



This is an e-learning resource



Protecting Children & Young Persons

*As a centre for Social Enterprise,
FSG Australia is committed to
delivering on the values of
Freedom, Social Justice and
Growth.*

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SECTION A – INTRODUCTION

Glossary

Refer to [FSG Australia glossary](#)

Scope

This document applies to all FSG Australia (FSGA) workers unless exceptions are listed in this scope.

A person is a worker if the person carries out work in any capacity for FSGA, including work as:

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor; or
- (d) an employee of a labour hire company who has been assigned to work at FSGA or
- (e) an outworker; or
- (f) an apprentice or trainee; or
- (g) a student gaining work experience; or
- (h) a volunteer.

For Kaia-specific procedures refer to [KAIA Program Practice Manual - Foster Care](#) and [KAIA Program Practice Manual - Residential Care Services](#).

For relevant headspace Capalaba procedures refer to: [headspace Capalaba Mandatory Reporting Policy](#).

For the MOU between community services and ADHC on children and young people with a disability refer to: http://www.community.nsw.gov.au/docswr/assets/main/lib100044/protocol_adhc_comm_ser_v.pdf

Also refer to [Code of Conduct](#), [Professional Boundaries Policy](#), [Managing Direct Service Strategies](#).

For the response and reporting of assault, abuse and neglect, refer to [Managing direct service delivery risks procedures](#).

FSG Australia (FSGA) overarching policy is available at [FSG Australia Overarching Policy](#).

Refer to The Child Protection Guide:

<http://www.communities.qld.gov.au/childsafety/partners/our-government-partners/queensland-child-protection-guide>.

The Child Protection Guide (CPG) is a Queensland web-based decision support tool which aims to assist health and education professionals to report their concerns to the appropriate statutory agency or to refer children and their families to a family support service.

Refer to the Mandatory Reporter Guide:

http://www.community.nsw.gov.au/kts/guidelines/documents/mandatory_reporter_guide.pdf

For services in NSW mandatory reporters are required by law to report to Family and Community Services if they suspect that a child is at risk of significant harm.

The reading of the relevant document is mandatory for workers who will owe a duty of care to children and young people as part of their work area orientation.

Human Services Quality Standards

Standard 4: Safety, wellbeing and rights

1. The organisation provides services in a manner that upholds people's human and legal rights.
2. The organisation proactively prevents, identifies and responds to risks to the safety and wellbeing of people using services.
3. The organisation has processes for reporting and responding to potential or actual harm, abuse and/or neglect that may occur for people using services.
4. People using services are enabled to access appropriate supports and advocacy.

National Standards for Disability Services

Standard 1: Rights

- 1:5 The service has preventative measures in place to ensure that individuals are free from discrimination, exploitation, abuse, harm, neglect and violence.
- 1:6 The service addresses any breach of rights promptly and systemically to ensure opportunities for improvement are captured.
- 1:7 The service supports individuals with information and, if needed, access to legal advice and/or advocacy.
- 1:8 The service recognises the role of families, friends, carers and advocates in safeguarding and upholding the rights of people with disability.

Standard 6: Service management

- 6:3 The service documents, monitors and effectively uses management systems including Work Health Safety, human resource management and financial management.

NSW Disability Service Standards

Standard 1 - Rights

3. Each person will receive a service in an environment free from discrimination, abuse, neglect and exploitation
7. Each child with a disability has the same rights and freedoms as all other children and service providers will take each child's best interests into account when providing services.

Legislation

Refer to [Legislation guide for more information](#)

Child Protection Act 1999 (Qld)

Children and Young Persons (Care and Protection) Act 1998 (NSW)

Child and youth risk management strategies - The blue card system

Child Protection (Working with Children) Act 2012 (NSW)

Disability Inclusion Act 2014 (NSW)

Disability Services Act 2006 (Qld)

Duty of Care (common law)

Work Health and Safety Act 2011(NSW)

Work Health and Safety Act 2011(Qld)

Working with Children (Risk Management and Screening) Act 2000 (Qld)

Statement of commitment

FSGA is committed to the safety and wellbeing of all children and young people, including those who use our services. Our workers will treat them with respect and understanding and address their concerns at all times. Our organisation will endeavour to provide a safe and supportive service environment for children and young people through clear and comprehensive policy and procedures which are available to all stakeholders.

