



Child Protection Policy

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Purpose

This policy provides information for the purposes of child protection reporting practices at Marist Youth Care (MYC). The policy outlines the responsibilities around legal compliance and safe delivery of services to clients. It also outlines the roles and responsibilities of all employees and carers in this regard. This policy should be read in conjunction with the Child Protection Procedures.

Legislation

The Agency is committed to compliance with the NSW Child Protection Legislation, common law duty of care and other legislative obligations that impact upon the provision of safe and supportive service delivery to clients and work environment for staff and carers.

Level: Agency

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The Agency reaffirms its commitment to the legislative requirements contained in the following Acts that relate to child protection in NSW.

Ombudsman Act 1974 (Part 3A relates to their Child Protection jurisdiction)

Commission for Children and Young People Act 1998

Children and Young Persons (Care and Protection) Act 1998

Policy

MYC aims to be proactive in creating safe and supportive environments for children and young people, employees and carers.

A safe environment is one where the risk of significant harm is minimised and clients, employees and carers feel secure. Harm relates not only to dangers in the physical environment, but also refers to violence, physical threats, verbal abuse, threatening gestures, neglect, emotional or psychological harm, sexual harassment and abuse, grooming behaviour and racial vilification.

A supportive environment facilitates and enhances the social, academic, physical and emotional development of children, young people, employees, carers and all those involved with the work of the Agency. A supportive environment strives to be one in which:

- Clients are treated with respect and fairness by staff, carers and other clients
- Effective professional relationships are established and maintained
- Non-discriminatory language and behavioural practices are defined, modelled and reinforced by staff of the Agency and by carers.
- Staff and carers utilise Strengths based, Therapeutic Crisis Intervention (TCI) and Restorative Justice approaches within work practices.

MYC is committed to fostering the well-being of children and young people and to protecting them from any form of neglect or abuse.

MYC is committed to maintaining practices that create a culture of safety within which children, young people employees and carers are supported and protected.

This policy should assist MYC employees and carers to understand the broader responsibilities of the Agency and themselves as employees and carers in the area of child protection. This policy should be read in conjunction with the Child Protection Procedures, and with the **Child Wellbeing and Child Protection-NSW Interagency Guidelines** at <http://www.community.nsw.gov.au/kts/guidelines/reporting/index.htm>

Definitions

When reading this document it is important to understand the various terms used.

Child:

There are three relevant pieces of legislation referred to in this policy and they define a "child" differently:

Under the *Children and Young Persons (Care and Protection) Act 1998* a child is defined as meaning a person who is under the age of 16 years.

Under the *Ombudsman Act 1974* a child is defined as meaning a person under the age of 18 years.

Under the *Commission for Children and Young People Act 1998* a child is defined as a person under the age of 18 years.

Young Person:

A young person is defined as a person who is aged 16 years or above but who is under the age of 18 years [*Children and Young Persons (Care and Protection) Act 1998*]

Mandatory Reporter:

A "mandatory reporter" is any person who delivers health care, welfare, education, children's services, residential services or law enforcement wholly or partly to children (aged under 16) as part of their paid work and includes any person who directly manages or supervises such work. Foster carers are not mandatory reporters. Under this legislation they are regarded as volunteers.

(Children & Young Persons (Care and Protection) Act 1998 Section 27)

Prohibited Person:

A person convicted of any serious sex offence or specific offences against a child (murder of a child or a child related personal offence, as well as a registrable persons as under the Child Protection Registration Act 2000) is prohibited from applying to work, or working, in child related employment [*Commission for Children and Young People Act 1998*].

Head of Agency:

The head of agency is the person upon whom ultimate responsibility falls for decisions regarding child protection matters in an organisation. In Marist Youth Care the Head of Agency is the Chief Executive Officer.

“Reasonable Grounds”:

Reasonable grounds is a term used in reports of risk of significant harm to Community Services (CS). Reasonable grounds are those grounds that would lead a 'reasonable person' to suspect the child/young person is at risk of significant harm. The law does not expect people to be hyper-vigilant and over-zealous, nor is it acceptable to ignore clear signs of risk to children/young people. A useful rule of thumb is to consider whether another person, when faced with similar information, would also draw the same conclusion

“Reportable Conduct”

Section 25A of the Ombudsman Act defines “reportable conduct” as:

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 the child

Reportable conduct does not extend to:

- a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25ACA (note: this does not apply to MYC).

For the purposes of the Ombudsman Act, Foster carers are regarded as employees, and the Act applies.

“Relevant Employment Proceeding” – (*Commission for Children and Young Persons Act*)

A relevant employment proceeding is a completed disciplinary proceeding where an employer (or professional or other body that supervises the professional conduct of the employee) has found reportable conduct occurred.

