information in relation to an unborn child if the unborn has been the subject to a pre-natal report under section 25.

The release or exchange of information should:

- have regard to the child's best interests as paramount and work towards providing support to maintain their safety;
- promote communication between agencies/services to ensure the best support options are considered and provided;
- take on a shared responsibility with respect to the safety, welfare and wellbeing of children and young people;
- consider that the child safety, welfare and wellbeing remain paramount and information exchange may supersede/override privacy/confidentiality needs.

Where a risk of significant harm report contains an allegation of reportable conduct against an employee of another agency, in addition to investigating the risk of significant harm report, the employing agency will be advised of the allegation, and will seek the reporter's consent to disclose their identify to the employer to assist in their reportable conduct investigation.

The head of a designated government or non-government agency¹⁵ is required to notify the NSW Ombudsman of any reportable allegation or conviction against an employee of the agency within 30 days, and to report to the NSW Ombudsman the results of any investigation and action taken with respect to the reportable allegation or conviction.

Reportable Conduct

8.6 Reportable allegation or reportable conviction against an employee¹⁶

Juvenile Justice is a designated government agency for the purposes of Part 3A of the *Ombudsman Act 1974*: Juvenile Justice must notify the NSW Ombudsman of any reportable allegation or reportable conviction against an employee regardless of where the alleged abuse occurred, i.e., either in the course of their employment or outside working hours in their private lives.

The NSW Ombudsman must be notified of any reportable allegation against a person employed or engaged by Juvenile Justice whether or not the abuse has been substantiated. This is an allegation based reporting system. Reports made to the Employment Relations & Professional Conduct Unit are assessed and the necessary referrals are made from that unit to external agencies, such as NSW Police Force or the NSW Ombudsman.

The requirements of the *Ombudsman Act 1974* cover anyone who is employed¹⁷ by Juvenile Justice whether or not their position requires them to work with children; and anyone engaged by Juvenile Justice that provides services to children and young people, including but not limited to:

¹⁵ A designated agency in NSW is an agency accredited in accordance with the regulations under the *Children and Young Persons (Care and Protection) Act 1998* to provide out of home care services and includes Community Services and Ageing, Disability and Home Care.

¹⁶ See s. 25C of the *Ombudsman Act 1974*; Under Part 2.7 of the *Public Sector Employment & Management Act 2002*, action can be taken by the department against an employee who, without reasonable excuse, fails to make a report as required by this policy.

¹⁷ This definition is different to, and broader than, the definition under s. 33 of the *Commission for Children & Young People Act 1998*.

- contractors and subcontractors;
- sessional supervisors and mentors;
- monitors for youth justice conferencing outcome plans;
- volunteers;
- work experience participants;
- student placements, e.g., TAFE or tertiary students;
- clergy, ministers of religion, members of religious orders and instructors of religion who provide pastoral or liturgical support and services¹⁸.
- Official Visitors
- Staff or volunteers of services funded by Juvenile Justice NSW

A reportable allegation must be notified to the NSW Ombudsman when the:

- (a) person who is subject of the reportable allegation is a current employee, as defined in section 25A of the *Ombudsman Act 1974*, at the time the allegation was made;
- (b) allegation refers to a description of behaviour that constitutes a reportable allegation; and
- (c) child who is the subject of the reportable allegation was under 18 years of age at the time of the alleged offence or behaviour.

8.6.1 Duties of the Director-General or Delegate

The *Ombudsman Act 1974* requires the head of a designated division or public authority in NSW to ensure that systems are in place for recording and responding to allegations of reportable conduct of an employee.

The Director-General or delegate must:

- determine which allegations and convictions are to be notified to the NSW Ombudsman as reportable allegations or convictions and which matters are exempt from notification¹⁹;
- conduct an investigation whenever information is received that comprises an allegation of reportable conduct, including conduct exempt from notification to the NSW Ombudsman²⁰, or a reportable conviction against an employee. In such circumstances it is Juvenile Justice responsibility to investigate and make a decision about the management, supervision or continued employment of an employee the subject of the allegation or conviction²¹; and
- notify the NSW Ombudsman of any reportable allegation or reportable conviction against an employee, even if Juvenile Justice does not propose to take any action against the employee.

¹⁸ See the Memorandum of Understanding between the Juvenile Justice and Civil Chaplaincies Advisory Committee 2009.

