



## ST ALOYSIUS' COLLEGE, MILSONS POINT


### CHILD PROTECTION GUIDELINES

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## 1. Overview

- 1.1 As a result of public concerns about issues of child abuse in Australia over the past several years, the NSW State Government has passed legislation for the optimal protection of children and young persons from abuse/risk of harm. The welfare of the child or young person is the paramount consideration. Schools and other agencies looking after children and young persons in NSW must comply with the legislation.
- 1.2 St Aloysius' College ("**the College**") is committed to the security and well being of its students. These Child Protection Guidelines acknowledge such continued commitment and set out information, processes and procedures to comply with the NSW legislation.
- 1.3 The NSW Child Protection legislation consists of the following Acts:
- (a) *Children and Young Persons (Care and Protection) Act 1998*
- This Act requires employees who, in the course of their work, have reasonable grounds to suspect that a child or young person has been abused/is at risk of harm, to report the name or description of the child or young person and the reasonable grounds for suspecting that the child or young person is at risk of harm.
- (b) Part 3A of the *Ombudsman Act 1974*
- Part 3A of this Act relates to the NSW Ombudsman's child protection jurisdiction. It addresses the subject of reportable allegations and reportable conduct against an employee.
- The Act mandates notification to the NSW Ombudsman of any reportable allegation or conviction against an employee, whether in the course of their employment or outside working hours, of which an employer becomes aware.
- (c) *Child Protection (Prohibited Employment) Act, 1998; and Commission for Children and Young People Act, 1998*
- These Acts introduce a process for helping employers to decide whether people are suited to work in child-related positions in NSW.
- The Acts prohibit persons found guilty of committing a serious sex offence from working in such positions, and require that some people must be subject to background checking when applying for such paid positions – checking includes relevant criminal records (on a national basis), relevant Apprehended Violence Orders and relevant employment proceedings.
- 1.4 The aim of the Child Protection legislation is to put in place consistent processes and procedures to ensure that children and young persons are protected, and the legitimate rights of parents, employees and employers are maintained and protected.
- 1.5 The Provincial of the Society of Jesus in Australia ("**the Provincial**") has issued guidelines for the development by each Jesuit School of arrangements which take into account the requirements of State law and which ensure:

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- that Jesuit schools are and remain institutions in which the security and total well being of students committed to the care of the Society and its companions are safeguarded by all prudent means; and
- that companions in the works of a Jesuit school continue to perform their vocation in the confidence that they will be appropriately safeguarded against allegations that may be false or injurious.


1.6 It is the responsibility of the College Rector to ensure that Child Protection arrangements in the College are consistent with the policy and procedures as laid down in the Provincial's guidelines and in accordance with the laws of the State.

## **2. General principles**

2.1 The College's Child Protection Guidelines and the procedures to be followed at the College are based on the following principles:

- (a) All adults have the responsibility to care for children and young persons, and to protect them from any kind of abuse/risk of harm;
- (b) In every preventative and/or protective action related to abuse/risk of harm, the total well-being of the child or young person is the primary concern;
- (c) The value of the family unit is respected but not to the detriment of the well-being of the child or young person;
- (d) In following these Guidelines the prime concern at all times must be the safety and care of all children and young persons at the College. It is not the intention of the Guidelines to be punitive towards an employee or to pre-judge the outcome of any legal processes;
- (e) If an allegation is from an ex-student or otherwise relates to conduct alleged to have involved a former student of an employee at the College, the same processes will be followed as for a current student;
- (f) All persons involved in situations where abuse/risk of harm is disclosed or suspected are to be treated with sensitivity, dignity and respect, and the College shall offer the provision of pastoral support as deemed appropriate by the College Rector;
- (g) As the College Rector is responsible for compliance with the terms of the Child Protection legislation, he is to be informed of all matters concerning the welfare of children and young persons, including suspected or disclosed incidents of abuse/risk of harm;
- (h) Employees who have access to information regarding suspected or disclosed abuse/risk of harm have the obligation to observe appropriate confidentiality in relation to the entire matter;

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- (i) Employees must avoid any false, exaggerated or unjustified assertions that may infringe the good name of, or honour due to, another person;
- (j) The College Rector is to ensure that the College's pastoral care structures address issues of abuse/risk of harm, making appropriate provision for the support of children and young persons, families and employees directly involved.

### **3. Legitimate Authority of the College**

3.1 The Child Protection legislation directs that ownership be taken by the Legitimate Authority of the College or other agency to ensure that its provisions are implemented.

3.2 For the College, the Legitimate Authority of the College with respect to this legislation is as follows:

- (a) *Children and Young Persons (Care and Protection) Act 1998*

The College Rector, representing the Provincial

- (b) Part 3A of the *Ombudsman Act 1974*

The Provincial, who serves as the “Head of Agency”. The Provincial has appointed the College Rector to act as his representative in any Child Protection issues which may arise in the College.

- (c) *Child Protection (Prohibited Employment) Act, 1998; and Commission for Children and Young People Act, 1998*

The College Rector has nominated the Catholic Commission for Employment Relations (“CCER”) as the Approved Screening Agency for the College.


### **4. Procedures for reporting suspected abuse/risk of harm under the *Children and Young Persons (Care and Protection) Act 1998***

4.1 It is the responsibility of the College Rector to ensure that all issues of notification are notified, as soon as practicable, to the appropriate authorities as designated by the Child Protection legislation.