Useful link:

http://www.adhc.nsw.gov.au/_data/assets/file/0019/232732/ADHC_Child_Protection_Guidelines.pdf

e-Learning resources

Kaia Foster Parent and Residential Program

Kaia Program

Challenging reactions

Legislation

Prohibited practices

Trauma

Responding to crisis

Statement of standards

SECTION B - PROCEDURE

1.0 Code of conduct & professional boundaries

The FSGA [Code of conduct](#) and [Professional Boundaries](#) details FSGA's values and provides clear expectations for all workers. It details FSGA's values and provides clear expectations for:

- personal and professional boundaries
- ethical behaviour
- appropriate worker behaviour and relationships with children/young persons.

The FSGA Code of Conduct provides the standard of behaviour at FSGA. All workers and other people representing FSGA are required to conduct themselves in a professional manner and in accordance with:

- sector standards
- FSGA's commitment to the highest quality of service delivery
- FSGA's policies and procedures
- strict compliance with laws and regulations.

Within the Code of Conduct is a reference to the document detailing the required professional boundaries when walking alongside children/young people.

Whilst it is recognised that workers must establish a rapport with children/young people, and provide friendly and accessible services, they are responsible for establishing and maintaining appropriate boundaries between themselves and children/young people and for providing an equitable service. There is no single all-encompassing definition of what constitutes professional boundaries. The intention of professional boundaries is to achieve a shared understanding of acceptable and unacceptable practice, enabling FSGA to apply clear and consistent standards.

Workers are required to sign their agreement to comply with the Code of Conduct prior to commencing employment, and any breach of the Code may lead to [disciplinary action](#), including the termination of employment for acts of serious misconduct.

2.0 Children/Young person's rights and responsibilities

The [Rights and responsibilities](#) fact sheet provides clear information about children's/young people's rights and responsibilities whilst participating in FSGA services.

FSGA upholds the United Nations Convention on the Rights of the Child. This Convention established 'minimum' rights to which children/young people are entitled. FSGA aims to uphold these rights.

For those children/young people receiving services funded by the Department of Communities, Child Safety and Disability Services - Child Safety Services, FSGA also adheres to the Charter of Rights for a Child in Care, contained in the *Child Protection Act 1999*.

Under the Convention, children/young people have the right to:

- feel safe
- be listened to
- be involved in decisions that affect them
- have their cultural values respected
- not be unjustly discriminated against on the basis of their status, activities, expressed opinion or beliefs of their parents or carers
- have their best interests considered.

Children/Young people are expected to conduct themselves in a manner which does not put the health, safety or wellbeing of others at risk. Any child/young person who has a complaint about another person's actions will be encouraged to air their grievance or complaint in accordance with the [Managing Complaints Procedures](#).

An incident that results in significant [harm](#) to a child/young person is considered in terms of an allegation or suspicion of harm in the first instance. For more information refer to the [Managing direct service delivery risks procedures](#).

When intervention strategies are required, FSGA employs proactive strategies in accordance with the [Managing Direct Service Strategies](#), which aims to lessen the need for a person to react in a challenging way.

All children's/young persons' personal information is treated as private in accordance with the [Managing personal information under the Australian Privacy Principles procedures](#).

3.0 Recruiting, selecting, training and managing workers

In accordance with the [HR Operations Manual](#), [Staffing Solutions Operations Manual](#) and [Volunteering FSGA Operations Manual](#), FSGA has effective procedures for recruiting, selecting, training and managing workers. This includes having position descriptions and ensuring ongoing training and development is planned.

In accordance with the [Managing Human Resources Procedures](#), FSGA establishes the suitability, integrity, identity and credentials of workers and meets safety screening legislative requirements including the need for all workers to have a current Queensland Blue Card or NSW Working with Children Check. FSGA recognises that in addition to safety screening, a risk management approach is also required in every aspect of service delivery. Safety screening complements robust recruitment practices.