¹⁹ In accordance with legislation and the Class or Kind Determination (section 25 CA of the *Ombudsman Act 1974*)

²⁰ In accordance with legislation and the Class or Kind Determination

²¹ NSW Ombudsman, *Child protection in the workplace* 2004

Anyone against whom allegations are made is entitled to procedural fairness and natural justice and may make written submissions to the Director-General or delegate concerning the reportable allegation or conviction.

8.7 Employee Disciplinary Proceedings²²

The Director-General or delegate must notify the Commissioner for the Office of the Children's Guardian of the name and other identifying particulars of any employee against whom relevant employment proceedings²³ have been completed, except where the investigation finds that there was no reportable conduct or the conduct fell within the Class or Kind Agreement between Juvenile Justice and the Office of the Children's Guardian.

The Juvenile Justice NSW, Employee Relations and Professional Conduct (ER&PC) Unit may report non-employees to the Commissioner for the Office of the Children's Guardian if there is concern that the employer may not report or investigate the allegations or conduct.

8.7.1 Vexatious complaints

Where a complaint or report made in accordance with this policy is deemed to be frivolous, vexatious or founded on improper motives, the matter must be referred to the Coordinator, Employment Relations & Professional Conduct Unit for further consideration and assessment and, where necessary, appropriate referrals.

Upon receipt of the referral, the Coordinator, Employment Relations & Professional Conduct Unit, will assess all available information and make a determination as to the appropriateness of any further action. This may include disciplinary action, referral to an external agency (NSW Police Force, Independent Commission Against Corruption or the NSW Ombudsman), or counselling of the person(s) involved.

Under the *Public Interest Disclosures Act 1994*, protection is not available for disclosures which are frivolous or vexatious.

8.8 Department of Education and Communities

In the event of an incident or allegation of reportable conduct of an employee of the Department of Education and Communities (DEC) based at a Juvenile Justice centre, the DEC Employee Performance & Conduct Directorate must be notified by contacting 9266 8070.²⁴

8.9 Allegations of assault or other reportable conduct by police officers

All allegations of assault upon clients by police, either prior to or during the Juvenile Justice involvement, must be reported to the NSW Police Customer Assistance Unit by contacting 1800 622 571.

²² See s. 39 of the *Commission for Children and Young People Act 1998*.

²³ An investigation concerning allegations of reportable conduct

²⁴ Department of Education and Communities, Responding to Allegations Against Employees in the Area of Child Protection, at https://www.det.nsw.edu.au/policies/staff/child_protect/alleg_emp/PD20050263.shtml?level=Schools&categories=Schools%7CWellbeing%7CChild+protection on 26 February 2014.

8.10 Assault amounting to physical injury or sexual abuse

Any incident or allegation of assault causing physical injury or sexual assault on a client must be reported to NSW Police Force.

8.11 Confidentiality and safeguard for reporters

Risk of significant harm reports to Community Services are confidential and the reporter's identity is, subject to some limited exceptions, protected by law²⁵ if the report is made in good faith. The law offers the following protections²⁶:

- the report shall not be held to be a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- no liability for defamation can be incurred because of the making of the report;
- the report, or its contents, is not admissible in any proceedings as evidence against the person who made the report;
- a person cannot be compelled by a court to provide the report or give any evidence as to its contents;
- a reporter may consent to the disclosure of their identity to a court. If however consent isn't given then a court may only order the disclosure of the reporter's identity if it is satisfied that the evidence is of critical importance to the case and that failure to admit it would prejudice the proper administration of justice;
- a report is an exempt document under the *Freedom of Information Act 1989*.

If law enforcement agencies require the identity of a reporter in order to investigate serious offences alleged to have been committed against children or young people, the identity of the reporter may be released to the police. The reporter will be notified that their identity is to be released to the police unless doing so would prejudice the police investigation.

Similarly, if a report or notification is made to the NSW Ombudsman in relation to reportable conduct, employees are not liable for defamation or civil proceedings incurred because of the disclosure.

Employees requiring further information or advice on the limited liability of employees should contact a union representative or a solicitor.²⁷

9. Disciplinary Action/Removal from Office

9.1 Public sector employees

Directors and Managers should apply the *Government Sector Employment Act 2013*, its Regulations and associated guidelines when taking disciplinary action against an employee found guilty of failing to discharge his or her duty of care or any other statutory breach.