4.2 These procedures refer to circumstances where a person has reasonable grounds to suspect that a child or young person or a class of children or young persons have been abused/are at risk of harm because of the presence of any one or more of the following circumstances:

- (a) The child or young person's basic physical or psychological needs are not being met or are at risk of not being met;
- (b) The parents or other caregivers have not arranged, and are unable or unwilling to arrange, for the child or young person to receive the necessary medical care;

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- (c) The child or young person 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 parent or other caregiver has behaved in such a way towards a child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.
- 4.3 Notification on reasonable grounds that a child (under the age of 16 year) is at risk of harm is **mandatory** for the following persons:
- (a) a person, who in the course of their professional work or paid employment delivers health care, welfare, education, children’s services residential services, or law enforcement, wholly or partly, to children; and
  - (b) a person who holds a management position in an organization the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly, to children.
- 4.4 Notification that a young person (16 or 17 years of age) who is suspected of being at risk of harm is **voluntary**.
- However, consideration may need to be given to any possible legal duty to report knowledge of a crime to the NSW Police under the *Crimes Act 1900*.
- When considering notifying young persons to the appropriate authorities, the notifier needs to consider the young person’s wishes, their level of maturity and the personal situation as well as ensuring that the decision about their safety in such circumstances is not left entirely to them. At the College, a young person will be informed of any decision to notify.
- 4.5 In the case of a child or young person enrolled at the College, the employee or other person engaged at the College must as soon as practicable notify the College Rector of the name or a description of the child or young person and the grounds for suspecting that the child or young person is at risk of harm.
- 4.6 For notifications to the appropriate authorities, it is the College’s preferred process that the employee or other person, through the College Rector, notifies those authorities as required, eg: the NSW Department of Community Services (“DoCS”), the NSW Police, and the NSW Ombudsman.
- 4.7 A student who has turned 18 years of age is legally an adult and, therefore, is not covered by the provisions of the *Children and Young Persons (Care and Protection) Act 1998*. If the student has been physically or sexually abused, it is possible that a crime has been committed, in which case it may be desirable or necessary to report this to the NSW Police. At the College, a student will be informed of this.

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If there are reasonable grounds to suspect abuse/risk of harm to a student who has turned 18 years of age, it is the College's preferred process that the employee or other person, through the College Rector, notifies the NSW Police at the nearest Police station, preferably the Detectives' office if there is such a service at that station.

#### 4.8 **Establishing reasonable grounds**

Reasonable grounds may be found where, for eg:

- (a) A person witnesses an incident which may generate suspicion that a child or young person could be at risk of harm;
- (b) A child or young person speaks about being abused;
- (c) Someone else (perhaps a relative, friend, acquaintance or sibling of the child or young person) informs an employee or other person;
- (d) A child or young person tells an employee or other person that he/she knows someone who has been abused (often a child is referring to her/himself);
- (e) An employee or other person observes a particular child or young person's behaviour or his/her knowledge of children generally leads to suspicion of abuse.

If there is concern about a child or young person but the potential notifier does not feel confident enough that the suspicions constitute reasonable grounds, it is advised that the matter be discussed in private with the College Rector.

#### 4.9 Employees or other persons must not undertake any investigation of suspected abuse/risk of harm.


Responsibility for the conduct of the child protection investigation lies with DoCS in the first instance.

#### 4.10 **Protection for notifier**

The legislation provides protection for the notifier as follows:

- (a) The notification shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) No liability for defamation is incurred for the person making the notification;
- (c) The notification shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
- (d) The notification shall not be admissible in evidence in any proceedings before a court, tribunal or committee and no evidence of its contents shall be admissible;

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- (e) No person can be compelled in any court or tribunal to produce the notification or part thereof or to give evidence of its contents except in a children's court dealing with the subject child or young person.

#### 4.11 Flow chart

Annexure 2 is a flow chart outlining the process for notifying suspected abuse/risk of harm under the *Children and Young Persons (Care and Protection) Act 1998*.

4.12 At all stages it is essential that:

- (a) The child or young person is protected;
- (b) The Provincial is kept informed;
- (c) The anonymity of the notifier is maintained;
- (d) The rights of any alleged offender are respected.

#### 4.13 Definitions

Definitions relevant to the *Children and Young Persons (Care and Protection) Act 1998* are provided in Annexure 3.

### 5. Reportable allegations and reportable convictions against employees

5.1 As with notifications under the *Children and Young Persons (Care and Protection) Act 1998*, it is the responsibility of the College Rector to ensure that all issues of notification under the Part 3A of the *Ombudsman Act 1974* and the *Commission for Children and Young People Act 1998* are notified to the appropriate authorities as designated by the legislation.


5.2 Under Part 3A of the *Ombudsman Act 1974*, the College Rector must report to the NSW Ombudsman any reportable allegation or reportable conviction against a person employed or engaged by the College – hereafter referred to as an employee.

5.3 The College Rector must notify the NSW Ombudsman within 30 days of becoming aware of a reportable allegation or reportable conviction relating to an employee.

5.4 For a reportable allegation to be notified to the NSW Ombudsman, the following components are necessary:

- a) The person who is the subject of the allegation must be a current employee of the College or have been an employee at the time the allegation was made and must be identifiable. This does not necessarily mean identified by name, as a person may be identifiable by other information including their description and work schedules;
- (b) The alleged victim must have been under 18 years of age at the time of the alleged incident; and

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(c) The allegation must be an allegation of reportable conduct.

5.5 Certain allegations do not need to be notified to the NSW Ombudsman, viz:

- (a) An allegation that on face value is reasonable for the care and discipline and management of a child, having regard to the age, maturity, health or other characteristics of the children and to the College's *Code of Conduct for the Care and Protection of Children*; or
- (c) An allegation of the use of physical force that, in all the circumstances, is trivial and negligible, and the College investigates the complaint and records the result of the investigation under workplace employment procedures; or
- (d) An allegation of conduct that falls within a Class or Kind Determination with the NSW Ombudsman that applies to the College.

Even if an allegation is not notifiable to the NSW Ombudsman, the College is still required to investigate the allegation and respond to its finding(s) through the implementation of action(s) as deemed appropriate by the College.

5.6 In the case of a reportable allegation or reportable conviction against an employee, it is the responsibility of the College Rector to assess and monitor the risk of continued access of the employee to children in the College's care. Depending on the nature of the allegation and all other relevant factors, the College Rector may take such action as is considered necessary to minimize such risk.

5.7 Administrative steps may be necessary to remove some or all of the responsibilities of an employee who is accused of wrong-doing. Any such action should be limited to the minimum considered necessary, should be private and temporary and must not be understood or depicted as implying guilt. Such measures are intended for the protection of the employee as well as the child and to facilitate a prompt resolution.

5.8 All practicable measures shall be taken to preserve the good name of the employee affected and to maintain his/her professional standing and self-esteem.