The Human Resource Department is responsible for ensuring paid workers meet the safety screening requirements and the Volunteering FSGA is responsible for ensuring volunteers meet the safety screening requirements.

For all workers working in Queensland, safety screening includes the Blue Card, Yellow Card Exemption and National Criminal History Police Check. Workers, nominee, directors and volunteers who will work in the Kaia Program complete a Suitability Check under the Department of Communities, Child Safety and Disability Services - Child Safety Services.

Successful applicants who will work in New South Wales must provide their Working with Children Check Number to their FSGA, along with their surname and date of birth for online verification. FSGA is responsible for checking the validity of a Working with Children Check prior to engaging any new individual for child-related work. In order to verify the status of a Working with Children Check, FSGA will conduct an online verification of the Working with Children Check using the unique number provided by the prospective worker. Paper verification is *not* permitted under this new system; therefore employers cannot accept the worker's notification letter as proof of clearance.

FSGA will maintain a register of all workers and the status of their safety screening. All workers must advise FSGA immediately if there is any event that is likely to adversely affect the status of their safety screening and that would require FSGA to reconsider their suitability for working with FSGA.

When interviewing and recruiting new workers who will work with children, FSGA carefully considers the applicant's previous experience in child-related environments, asks pertinent questions and checks references before appointing a new worker.

Systems are in place to adequately train and induct workers before employment, or as emergent needs arise, as detailed in the [Managing Human Resources Procedures](#). Direct

service employees are required to have Cert III in Disability or equivalent which ensures they are competent in identifying, assessing and minimising risks. FSGA policies and procedures are trained in accordance with the [Managing Human Resources Procedures](#).

As detailed in the [HR Operations Manual](#), exit interviews assist FSGA to identify broader issues of concern that may impact on the safety and wellbeing of children/young people in the service environment. Exit interviews provide an opportunity to:

- gather information about the effectiveness of the recruitment process
- identify possible areas for improvement in FSGA processes, management, job design, remuneration or career planning and development
- receive positive feedback on what is working well in FSGA.

4.0 Harm prevention and response

In accordance with the [Managing direct service delivery risks procedures](#), FSGA has procedures in place which aim to prevent [abuse](#), [assault](#) and [neglect](#) and to promote children's/young persons' rights to feel safe and to live and receive services in an environment free from any type of abuse, assault and neglect. Where abuse, assault or neglect is suspected or has occurred, FSGA will fulfill reporting obligations and respond promptly and sensitively to the allegations to protect the person/s from further harm and to offer medical and psychological assistance. FSGA aims to actively encourage and support children/young persons to access due process through the justice system and to participate in any investigation.

The [Managing Direct Service Strategies](#) supports FSGA intervention practices which focus on positive outcomes for children/young people, including the extent to which they feel satisfied with their lives in areas such as choice and decision making, personal competence and self-reliance, community participation, friendships and the feeling of being part of a secure, interdependent and supportive community.

Children/Young people can only be protected from harm if it is reported and dealt with quickly and effectively. The [Managing direct service delivery risks procedures](#) ensures workers respond as quickly as possible to an allegation or suspicion of harm or a breach of the Protecting Children and Young People Procedures. FSGA aims to ensure abuse including sexual and physical assault, psychological/emotional and financial abuse and neglect does not occur. Also see guidelines outlined in [Appendix A - Sexual abuse](#).

FSGA workers work to minimise [harm](#) to children/young people by acting in a manner that supports their interests and wellbeing, by:

- making sure that children/young people know that it is their right to feel safe at all times

- teaching children/young people about acceptable and unacceptable behaviour in general
- letting children/young people know who is and who is not an worker in the organisation
- allowing children/young people to be a part of decision-making processes
- making sure children/young people are safe by monitoring their activities and ensuring their environment meets all safety requirements (refer to the [Managing direct service delivery risks procedures](#))
- taking anything a children/young people says seriously and following up their concerns
- letting children/young people know there is no secret too awful, no story too terrible, that they can't share with someone they trust
- teaching children/young people about appropriate and inappropriate contact in a manner appropriate to their age and level of understanding
- teaching children/young people to say 'no' to anything that makes them feel unsafe
- encouraging children/young people to tell workers of any suspicious activities or people
- listening to children/young people and letting them know that workers are available for them if they have any concerns.