9.2 Conference convenors

²⁵ As per Section 29 of the *Child and Young Person (Care and Protection) Act 1998*

²⁶ Child Wellbeing & Child Protection NSW Interagency Guidelines

²⁷ Employees may also contact Juvenile Justice Legal Services for information; however officers of that unit are not in a position to offer detailed advice on the subject.

Schedule 1(3)(2) of the *Young Offenders Act 1997*, provides the Director-General (or delegate) with the authority to remove a Conference Convenor from office at any time.

9.3 Non-Juvenile Justice Employees

Directors and Managers are responsible for making all non-Juvenile Justice employees aware of the agency's expectations of conduct. This includes but is not limited to external consultants, contractors, volunteers, students, Official Visitors and Chaplains. It is also the Director or Manager's responsibility to take the necessary action to address any concerns about their conduct.

All Directors and Managers must report all allegations of reportable conduct made against external consultants, contractors, volunteers, students, official visitors and chaplains and any other non-Juvenile Justice employee, immediately to the Juvenile Justice Employment Relations and Professional Conduct Unit. Juvenile Justice is required to inform the Ombudsman about the allegation and conduct an investigation. Juvenile Justice will inform the individual's organisation and/or professional body (for example, a professional registration or complaints panel) that an investigation is being conducted.

Juvenile Justice will conduct an investigation to resolve an allegation of misconduct to determine whether the individual under investigation:

- can return to work with clients in centres or the community; or
- suspend the individual's services in centres and the community.

When the investigation has been completed the agency will provide the Ombudsman with the report relating to the investigation, copies of all of the statements and other documents which form the basis of the report and the results of the investigation.

Government and non-government agencies are also required to report and investigate allegations of reportable conduct to the Ombudsman.

The process requires compliance with the principles of procedural fairness. For guidance see the NSW Public Service Commission Personnel Handbook at www.dpc.nsw.gov.au. [Personnel Handbook](#)

10. Record Keeping: Allegations and Action taken

Each stage of the reporting and investigation process must be thoroughly documented. In particular records should be maintained of the following by:

- an initiating employee recording the details of an allegation made or conduct observed, the name of the informer, the identity of the parties, the nature of the allegation, the time it was made and when it was reported to the Employment Relations & Professional Conduct Unit or other officer;
- the Employment Relations & Professional Conduct Unit recording the receipt of the allegations or other information and the steps taken in response;
- the Director-General or delegate when determining the action to be taken in response to any risks that may be disclosed by the allegation, the course of the investigation, what action should be taken as a result of the investigation,

- the person conducting an investigation, recording the evidence that supports or argues against the alleged conduct having happened.

Records in relation to allegations and reportable conduct are to be maintained and disposed of in accordance with the *State Records Act 1998* and other legislation as prescribed.

11. Implementing this Policy

All employees must read, understand and complete current and relevant training about this policy. Employees with client contact must have a detailed understanding of this policy. Employees without client contact must have an understanding of the principles and purpose of the policy. Directors and managers must make non-employees aware of the policy.

12. Monitoring and Evaluating the Policy

Juvenile Justice is committed to developing and maintaining a monitoring and evaluation system to ensure that key objectives of the *Children and Young Persons (Care and Protection) Act 1998* are met and sustained.

To facilitate monitoring of the policy, all employees are required to keep records of the following:

- completed Mandatory Reporter Guide (MRG) reports;
- risk of significant harm (ROSH) reports to the Community Services Helpline;
- outcome of the ROSH reports from Community Services;
- requests for services from non-government agency services;
- outcomes of requests for non-government agency services;
- requests for exchange of information under Chapter 16A between Juvenile Justice, Community Services and other government and non-government agencies.

12.1 Review of the policy

A review of this policy and associated guidelines will be scheduled a year from the date of approval of the policy or at such time as the provisions of the *Child Protection (Working with Children) Act 2012* and associated Regulation are implemented.

APPENDIX 1 Definitions

The legal context determines the exact definition of some terms used in this policy.