5.9 The College will inform employees that it will regard false allegations against them as a grave wrong.

#### 5.10 **Principles to be observed**

Where a reportable allegation or reportable conviction is made against an employee, the College shall observe certain principles, viz:

- (a) The well-being of the child/children is of paramount concern;
- (b) A reportable allegation is a statement which is, at that point, unproven;
- (c) The dignity and privacy of all those involved, directly or indirectly, shall be maintained;

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- (d) Care shall be given to ensuring the continuing trust and confidence of the College community.


#### 5.11 Procedure where allegation is made

- 5.11.1 The College has established a procedure for notification of a reportable allegation or reportable conviction against an employee. Annexure 4 outlines this procedure.
- 5.11.2 Allegations will generally be dealt with in accordance with that procedure and these Guidelines. The procedure and these Guidelines should be referred to when making an allegation or if further information is needed.
- 5.11.3 The College will take whatever action it considers appropriate if the employee's conduct/actions is reportable to the NSW Ombudsman, including disciplining or dismissing offenders.

#### 5.12 Notifying the NSW Commission for Children and Young People

- 5.12.1 The College Rector is required to notify to the NSW Commission for Children and Young People ("CCYP") all relevant employment proceedings since 4 July 1995 involving:
- (a) Reportable conduct by an employee;
  - (b) An act of violence committed by an employee in the course of employment and in the presence of a child.
- 5.12.2 Certain matters do not need reporting to the CCYP, viz:
- (a) Where relevant employment proceedings have found that an incident was not reportable conduct or not an act of violence;
  - (b) Where such proceedings find an allegation to be:
    - Reasonable for discipline, management or care and in accordance with relevant professional standards; or
    - Trivial or negligible; or
    - "Inappropriate professional conduct" as defined in the CCYP Class or Kind Agreement applying to the College – only relevant to certain employees referred to in the Agreement, and only includes conduct involving low level physical force;
  - (c) Where relevant employment proceedings find an allegation to be:
    - False; or
    - Vexatious; or

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5.12.3 Relevant employment proceedings required to be notified to the CCYP shall be notified as either a Category 1 or Category 2 matter.

### 5.13 Flow charts

5.13.1 Annexure 5 is a flow chart of the process that shall be used by the College to determine if a reportable allegation or reportable conviction against an employee is required to be notified to the NSW Ombudsman, and how it shall be handled.

5.13.2 Annexure 6 is a flow chart of the process that shall be used by the College to determine if a relevant employment proceeding is to be notified to the CCYP, and if so, the Category accorded to the matter.

### 5.14 Definitions

Definitions relevant to the Part 3A of the *Ombudsman Act 1974*, *Commission for Children and Young People Act 1998*, and the *Child Protection (Prohibited Employment) Act 1998* are provided in Annexure 7.

## 6. Engagement of employees

### 6.1 Placement of Religious within the College

Under the provisions of the Child Protection legislation, ministers of religion and members of religious organizations are subject to the screening processes required of Teaching and General staff employed by the College.


The referee for the purposes of Child Protection will be the person's last placement.

### 6.2 Recruiting of Teaching and General staff

6.2.1 Applications for appointment as Teaching and General staff shall be accompanied by:

- (a) Documentation of personal identification;
- (b) Two written references, as to character, by people who have direct, recent experience of the applicant's work;
- (c) A written statement by the applicant that he/she has not been charged with or convicted of any relevant criminal offence, such an offence being one that would reasonably be considered to render the person unsuitable for employment in a school.

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- 6.2.2 In the case of preferred applicants, the information supplied must be verified by:
- (a) Enquiry of the referees;
  - (b) Completion of a Prohibited Employment Declaration stating that they are not a prohibited person; and
  - (c) The employment screening process required under the *Commission for Children and Young People Act 1998*.

### 6.3 **Recruiting of volunteers**

- 6.3.1 Under the legislation, the definition of “employee” includes volunteers.

For the purposes of the legislation, volunteers who are involved in or seek to undertake child-related employment are required to establish their suitability to work in such employment.

- 6.3.2 Any applicant for voluntary work in child-related employment as listed in the legislation, must complete a Prohibited Employment Declaration stating that they are not a person prohibited under the *Child Protection (Prohibited Employment) Act 1998* from seeking, undertaking, or remaining in child-related employment.

### 6.4 **Engagement of subcontractors**

- 6.4.1 Under the legislation, the definition of employee also includes subcontractors who work in child-related areas.


- 6.4.2 The principal of the subcontracting agency must ensure that the requisite NSW Police checks have been conducted, as well as it being in receipt of a completed Prohibited Employment Declaration stating that the person is not prohibited under the *Child Protection (Prohibited Employment) Act 1998* from seeking, undertaking, or remaining in child-related employment.

The principal should furnish the College with proof of the checks and the completed Declaration.

## 7. **Employee induction/development**

- 7.1 Applicants for appointment as members of the Teaching or General staff will be provided, before taking up their appointment, with a copy of these Guidelines and the College’s General Code of Conduct which defines standards of decorum and prudential conduct in force at the College.
- 7.2 Each applicant should sign an acknowledgment of having read, understood and accepted these Guidelines and accepted the College’s *Code of Conduct for the Care and Protection of Children*.

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- 7.3 In-service instruction will be provided from time to time to all employees on any statutory obligations binding on them, and on the implementation of the Guidelines.
- 7.4 Other persons defined as employees under the Child Protection legislation shall be provided with the appropriate statements, directions and protocols.

## **8. Supplementation of these Guidelines**

8.1 These Guidelines are supplemented by the following documents:

- (a) The applicable legislation;
- (a) *NSW Interagency Guidelines for Child Protection Intervention*, 2005 edition, published by the NSW Government;
- (b) *Child Protection in the Workplace – responding to allegations against employees*, June 2004, published by the NSW Ombudsman;
- (c) *The Working With Children Check Guidelines*, April 2004, published by the CCYP;
- (d) NSW Ombudsman Class or Kind Determination concerning Independent Schools represented by The Association of Independent School of NSW Ltd;
- (e) *NSW Commission for Children and Young People Class or Kind Agreements for Education*, April 2004;
- (f) The College's *Code of Conduct for the Care and Protection of Children*;

and any other documents/requirements published/prescribed by the relevant authorities for the purposes of ensuring the College's compliance to the Child Protection legislation.