5.0 Breaches of FSGA's Protecting Children and Young People Procedures

In accordance with the [Managing Human Resources Procedures](#), where work attitude, performance or conduct is unsatisfactory; a fair process of counselling and discipline will be initiated. Records of complaints, investigations and outcomes are kept and held in accordance with privacy legislation.

A breach is any action or inaction by a worker that fails to comply with any part of FSGA's Protecting Children and Young People Procedures.

Breaches will be managed in a fair, unbiased and supportive manner. The following will occur:

- all people concerned will be advised of the process

- all people concerned will be able to provide their version of events
- the details of the breach, including the versions of all parties and the outcome will be recorded
- matters discussed in relation to the breach will be kept private unless otherwise required by law
- an appropriate outcome will be decided.

However, a breach that results in significant harm to a child/young person is considered in terms of an allegation or suspicion of harm in the first instance. Refer to the [Managing direct service delivery risks procedures](#).

Depending on the nature of the breach, outcomes may include:

- emphasising the relevant component of the Protecting Children and Young People Procedures
- providing closer supervision
- further education and training
- mediating between those involved in the incident (where appropriate)
- [disciplinary procedures](#) if necessary, or
- reviewing current policy and procedures and developing new policy and procedures if necessary.

6.0 Activities and special events

In accordance with the [Managing direct service delivery risks procedures](#), FSGA takes all the necessary steps to ensure children/young person safety during an activity. A comprehensive activity plan is developed following risk management exercises related to the individual(s), venue and the activity. Worker feedback following the activity is used to continuously improve the quality and safety of the activity.

7.0 Strategies for communication and support

All stakeholders are aware of the Protecting Children and Young People Procedures as detailed in [Fact Sheet 14 – Child and Young Person Protection](#).

Workers who will work with children/young people sign off understanding of the Protecting Children and Young People Procedures on the [Work area orientation form](#).

8.0 Parents, guardians and carers of children/young people

8.1 Working in partnership

FSGA workers work in partnership with parents and carers¹ to effectively meet the needs of children/young people. For children/young people receiving services funded by the Department of Communities, Child Safety and Disability Services - Child Safety Services, contact with the family must be approved by the child's/young person's Child Safety Officer.

8.2 Facilitating contact between parent/guardian/carer and child/young person

Where appropriate to do so FSGA will facilitate contact between children/young people and their parent/guardian/carer in accordance with the [Facilitating participation procedures](#), which ensures that FSGA supports children/young persons to maintain their family relationships by encouraging them to maintain healthy relationships with their families whilst respecting their right to form mutual networks and relationships of their choosing.

FSGA recognises that there will be occasions where there will be separate requirements for support to the person with the disability and their family members. FSGA recognises that a family with a member with a disability may experience significant effects in the way their family functions and may require access to service/s to support family functioning.

8.3 Rights and responsibilities of parents/guardians/carers

Parents/guardians/carers:

- are welcome visitors at FSGA unless the visit would adversely affect the health and wellbeing of children/young persons
- are involved where appropriate, in the planning, management, development and delivery of services in accordance with the [Facilitating participation procedures](#)

¹ For the purposes of this document, 'carers' does not refer to Foster and Kinship Carers approved by Child Safety Services to provide daily care to children/young people subject to child protection statutory intervention. Refer to the [Kaia Program Practice Manual](#).

- have their cultural, religious, disability and language requirements respected and catered for in accordance with the [Aboriginal and Torres Strait Islander Policy](#) and the [Culturally and linguistically Diverse Policy](#)
- are informed about FSGA services at intake and as requested via the FSGA website
- are given opportunities to give regular feedback to FSGA in accordance with the [Service delivery feedback policy](#)
- are given information from workers about their child's/young person's involvement in activities in accordance with the [Managing direct service delivery risks procedures](#)
- are able to access and comment on FSGA's procedures/policy
- are informed at intake, and as emergent needs arise, of what they can do if they are concerned or have questions about anything which has occurred at FSGA and what they can expect from workers via [Fact Sheet 6 – Complaints](#). Participants of individual planning are reminded of the complaint procedures
- have their personal information treated as private in accordance with the [Managing personal information under the Australian Privacy Principles Procedures](#).