Word/Term	Definition
Agency	Agency refers to all public sector services. The <i>Ombudsman Act 1974</i> also uses the term to refer to certain non-government service providers or organisations that fall within the Ombudsman's child protection jurisdiction.
Allegations which are exempt	<p>According to section 25 CA of the <i>Ombudsman Act 1974</i>, allegations which are exempt from notification to the Ombudsman are matters which relate to:</p> <ul style="list-style-type: none"> • 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 • the use of physical force that, in all the circumstances, is trivial or negligible, but only if the employer is an agency to which Part 3A of the <i>Ombudsman Act 1974</i> applies and the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or • conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA of the <i>Ombudsman Act</i>. <p>Note: For the purposes of the Ombudsman Act, 'child' means a child or young person under the age of 18 years.</p>
At risk of significant harm	<p>At risk of significant harm is defined in section 23 of the <i>Children and Young Persons (Care and Protection) Act 1998</i>:</p> <p>(1) For the purposes of this Part and Part 3, a child or young person is at risk of significant harm if current concerns exist for the safety, welfare or wellbeing of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:</p> <p>(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,</p> <p>(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,</p> <p>(b1) 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,</p>

Word/Term	Definition
	<p>(c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,</p> <p>(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,</p> <p>(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,</p> <p>(f) 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.</p> <p>Note. Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.</p> <p>(2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions.</p>
Child	<p>Child is defined in the <i>Children and Young Persons (Care and Protection) Act 1998</i> as a person who is under the age of 16 years.</p> <p>Child is defined in the <i>Ombudsman Act 1974</i> as a person under the age of 18 years</p>
Child and Young Person Abuse	<p>Abuse is defined in section 227 of the <i>Children and Young People (Care and Protection) Act 1998</i> as any intentional action by a person that has resulted in or appears likely to result in:</p> <p>(a) the physical injury or sexual abuse of a child or young person, or</p> <p>(b) a child or young person suffering emotional or psychological harm of such a kind that the emotional or intellectual development of the child or young person is, or is likely to be, significantly damaged; or</p> <p>(c) the physical development or health of a child or young person being significantly harmed.</p>
Child-related employment	<p>Is defined in the <i>Commission for Children and Young People Act 1998</i> as:</p> <p>(a) any employment of the following kind that primarily involves direct contact with children where that contact is not directly supervised by a person having the capacity to direct the person in the course of the employment:</p> <p>(i) employment involving the provision of child protection services,</p> <p>(ii) employment in pre-schools, kindergartens and child care centres (including residential child care centres),</p>

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Word/Term	Definition
	<p>(iii) employment in schools or other educational institutions (not being universities),</p> <p>(iv) employment in detention centres (within the meaning of the Children (Detention Centres) Act 1987) and juvenile correctional centres (within the meaning of the Crimes (Administration of Sentences) Act 1999),</p> <p>(v) employment in refuges used by children,</p> <p>(vi) employment in wards of public or private hospitals in which children are patients,</p> <p>(vii) employment in clubs, associations, movements, societies, institutions or other bodies (including bodies of a cultural, recreational or sporting nature) having a significant child membership or involvement,</p> <p>(viii) employment in any religious organisation,</p> <p>(ix) employment in entertainment venues where the clientele is primarily children,</p> <p>(x) employment as a babysitter or childminder that is arranged by a commercial agency,</p> <p>(xi) employment involving fostering or other child care,</p> <p>(xii) employment involving regular provision of taxi services for the transport of children with a disability,</p> <p>(xiii) employment involving the private tuition of children,</p> <p>(xiv) employment involving the direct provision of child health services,</p> <p>(xv) employment involving the provision of counselling or other support services for children,</p> <p>(xvi) employment on school buses,</p> <p>(xvii) employment at overnight camps for children, and</p> <p>(a1) means (without limiting paragraph (a)) any employment of the following kind:</p> <p>(i) employment comprising the provision of an education and care service,</p> <p>(ii) employment as a person involved in the control or management of an education and care service,</p> <p>(iii) employment as a certified supervisor (within the meaning of the Children (Education and Care Services) National Law (NSW)) in relation to an education and care service under that Law,</p> <p>(iiia) employment as a certified supervisor (within the meaning of the Children (Education and Care Services) Supplementary Provisions Act 2011) in relation to a State regulated education and care service under that Act,</p> <p>(iv) employment as an assessment officer within the meaning of section 27A of the Children and Young Persons (Care and Protection) Act 1998,</p> <p>(v) employment as the principal officer of a designated agency within the meaning of the Children and Young Persons (Care and Protection) Act 1998,</p> <p>(vi) employment as the principal officer of an accredited adoption service provider within the meaning of the Adoption Act 2000,</p>