8.2 Where appropriate, excerpts from the above documents have been directly incorporated into these Guidelines.

8.3 In developing these Guidelines, the College has made every effort to ensure consistency with the various requirements of the above documents.


8.4 Copies of the above documents shall be available in the College.

## **9. About these Guidelines**

9.1 These Guidelines are not a term of any contract, including any contract of employment.

9.2 These Guidelines may be varied by the College from time to time in the event of any information that would demonstrate the need for a review, or resulting from any legislative or organizational change that would warrant a review.

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NSW Child Protection legislation package

Legislation	<i>Children and Young Persons (Care and Protection) Act 1998</i>	<i>Commission for Children and Young People Act 1998</i>	<i>Child Protection (Prohibited Employment) Act, 1998</i>	Part 3A of the <i>Ombudsman Act 1974</i>
<b>Effects</b>	Provides a framework for cooperative and coordinated work between Government, community sector agencies and families in the care and protection of children and young persons.  Requires reporting to DoCS of children and young persons who are suspected on reasonable grounds of being abused/at risk of harm.	Established the CCYP.  Requires employment screening for child-related employment.	Prohibits employment in child-related employment of persons found guilty of committing certain serious sex offences.	NSW Ombudsman's jurisdiction covers the oversight, monitoring and investigation of child protection matters in certain designated agencies including non-government schools, health services, licenced child care centres and substitute child care services.
<b>Obligations of employers</b>	Mandatory reporting to DoCS regarding a <b>child</b> who is suspected on reasonable grounds of being at risk of harm.  Voluntary reporting to DoCS regarding a <b>young person</b> who is suspected on reasonable grounds of being at risk of harm.  Work with Government and non-government agencies to plan and provided services for the care and protection of children and young persons.  Retain relevant records.	Follow the process outlined in the CCYP's <i>Working With Children Check Guidelines</i> .  Not employ persons in child-related employment without appropriate employment screening.  Notify the CCYP of relevant employment proceedings and of applicants who have not been engaged based on the results of employment screening.  Retain relevant records.	Confirm existing employees are not prohibited persons.  Not employ anyone without evidence that he/she is not a prohibited person.  Retain relevant records.	Notify the NSW Ombudsman of any reportable allegation or reportable conviction against an employee of which an employer becomes aware.  Retain relevant records.
<b>Obligations of employees</b>	As per employers.	Answer truthfully any questions asked as part of the recruitment and employment screening process.	Disclose to employer their status relating to the definition of a prohibited person.  Not apply for or remain in child-related employment if a prohibited person.	Inform local manager (Principal/director) of any allegation of reportable conduct or reportable conviction within their workplace.

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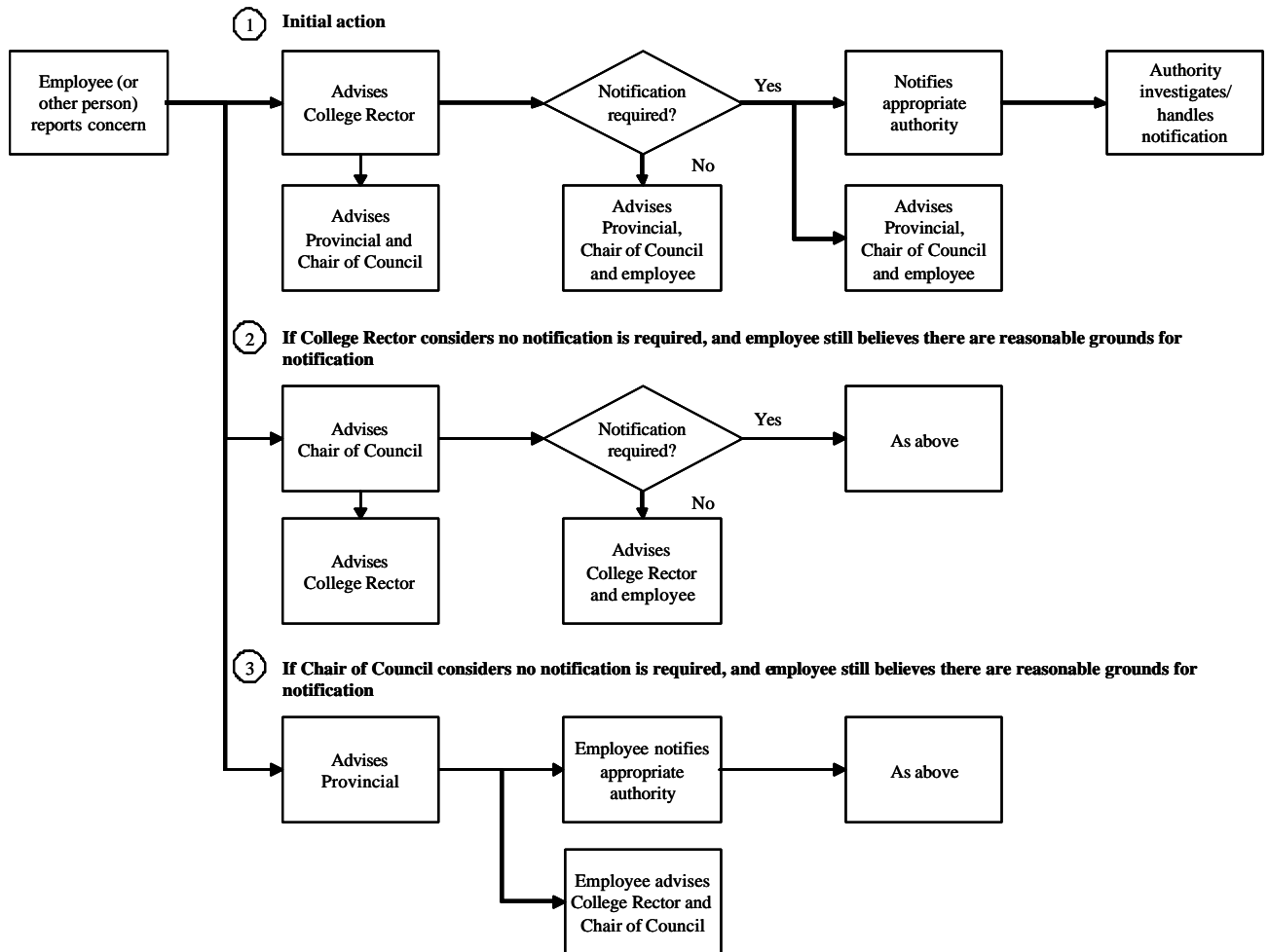