Reportable conduct includes:

- any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child; or
- any child pornography offence or misconduct involving child pornography; or
- any child-related personal violence offence; or
- an offence of filming for indecent purposes committed against, with, or in the presence of, a child under section 21G or 21H of the *Summary Offences Act 1988*; or
- any assault, ill-treatment or neglect of a child; or
- any behaviour that causes psychological harm to a child, whether or not the child consents; or
- 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 reportable conduct or an act of violence occurred, however the finding is inconclusive or there is insufficient evidence.
- For the purposes of the *Commission for Children and Young Persons Act*, foster carers are regarded as employees, and the Act applies.

Risk of Significant Harm

This section outlines MYC child protection obligations under the Children and Young Persons (Care and Protection) Act 1998. It refers to reporting to Family and Community Services information about a child or young person if there are reasonable grounds to believe that they are at risk of significant harm.

Preamble to policy definition of significant harm

Members of the community and mandatory reporters who suspect that a child or young person is at "risk of significant harm" (the statutory threshold) should report their concerns to the Community Services. This new statutory threshold has replaced "risk of harm" in the *Children and Young Persons (Care and Protection) Act 1998*.

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well being of the child or young person are present to a significant extent.

Policy Definition

What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent.

What is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or well being.

In the case of an unborn child, what is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child's birth.

The significance can result from a single act or omission or an accumulation of these.

(source: Community Services Factsheet, KTS Website)

Mandatory Reporting

MYC staff whose work is in direct contact with children are mandatory reporters by law under the Act. However, under this policy Marist Youth Care has an expectation that carers and **all** staff, both paid and unpaid, will act as mandatory reporters for both children (under the age of 16 years) and young people (age 16 and 17 years).

If you are a mandatory reporter with current concerns that a child under the age of 16 years is at risk of significant harm, you are required to use the Mandatory Reporter Guide online at <http://sdm.community.nsw.gov.au/mrg> to determine if you are required to make a report to Community Services. Failure to report risk of significant harm is a breach of this policy and could result in disciplinary action being taken.

What must be reported to Community Services

Staff and carers at MYC must make a report to Community Services where they have current concerns about the safety, welfare and wellbeing of a child (under the age of 16 years). The Care Act provides that reports can be made about;

- Children and young people at risk of significant harm
- Unborn children at risk of significant harm
- Homeless children and young people

This includes children who were the subject of a prenatal report under section 25 and whose birth mother has not engaged with support services to eliminate or minimise the risk that gave rise to the report.

Significant harm may be caused by any of the following:

- Physical abuse
- Neglect
 - supervision
 - physical shelter/environment
 - food
 - medical care
 - mental health care

- education
- Sexual abuse
- Psychological harm
- Relinquishing care
- Carer concerns
 - parent/carer substance abuse
 - parent/carer mental health
 - parent/carer domestic violence

Where a person has reasonable grounds to suspect risk of significant harm, they should first use the Mandatory Reporter Guide (MRG) to assess whether their concerns meet the threshold of risk of significant harm. However, if there is an immediate danger to the child or young person the Police and/or the Helpline should be contacted directly.

(source: Community Services Factsheet, KTS Website)

What May Be Reported to Community Services by law

Under section 24 of the *Children & Young Persons (Care and Protection) Act 1998* a person who has reasonable grounds to suspect that a young person (aged 16 or 17 years) is at risk of significant harm may voluntarily report the young person to Community Services. That means the law does not make staff or carers at MYC mandatory reporters for young persons in this age group.

When deciding to report a young person to Community Services, consideration needs to be given to the young person's wishes, their level of maturity and their personal situation. It is strongly recommended that the young person be informed and, if appropriate, consent sought, when a report is to be made.

What Marist Youth Care requires under its procedures

Under this policy MYC requires staff or carers who have current concerns that a young person (age 16 and 17 years) is at risk of significant harm to consult with their Coordinator/supervisor and use the online Mandatory Reporter Guide, and follow the requirements.

A failure to do so may not be a breach of the law and bring about a penalty. However, it will be a breach of Marist policy and procedures and may result in disciplinary action.

Protection for Reporters

Section 29 of the *Children & Young Persons (Care and Protection) Act 1998* provides protection for persons who make reports to Community Services.

Reports made to Community Services are confidential and the reporter's identity is generally protected by law. However, from the end of January 2010 a new provision will allow a law enforcement agency access to the identity of the reporter if this is needed in connection with the investigation of a serious offence against a child or young person. While this will override the legislative protection, new safeguards to protect the reporter have been introduced. The request must come from a senior law enforcement officer and the reporter must be informed that their identity is to be released - unless informing them of the disclosure will prejudice the investigation.