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Word/Term	Definition
	<p>(vii) employment as a self-employed person or as a subcontractor (by or on behalf of or in a relevant agency) if that employment involves direct contact with children and the contact is not directly supervised by a person having capacity to direct the self-employed person or subcontractor in the course of his or her work, and</p> <p>(b) includes any other employment of a kind prescribed by the regulations, but does not include any employment of a kind excluded by the regulations.</p>
Clients	<p>Clients referred to in this policy include all children and young people with whom Juvenile Justice employees have contact with in the process of their work. This may include children and young people who are siblings or other family members of children and young people who have been referred for a youth justice conference, subject to community supervision or detained in a juvenile justice centre.</p>
Conference Convenor	<p>Conference Convenor means a person appointed under section 60 of the <i>Young Offenders Act 1997</i>.</p>
Director-General	<p>Director-General, unless otherwise stated, means the Director-General of the Department of Attorney General & Justice.</p>
Employee	<p>For the purpose of this Policy, employee means:</p> <p>(a) any employee of the agency, whether on salary or wages or piece-work rates, and</p> <p>(b) any individual engaged by the agency whether or not they are employed to work directly with children or young people (including in the capacity of a volunteer), and</p> <p>(c) any deemed employee, such as Youth Justice Conference Convenors</p> <p>d) any contractor, instructor of religion or student on placement.</p> <p>e) Official Visitors</p>
Juvenile Justice	<p>Juvenile Justice means the NSW Department of Attorney General and Justice, Juvenile Justice.</p>
Mandatory reporter	<p>Mandatory reporter is defined in section 27 of the <i>Children and Young People (Care and Protection) Act 1998</i> as:</p> <p>(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</p> <p>(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,</p>

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Word/Term	Definition
	children's services, residential services, or law enforcement, wholly or partly, to children.
Neglect	<p>Neglect means neglect by a person (whether or not an employee of Juvenile Justice) to provide, without reasonable excuse, adequate and proper food, nursing, clothing, medical aid, mental health care, education or lodging to a child or young person in his or her care.</p> <p>Neglect in the context of reportable conduct has a different definition: Neglect includes either an action or inaction by a person who has care responsibilities towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.</p> <p>Supervisory neglect: An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or An intentional or reckless failure to adequately supervise a child, or a significantly careless act or failure to act, that:</p> <ul style="list-style-type: none"> • involves a gross breach of professional standards, and • has the potential to result in the death of, or significant harm to, a child. <p>Carer neglect: Grossly inadequate care that involves depriving a child of the basic necessities of life: such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.</p> <p>Failure to protect from abuse: An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.</p> <p>Reckless acts (or failure to act): A reckless act, or failure to act, that:</p> <ul style="list-style-type: none"> • involves a gross breach of professional standards, and • has the potential to result in the death of, or significant harm to, a child. <p>An incident can constitute neglect if it contains any element within this definition.</p>
Ombudsman	Ombudsman means the New South Wales Ombudsman.
Barred person	<p>Barred person means:</p> <p>Offences listed in Schedule 2 of the Child Protection (Working With Children) Act 2012 are disqualifying offences which means they will lead to an automatic bar against working with children in NSW.</p>
Reasonable	Reasonable grounds to report concerns about the safety of a child or a young person does not require proof. Indicators that

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Word/Term	Definition
grounds	<p>represent reasonable grounds to report risk of significant harm include:</p> <ul style="list-style-type: none"> • a child or young person discloses that he or she has suffered or is suffering non accidental physical injury or sexual abuse • someone else advises you that a child or young person has been sexually abused or non-accidentally injured, or • your own observations of the child or young person's physical condition or behaviours lead you to reasonably suspect that the child or young person has suffered or is suffering non-accidental physical injury or sexual abuse.
Reportable allegation	<p>Reportable allegation means an allegation of sexual assault, sexual misconduct, assault, ill-treatment, neglect or behaviour causing psychological harm against an employee and involving a child under the age of 18 years at the time of the alleged conduct.</p>
Reportable conduct	<p>Reportable conduct is defined in section 25A of the <i>Ombudsman Act 1974</i> and section 33(1) of the <i>Commission for Children and Young People Act 1998</i> as:</p> <p>(a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child, or</p> <p>(aa1) any offence or misconduct involving child abuse material (within the meaning of Division 15A of Part 3 of the <i>Crimes Act 1900</i>), or</p> <p>(a1) any child pornography offence or misconduct involving child pornography, or</p> <p>(a2) any child-related personal violence offence (within the meaning of Division 2), or</p> <p>(a3) an offence under section 91J, 91K, 91L or 91M of the <i>Crimes Act 1900</i> committed against, with or in the presence of a child, or</p> <p>(a4) an offence that was reportable conduct at the time that it was committed, or</p> <p>(b) any assault, ill-treatment or neglect of a child, or</p> <p>(c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.</p> <p>Note:</p> <p>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.</p>