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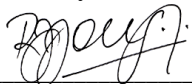
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**Flow chart: Process for notifying suspected abuse/risk of harm under the  
*Children and Young Persons (Care and Protection) Act 1998***



- In those cases where allegations of abuse/risk of harm are directed against the clergy, or members of religious organizations, the notification procedures adopted are to be consistent with those outlined in these Guidelines.
- However, in the case where an allegation is directed against the College Rector, the first point of reference will be the Chair of Council who will immediately inform the Provincial.
- In all other respects, the procedures to be adopted are to be consistent with those outlined in these Guidelines.

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**Definitions relevant to the *Children and Young Persons (Care and Protection) Act 1998***

Definitions have been taken from the *NSW Interagency Guidelines for Child Protection Intervention*, 2005 edition, and *The Working With Children Check Guidelines*, April 2004.

**Child**

A person who is under 16 years of age.

A person who is aged 16 years or above but who is under the age of 18 years.

**Behaviour that causes psychological harm**

Psychologically harmful behaviour is behaviour that results in significant emotional harm or trauma to a child. There needs to be a causal link between the inappropriate behaviour and the harm.

**Child abuse**

The term commonly used to describe different types of maltreatment inflicted on a child or young person. It includes assault (including sexual assault), ill treatment, neglect and exposing the child or young person to behaviour that might cause psychological harm.

**Child sexual abuse**

Any sexual act or sexual threat imposed on a child or young person.

**Class of children or young persons**

Refers to more than 1 child or young person who may be at risk of harm from abuse because of a person or situation. Eg: children in a school where a person in charge is suspected of abuse or known to have abused a child.

**Neglect**

Neglect occurs when a child is harmed by the failure of a person whose job includes care responsibilities towards a child, to provide basic physical and emotional necessities of life, including failure of such a person to provide or arrange for the provision of adequate and proper food, nursing, clothing, medical attention or lodging for a child in that person's care.

**Physical abuse**

Physical abuse or ill treatment is assault, non-accidental injury and/or physical harm to a child or young person by a parent, caregiver, another person responsible for the child or young person, or older child. It includes: harm or injuries which are caused by excessive discipline, beating or shaking, bruising, lacerations or welts, burns, fractures or dislocation, female genital mutilation and attempted suffocation or strangulation.

**Young person**

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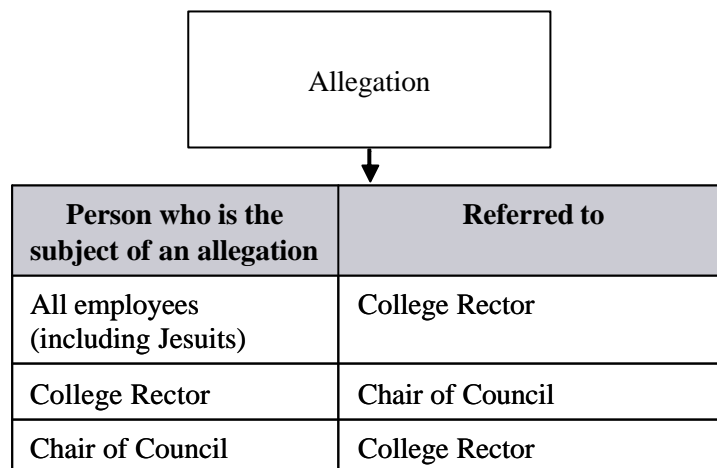
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**Procedure for notifying and handling a reportable allegation or reportable conviction  
against an employee**

Where an allegation is made against an employee, the following procedure shall be followed by the College:

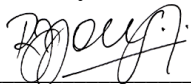


- In the first instance, the College Rector\* will determine whether the complaint is a reportable allegation, notifiable to the NSW Ombudsman.
- The College Rector\* will inform the complainant of the consequent processes which are required by law and by these Guidelines.
- Depending on the nature of the allegation, the College Rector\* shall contact the Provincial.

If the Provincial is unavailable and cannot be contacted immediately, the College Rector shall contact the Chair of Council.

- Where the allegation is judged to be a reportable allegation, the College Rector\* shall notify the NSW Ombudsman of the allegation within as soon as practicable, and in any event, within 30 days of becoming aware of the allegation, or within a period agreed to by the NSW Ombudsman.
- The College Rector\* shall instigate an investigation of the allegation. The seriousness of the allegation shall guide the level of investigation undertaken.
- With regard to the investigation, the College Rector (or as delegated) shall:
  - Remind the employee who is the subject of the allegation of their right to contact a representative of their choosing, and provide an opportunity for the employee to respond to the allegation;

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- Make reasonable inquiries before reaching a finding;
  - Consider all relevant available evidence;
  - Act fairly and without bias/conflict of interest;
  - Conduct the investigation without undue delay.
- The College shall maintain clear documentation of any investigation.
  - The College shall provide support to all parties throughout an investigation.
  - Where required, the College Rector\* shall notify the NSW Ombudsman whether or not the College proposes to take any disciplinary or other action in relation to the employee who is the subject the allegation, and the reasons why it intends to take or not to take any such action. Such notification shall be made as soon as practicable.
  - Where an allegation does not need notifying to the NSW Ombudsman, the College's usual Grievance/inquiry processes shall be adopted.
  - Where after investigation of a reportable allegation, the College conducts an employment proceeding against the person who is the subject of the allegation, the College Rector\* shall communicate the outcome of the employment proceeding to the CCYP.
- \* Where the person who is the subject of the alle gation is the College Rector, this procedure will be conducted by the Chair of Council.**

### Documentation


- Where an allegation is deemed not notifiable to the NSW Ombudsman, a copy of the file is retained at the College, and, where applicable, specific details at the office of The Association of Independent Schools of NSW Ltd.
- Where an allegation is deemed notifiable to the NSW Ombudsman, a copy of the file is retained at the College and at the office of NSW Ombudsman.
- An employee against whom an employment proceeding has been taken is, subject to section 43 of the *Commission for Children and Young People Act 1998*, entitled to apply to the College Rector for access under the *Freedom of Information Act 1989* to any documents of the College containing information about that proceeding.