(source: Community Services Factsheet, KTS Website)

Complaints against Employees and Carers

MYC has a duty to ensure the safety and effective delivery of services to clients in its programs. The Agency has in place procedures to respond to any concern or complaint about the conduct of an employee, a carer or a volunteer, involving a client.

The law requires the Agency to respond to complaints involving employees, carers and volunteers even if it involves conduct towards a child that is not a client of MYC. Whilst the Agency has a general duty to make reasonable inquiries and respond appropriately to any such complaint it also has specific reporting requirements and obligations in certain circumstances.

See Child Protection Procedures for more details on:

- Legal obligation under the Ombudsman Act NSW 1973
- What type of matters must be reported to the NSW Ombudsman?
- How may a staff member or carer become aware of an allegation or conviction of reportable conduct?
- What staff and carers need to know is expected of them under this policy?
- What happens immediately after a report is made?
- What does an investigation/inquiry plan include?
- What are the general stages in an investigation?
- What is the process for persons providing information to the inquiry?
- What happens after the matter is investigated?
- Who will know about the allegation and investigation?
- What are the rights of the person subject of the complaint?
- What the person subject of the complaint can expect?
- What are the rights of the complainant, notifier or a victim?
- What if someone is concerned or aggrieved by the process or outcomes?
- When may a finding need to be reported to the Commission for Children and Young People (CCYP)?

Record keeping

- Records pertaining to allegations or complaints made against employees and involving children are not to be attached to the general personnel files of relevant employees or carers.
- All reports, statements, recordings or other materials related to the investigation of an allegation against a staff member or carer will be maintained permanently in a secure confidential investigation file. A notation in the HR file will indicate the existence of an investigation record.
- Investigation files will be stored at Head Office securely and confidentially. The investigation files are managed by Coordinator Professional Standards
- Documentation and files that relate to performance or systemic response as a result of an investigation will be stored at Head Office securely and confidentially. These may form part of the relevant personal and supervision files of staff or carers if appropriate and necessary for the implementation of the outcomes. All documentation is managed by the Coordinator Professional Standards in cooperation with HR.
- Record of the investigation and action plans are retained separately on the data base for the purpose of managing staff, service delivery, legal compliance and quality control. Only those staff who require access to this information for professional purposes within their position at MYC, or the subject of the investigation, will be given access. The data base is maintained and controlled by the Coordinator Professional Standards.

The Working with Children Check

This section details Marist Youth Care's child protection obligations related to employment screening under the Commission for *Children and Young People Act 1998*.

The main requirements are that MYC:

- Does not employ prohibited persons in child-related employment.
- Does *Working With Children* background checks and /or National Criminal History Record Check.
- Reports *relevant employment proceedings*.
- Keeps records and protects confidentiality.

Please see Child Protection Procedures for more information on Prohibited persons.

MYC is obligated by law to ask all preferred applicants for child-related employment to complete an *Applicant Declaration and Consent* form to declare that they are not a prohibited person. This includes carers,

volunteers and students on placement. It is an offence to employ anyone in child-related employment without requiring them to disclose whether they are a prohibited person.

There are three types of records considered in the Working with Children background check: relevant criminal records, relevant apprehended violence orders (AVOs) and relevant employment proceedings.
Note: Referee checks will always be completed for preferred applicants for positions.

As part of the funding agreement, all federally funded programs run by MYC now require staff to have a National Criminal History Check, in order to be eligible to work within the program.

An applicant who fails to complete and sign the *Applicant Declaration and Consent* form cannot be offered a paid or unpaid position in the agency. The on-line form is available at;
<https://check.kids.nsw.gov.au/#applying-for-job>.

Where applicants are unable to complete the form on-line it can be printed off the website and completed manually.

An employee who believes that s/he might be a prohibited person, or that another employee is a prohibited person, must inform the Chief Executive Officer immediately.

It is an offence to commence employing or to continue employing a person who the employer knows is a prohibited person.

Training and Competency

Marist Youth Care ensures that Child Protection is part of the core training received by all new staff and carers. Induction and on-the-job training should involve assessing the competency of staff and the understanding of obligations under this policy. Refresher modules offered should be completed by staff and carers who are due for updates. Managers and other supervisors should keep track of staff and carer training needs, targeting training when needed.

Related Policies, Procedures and forms

- Child Protection Procedures
- Risk of Significant Harm Procedures
- Code of Conduct
- Duty of Care Policy
- Privacy Policy

Review

Annually as part of the Policy review schedule
Any changes or amendments require the prior approval of EMAC.

Document History

This policy replaces Marist Youth Care Child Protection Policy dated December 2005.

This policy replaces Child Protection Policy ver7