Word/Term	Definition
	Reportable Conduct is also defined in the <i>Ombudsman Act 1974</i> .
Reportable conviction	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.
Volunteer	For the purpose of the <i>Commission for Children and Young People Act 1998</i> , a volunteer is an 'employee' according to the definition in the <i>Ombudsman Act 1974</i> .
Young person	Young person is defined in the <i>Children and Young People (Care and Protection) Act 1998</i> as a person who is aged 16 years or above but who is under the age of 18 years . (This differs from the <i>Ombudsman Act 1974</i> which defines a child as a person under the age of 18 years).

APPENDIX 2 References and Resources

The electronic version of this document contains links to the listed documents.

Procedures

Client Protection and Wellbeing Procedures

Policy

- [Appointment and engagement of convenors](#) (December 2010);
- [Case Management Policy](#) (2010);
- [Client Complaints Policy](#) (May 2012);
- [Code of Conduct](#) (July 2010);
- [Conduct and Performance Procedural guidelines](#);
- [Detainee Behaviour Intervention Framework](#) (November 2009);
- [Fraud Control and Corruption Prevention Policy](#) (2005);
- [Registrable offenders policy and procedures](#) (October 2009);
- [Registrable offenders policy and procedures](#) (October 2009);

Forms

- [Summary of an Allegation or Complaint Against an Employee form](#)
- [Risk Assessment form](#) (to accompany Summary of an allegation or Complaint against an employee form)

Resources

- Australasian Juvenile Justice Administrators (2009) [Standards for Juvenile Custodial Facilities](#)
- [Child Wellbeing and Child Protection - NSW Interagency Guidelines](#)
- [Class or Kind Agreement](#) (June 2010)
- [Convention on the Rights of the Child](#), United Nations General Assembly Resolution 44/25
- [Keep Them Safe: A shared approach to Child Wellbeing](#)
- Keep Them Safe: [Reporting child protection concerns](#)
- [Mandatory Reporter Guide](#)
- [Fact Sheet: Mandatory Reporter Guide](#)
- [Memorandum of Understanding between the Juvenile Justice and Civil Chaplaincies Advisory Committee 2008](#)
- [New South Wales Ombudsman](#)
- [NSW Ombudsman Child Protection fact sheets](#)
- NSW Ombudsman fact sheet: [Child protection legislation](#).

[what employers and employees need to know](#)

- NSW Ombudsman Child protection fact sheet No 04: [Planning and conducting an investigation.](#)
- NSW Ombudsman Practice Updates: [Defining Reportable Conduct](#)
- NSW Ombudsman Practice Updates: [Making a Finding](#)
- [NSW Personal Handbook Appendix 9A](#)
- [Online Mandatory Reporter Guide](#)
- [State Records Authority's General Retention and Disposal Authority - Personnel Records \(GDA 28\)](#)
- United Nations [Standard Minimum Rules for the Administration of Juvenile Justice.](#)

Legislation

- [Children and Young Persons \(Care and Protection\) Act 1998;](#)
- [Children \(Community Service Orders\) Act 1987;](#)
- [Children \(Detention Centres\) Act 1987;](#)
- [Child Protection \(Working with Children\) Act 2012;](#)
- [Commission for Children and Young People Act 1998;](#)
- [Crimes Act 1900;](#)
- [Ombudsman Act 1974;](#)
- [Public Interest Disclosures Act 1994;](#)
- [Public Sector Employment and Management Act \(NSW\) 2002](#)
- [Young Offenders Act 1997;](#)

Useful contacts

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Version Control and Change History

Version Control	Date Effective	Approved By	Amendment
1	February 2013	V. Ruis	First version
2	April 2014	V. Ruis	Final