However, the employee is not necessarily given access to all information concerning the employment proceeding. Schedule 1 of the *Freedom of Information Act 1989* has exemption clauses, which may be relevant in certain circumstances.

Also operating in this area is any clause of an industrial instrument which may provide the employee with access to files, eg: the CCER's schools awards applying at the College.

- All documents shall be stored securely.

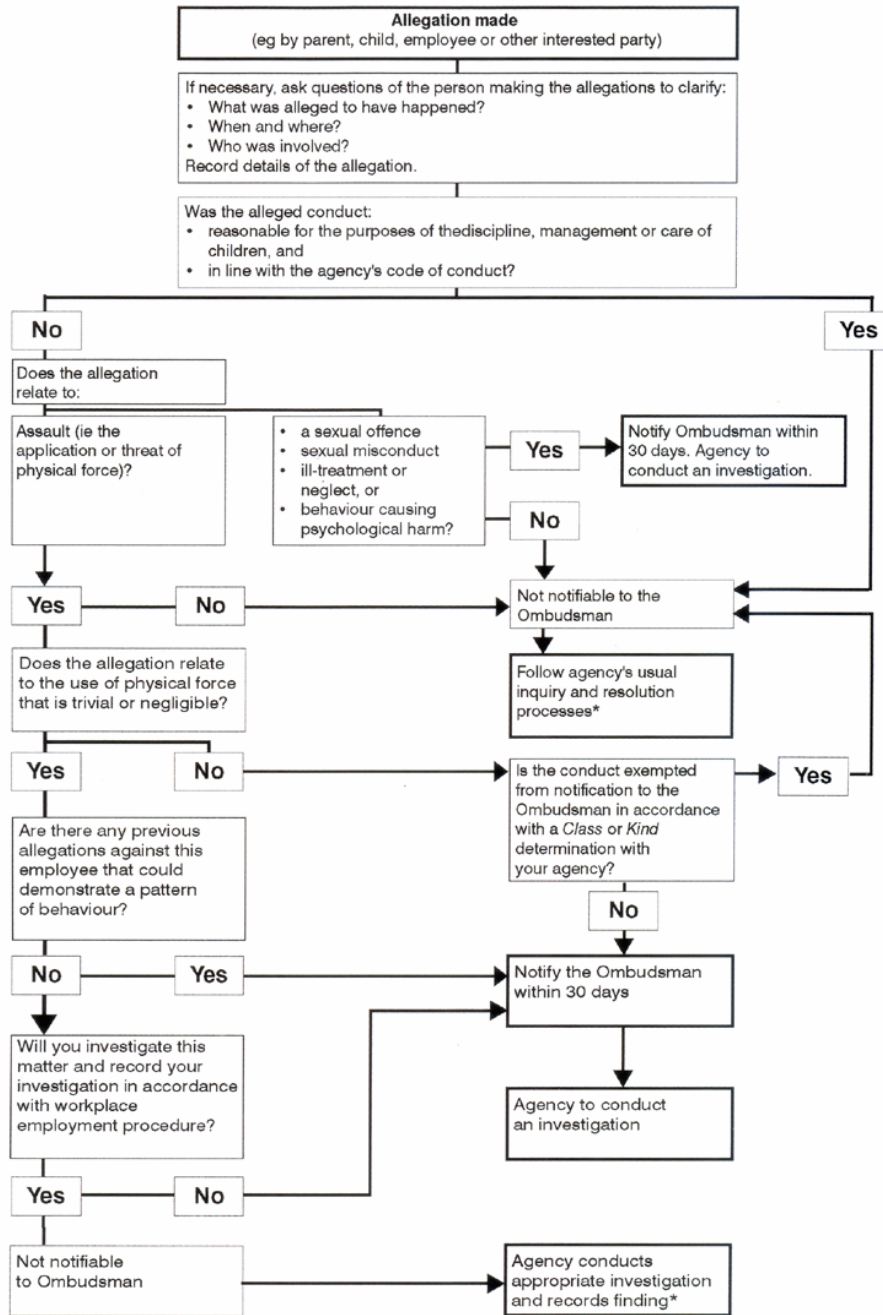
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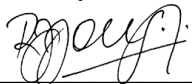
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**Flow chart: Process for determining if a reportable allegation or reportable conviction against an employee is required to be notified to the NSW Ombudsman**



*\*If the agency discovers that the alleged conduct is more serious than initially assessed and is reportable conduct, then the Ombudsman must be notified as soon as possible.*