Parents/guardians/carers of children/young people participating in FSGA services are expected to conduct themselves in a manner which supports child/young person protection. At intake, or on request, they are given [Fact Sheet 14 – Child and youth protection](#).

Parents/guardians/carers should:

- work with FSGA to support child/young person protection
- provide children/young people with the required support
- inform FSGA of any concerns
- have input into policies and procedures where relevant
- be involved with FSGA—but not be judged negatively for little or no involvement
- provide required items to ensure the nutritional, medical, emotional needs of children/young people are met whilst they are receiving an FSGA service e.g. comforter, food and drink (for non-residential services) and medication
- provide sufficient and adequate information to ensure the child's/young person's safety.

9.0 Visitors

All visitors to FSGA, for whom a positive safety screen result has not been verified, are required to be supervised around children/young people, or workers should schedule entry to the premises when children/young people are not present.

10.0 Planning activities

In accordance with the [Managing direct service delivery risks procedures](#), when planning any activity, FSGA workers assess the actual and potential risks to everyone involved. When planning activities involving children/young people, workers will consider:

- the number of people taking part
- the age and sex of the participants
- the age range of the participants
- the type of activity
- the environment where the activity will take place
- the particular needs of the individuals
- FSGA's policies and procedures.

In addition, there are a number of basic principles workers will take into account when planning activities for children/young people, including:

- maximising opportunities for children/young people to enjoy themselves and have fun
- ensuring the activities support the interests and wellbeing of children/young people
- being aware that children/young people should be fully supervised when required
- ensuring workers know where children/young people are and what they are doing
- providing adult supervision over any activity using potentially dangerous equipment
- ensuring children/young people are supervised by appropriate numbers of adults depending on numbers and age of children/young persons, type of activity and support needs
- ensuring that [duty of care](#) and dignity of risk is considered

- ensuring that children/young people, workers and parent/guardians/carers are inducted to the activity
- ensuring that children/young people are safe when being dropped off or picked up
- gain verification of safety-related procedures for young people home alone (the [Verification of customer's safety home alone form](#) is used to record written verification of a child/young person's safety when home alone)
- doing a risk assessment on the location of the activity.

11.0 Reviewing the Protecting Children and Young Persons Procedures

The Controlled Document Manager will schedule and record an annual review of the Protecting Children and Young Persons Procedures. The Children's Services Operations Manager is responsible for reviewing the procedures detailed in this document.

After the review, an email is sent to all FSGA workers prompting them to read the procedures and reminding them of FSGA's commitment to child/young person protection and the need to closely supervise children/young persons around visitors.

The Children's Services Operations Manager will:

- ensure the procedures are current and complete
- monitor that procedures are followed
- take into consideration whether any incidents relating to children/young people's risk management occurred
- review the actual process used to manage any incidents
- review the effectiveness of FSGA's policy and procedures in preventing or minimising harm to children/young people
- review the content and frequency of training in relation to the child/young person risk management strategy.

12.0 Risk management

After defining the context and identifying the activity/task/work area/personnel to be assessed FSGA risk management is carried out in accordance with the [Managing work health and safety procedures](#) as follows:

Step 1: Identify all hazards

Step 2: Assess the risks these hazards create

Step 3: Decide on measures to control the risks

Step 4: Implement appropriate control measures

Step 5: Monitor the control measures and review the process

13.0 Continuous improvement

[Process Improvement Procedures](#) ensure FSGA operates in an environment of continuous improvement and makes changes to procedures or policies in response to complaints, incidents or suggestions.

The [Managing Incidents Procedures](#) ensures that incidents are reported and the information used to continuously improve the workplace environment.

14.0 Individual needs

A child's/young person's cultural background is respected in accordance with [Aboriginal and Torres Strait Islander Policy](#) and the [Culturally and linguistically Diverse Policy](#).