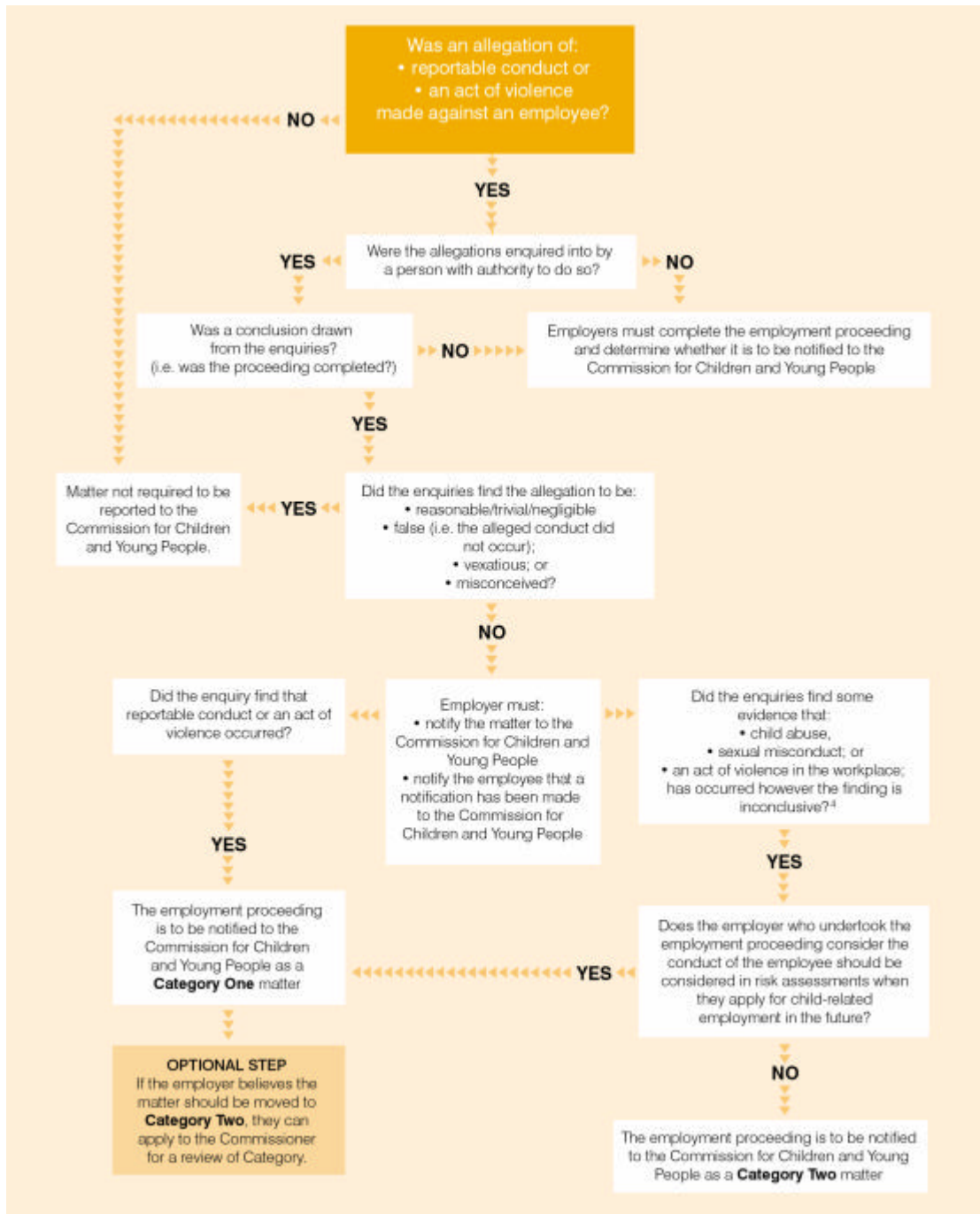
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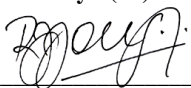
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**Flow chart: Process for determining if a relevant employment proceeding is to be notified to the NSW Commission for Children and Young People**



CCYP *The Working With Children Check Guidelines*, April 2004

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**Definitions relevant to Part 3A of the Ombudsman Act 1974, Commission for Children and Young People Act 1998, and the Child Protection (Prohibited Employment) Act 1998**

Definitions have been taken from *The Working With Children Check Guidelines*, April 2004, and *Child Protection in the Workplace – responding to allegations against employees*, June 2004.

**Act of violence**

(In relation to relevant employment proceedings).

An act or series of related acts that involves violent conduct committed by the employee in the course of employment, against or in the presence of a child.

**Apprehended Violence Order**

An Apprehended Violence Order (other than an interim order) made by a court under Part 15A of the *Crimes Act 1900*, or an interstate restraint order (within the meaning of Part 15A of the *Crimes Act 1900*) which is registered in NSW, and made on the application of a police officer or other public official for the protection of a child (or a child and others) (section 33(1) of the *Commission for Children and Young People Act 1998*).

**Approved Screening Agency**

An employer or employer-related body approved by the Minister to carry out all or any of the relevant procedures for itself or on behalf of another employer.

**Category 1**

Category 1 includes matters that always cause for concern, or matters which an employer suspects are part of a pattern of behaviour and therefore of significance when determining a person's suitability for future child-related employment.

**Category 2**

Category 2 includes matters which by themselves are not concerning, but which if repeated or considered with other matters such as a relevant criminal history or relevant Apprehended Violence Order, may indicate a pattern that needs to be taken into account when determining a person's suitability for future child-related employment.

**Child**

A person who is under 18 years of age.

**Child-related employment**

The definition of child-related employment differs slightly between the *Child Protection (Prohibited Employment) Act 1998* and the *Commission for Children and Young People Act 1998*. *The Working With Children Check Guidelines* uses the definition in the *Child Protection (Prohibited Employment) Act 1998*.

Under the *Child Protection (Prohibited Employment) Act 1998*, child-related employment means any employment of a kind listed in the legislation that primarily involves direct contact with children where that contact is not directly supervised. *Primarily* means that at least 1 of the essential duties of the position involves direct, unsupervised contact with children (IRC Matter 4337 of 2000).

Under the *Commission for Children and Young People Act 1998*, child-related employment means any employment that involves direct contact with children where that contact is not directly supervised.

**Criminal record, relevant**

A criminal record of a person with respect to a charge or conviction for:

- any sexual offence (including but not limited to, sexual assault, acts of indecency, child pornography, child prostitution and carnal knowledge);
- any assault, ill treatment or neglect of, or psychological harm to a child;
- any registrable offence:
  - that was committed in NSW and was punishable by penal servitude or imprisonment for 12 months or more; or
  - committed elsewhere and would have been an offence punishable by penal servitude or imprisonment for 12 months or more if it had been committed in NSW (section 33 of the *Commission for Children and Young People Act 1998*).

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A relevant criminal record includes all matters irrespective of whether they are otherwise considered spent and all relevant offences committed as a juvenile.