By following the [Facilitating participation procedures](#), FSGA ensures that children/young people are provided support in the [least restrictive](#) way to assist them to plan, monitor, achieve and review their individual needs and personal goals. Workers will provide flexible support to meet their changing needs, goals and aspirations.

15.0 Play equipment and toys

All FSGA toys and play equipment are to be inspected by quality assurance workers and deemed safe before being used by children/young people whilst participating in FSGA residential services.

16.0 Communication and support

In accordance with the [Facilitating Service Delivery Feedback Procedures](#), FSGA formally and informally gathers feedback from children/young people using FSGA services, with the aim to continuously improve services. Where a child/young person does not have the capacity to provide feedback or where it is appropriate to do so, their parent/carer/guardian may provide feedback on their behalf.

Feedback is gathered from workers with the aim to address any issues or concerns regarding service delivery.

[Fact Sheet 14 – Child and Young Person Protection](#) is given at intake to parents/carers/guardians of children/young people using FSGA services or as requested.

17.0 Child Wellbeing and Child Protection NSW Interagency Guidelines

Services for children/young people in NSW must take into account the interagency guidelines detailed on the Family and Community Services website at:

http://www.community.nsw.gov.au/kts/guidelines/collaboration/collaboration_index.htm

The central vision of *Keep Them Safe* is that child wellbeing and child protection is a collective or shared responsibility. In recognition that child protection is not the sole responsibility of Community Services, *Keep Them Safe* has changed the way that child abuse and neglect concerns are reported and responded to in NSW.

18.0 Reporting of certain misconduct involving children for services in NSW

Refer also to:

http://www.community.nsw.gov.au/docs_menu/preventing_child_abuse_and_neglect/resources_for_mandatory_reporters.html

18.1 Definitions:

Sexual offence

The term 'sexual offence' encompasses all criminal offences involving a sexual element that are 'committed against, with or in the presence of a child'.

These offences include (but are not limited to) the following:

- indecent assault
- sexual assault
- aggravated sexual assault
- sexual intercourse and attempted sexual intercourse

- possession/ dissemination/ production of child pornography or child abuse material
- using children to produce pornography
- grooming or procuring children under the age of 16 years for unlawful sexual activity
- deemed non-consensual sexual activity on the basis of special care relationships.

All cases involving a sexual offence would also involve sexual misconduct.

Sexual misconduct

The term 'sexual misconduct' includes conduct that does not necessarily equate to a criminal offence (for example, criminal proceedings may not have been commenced or proceeded to a finding of guilt by a court).

For sexual misconduct to be reportable to the Office of the Children's Guardian, the alleged conduct must have been committed against, with or in the presence of a child.

There are three categories of sexual misconduct in addition to sexual offences:

- crossing professional boundaries
- sexually explicit comments and other overtly sexual behaviour and
- grooming behaviour.

Crossing professional boundaries

Sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or intimate:

- relationship with
- conduct towards or
- focus on; a child or young person, or a group of children or young persons.

In the area of 'crossing professional boundaries', particular care should be exercised before making a finding of sexual misconduct. For example, an employee who, on an isolated occasion, 'crosses professional boundaries' in a manner that involves little more than poor judgement could not be said to have engaged in sexual misconduct. Also, in cases where an employee has 'crossed boundaries' in terms of their relationship with a child, if there is evidence which clearly shows that the employee did not seek to establish an improper relationship with the involved child, then this does not constitute sexual misconduct.

However, persistent less serious breaches of professional standards in this area, or a single serious 'crossing of the boundaries' by an employee, may constitute sexual misconduct, particularly if the employee either knew, or ought to have known, that their behaviour was unacceptable.

Codes of conduct that outline the nature of the professional boundaries which should exist between employees and children/young people can be particularly useful. For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be necessary to provide more detailed written advice about what constitutes appropriate behaviour.

Sexually explicit comments and other overtly sexual behaviour

Sexual misconduct includes a broad range of sexualised behaviour with or towards children. While it is not possible to provide a complete and definitive list of unacceptable sexual conduct involving children, the following types of behaviour give strong guidance:

- sexualised behaviour with or towards a child (including sexual exhibitionism)
- inappropriate conversations of a sexual nature
- comments that express a desire to act in a sexual manner
- unwarranted and inappropriate touching involving a child
- personal correspondence and communications (including emails, social media and web forums) with a child or young person in relation to the adult's romantic, intimate or sexual feelings for a child or young person
- exposure of children and young people to sexual behaviour of others including display of pornography
- watching children undress in circumstances where supervision is not required and it is clearly inappropriate.