Relevant criminal records include charges which:

- may have not been heard or finalized by a court; or
- are proven but have not lead to a conviction; or
- have been dismissed, withdrawn or discharged by a court.

#### **Direct supervision**

Occurs when a person is present at all times, and is observing the contact by the person under supervision with any child and is responsible for directing that person if required.

#### **Employee**

Any person who is engaged in child-related employment in any of the following ways:

- paid employment;
- subcontractors;
- volunteers for an organization;
- ministers of religion;
- other members of religious organizations; or
- undertaking practical training as part of an educational or vocational course.

#### **Employment proceedings, relevant**

Disciplinary proceedings completed in NSW or elsewhere, where an employer (or professional or other body that supervises the professional conduct of an employee) has found:

- reportable conduct; or
- that an act of violence committed by an employee in the course of employment and in the presence of a child has occurred, or there is some evidence that it occurred, however the finding is inconclusive.

#### **Employment screening**

The process of gathering and assessing relevant information about an applicant for employment to assist employers make an informed decision on whether or not to employ an applicant for a position.

#### **False**

(In relation to employment proceedings)

Where enquiries into the matter find that reportable conduct or an act of violence did not occur.

#### **Grooming behaviour**

For the purpose of relevant employment proceedings, grooming behaviour constitutes a form of sexual misconduct.

Grooming is a pattern of behaviour aimed at engaging a child as a precursor to sexual abuse. The grooming process can include:

- persuading the child that a “special” relationship exists – spending inappropriate special time with the child, inappropriately giving gifts, showing special favours to them but not other children, allowing the child to overstep rules etc;
- testing of boundaries – undressing in front of the child, allowing the child to sit on the lap, talking about sex, “accidental” touching of genitals etc.

These behaviours may not indicate risk if occurring in isolation but if there is a pattern of behaviour occurring, it may indicate grooming

#### **Misconceived**

(In relation to employment proceedings)

Where enquiries into the matter find that, even though the allegation was made in good faith, it was based on a misunderstanding of what actually occurred and the incident was not reportable conduct or an act of violence.

#### **Neglect**

Neglect occurs when a child is harmed by the failure of a person whose job includes care responsibilities towards a child, to provide basis physical and emotional necessities of life, including failure of such a person to provide or arrange for the provision of adequate and proper food, nursing, clothing, medical attention or lodging for a child in that person’s care.

#### **Paid**

A reference to “paid” includes any person who receives a salary or remuneration such as cash, fee or stipend for the performance of work, whether as an employee, contractor, consultant or other like arrangement, but does not include reimbursement or “out-of-pocket” expenses, receipt of “in kind” or similar benefits.

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### Physical assault

Using common law principles, physical assault must include all 3 of the following elements:

- it is an act committed on or towards a child; and
- it involves either the application of force to a child or an act that causes a child to think that immediate force will be used on them; and
- it is either hostile or reckless (a reckless act is one where the person foresees the likelihood of inflicting injury or fear, and ignores the risk).

Actual physical harm does not occur in order for an assault to have taken place, ie: the child does not have to be injured.

Physical conduct which an inevitable part of everyday life does not amount to an assault.

### Prohibited person

A person convicted of a serious sex offence, or a *Registrable Person*, other than where there is an order in force declaring that the *Child Protection (Prohibited Employment) Act 1998* does not apply to the person in respect of the offence.

### Registrable offence

A person found guilty of any of the following offences against a child in NSW:

- murder;
- sexual offences;
- indecency offences punishable by imprisonment of 12 months or more;
- kidnapping (unless the offender is or has been the child's parent or carer);
- offences connected with child prostitution, prostitution or publication of child pornography.

### Registrable person

A person who has been found guilty of a *Registrable Offence* against children under the *Child Protection (Offenders Registration) Act 2000*.

### Reportable allegation

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

### Reportable conduct

Is:

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including child pornography offence); or
- any assault, ill treatment or neglect of a child; or
- any behaviour that causes psychological harm to a child,
- whether or not, in any case, with the consent of a child.

### Reportable conviction

A conviction (including a finding of guilt without a court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.

Unless otherwise indicated, a reference to a reportable allegation is also a reference to a reportable conviction.

### Serious sex offence

Is:

- an offence involving sexual activity or acts of indecency, that was committed in NSW and that was punishable by penal servitude or imprisonment for 12 months or more; or
- 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 NSW; or
- 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 NSW; or
- 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 NSW; or
- an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs; or
- any other offence, whether under the law of NSW or elsewhere, prescribed by the regulations.

Offences that have now ceased to be offences in NSW are excluded.

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Offences involving sexual activity or an act of indecency if the conduct constituting the offence occurred in a public place and would not have constituted an offence in NSW if the place were not a public place are excluded (section 5(5) of the *Child Protection (Prohibited Employment) Act 1998*).

### **Sexual assault**

Child sexual assault refers to the involvement of children in sexual acts or acts of indecency.

### **Sexual misconduct**

(In relation to relevant employment proceedings)

Describes a range of behaviours or a pattern of behaviour aimed at the involvement of children in sexual acts.

Some of these behaviours may include:

- inappropriate conversations of a sexual nature;
- comments that express a desire to act in a sexual manner;
- unwarranted and inappropriate touching;
- sexual exhibitionism;
- personal correspondence (including electronic communication) with a child or young person in respect of the adult's sexual feelings for a child or young person;
- deliberate exposure of children and young persons to sexual behaviour of others including display of pornography;
- possession of child pornography in the workplace.

Sexual misconduct includes "grooming behaviour".

For a matter of sexual misconduct to be notified to the CCYP, the alleged conduct must have been committed against, with or in the presence of children.

### **Spent conviction**

Those offences included on a person's criminal record which, because of the passage of time and legislative preconditions have been met, are no longer to be considered in any administrative decision making

Sexual offences can never be "spent" for the purposes of an application for child-related employment in NSW (section 15(1A) of the *Criminal Records Act 1991*).

### **Unpaid**


Work for which payment, including stipend, fee or similar remuneration, is not made, eg: a volunteer.

### **Vexatious**

(In relation to employment proceedings)

Where enquiries into the matter find that the allegation was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made.

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