Grooming behaviour

Grooming or procuring a child under the age of 16 years for unlawful sexual activity is a sexual offence. However, Schedule 1(2) of the Act also recognises grooming as a form of sexual misconduct. As grooming is a sexual offence if the alleged victim is under 16 years old, caution should be exercised before reaching a grooming finding (particularly in cases where the behaviour is directed towards a child under 16 years). As an alternative to grooming, in many cases it will be more appropriate to consider whether there has been a 'crossing of professional boundaries' (see above) and/or other more overt sexual behaviour.

Furthermore, behaviour should only be seen as 'grooming' where there is evidence of a pattern of conduct that is consistent with grooming the alleged victim for sexual activity, and

that there is no other reasonable explanation for it. The types of behaviours that may lead to such a conclusion include (but are not limited to) the following:

- Persuading a child or group of children that they have a 'special' relationship, for example by:
 - spending inappropriate special time with a child
 - inappropriately giving gifts
 - inappropriately showing special favours to them but not other children
 - inappropriately allowing the child to overstep rules
 - asking the child to keep this relationship to themselves.
- Testing boundaries, for example by:
 - undressing in front of a child
 - encouraging inappropriate physical contact (even where it is not overtly sexual)
 - talking about sex
 - 'accidental' intimate touching.
- Inappropriately extending a relationship outside of work (except where it may be appropriate - for example where there was a pre-existing friendship with the child's family or as part of normal social interactions in the community).
- Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.
- An adult requesting that a child keep any aspect of their relationship secret or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

Serious physical assault of a child

An assault of a child includes any act by which a person intentionally inflicts unjustified use of physical force against a child. An assault can also occur if a person causes a child to reasonably fear that unjustified force will be used against them. Even if a person who inflicts, or causes the fear of, physical harm does not intend to inflict the harm or cause the fear, they may still have committed an assault if they acted recklessly (i.e. the person ought to have known that their actions would cause physical harm or the fear of such harm).

Assaults can include hitting, pushing, shoving, throwing objects, or making threats to physically harm a child. Reporting bodies should consider the context in which physical force is used against a child to determine whether it constitutes an assault. For example, an assault has not taken place where there is use of reasonable force in the following examples:

- actions for the discipline, management or care of children
- exercising appropriate control over a child
- disarming a child or young person seeking to harm themselves or others
- separating children or young people who are fighting
- moving a child or young person out of harm's way
- restraining a child or young person from causing intentional damage to property
- self defence or the defence of others.

When reporting bodies are considering whether the physical force used was reasonable, a range of variables should be taken into account, having regard to the circumstances of the case.

Variables that may be relevant include matters such as the age, maturity, health or other characteristics of the child or children involved, and professional codes of conduct or standards that the worker is required to follow.

While reporting bodies are expected to investigate every allegation of physical assault, only findings that a serious physical assault occurred are reportable to the Office of the Children's Guardian for consideration in Working with Children Check assessments.

A physical assault is not serious where:

- it only involves minor force; and
- it did not and was not ever likely to result in serious injury.

A physical assault is serious where:

- it results in the child being injured, beyond a type of injury like a minor scratch, bruise or graze; or
- it had the potential to result in a serious injury; or
- the injury suffered may be minor, but the assault is associated with aggravating circumstances (in this regard, aggravating circumstances might

include associated inhumane or demeaning behaviour by the employee, for example kicking a child, pulling a child by grabbing the child around the neck).

In considering whether a serious physical assault has occurred, reporting bodies whose work involves regular restraint of children, should consider the context of events, including the child's age and vulnerability.

Generally, behaviour that does not meet the standard of a serious physical assault does not become a serious physical assault by means of it being repeated. The only exception to this is where an employer has developed legitimate concerns for the safety of a child or children and intervened with a worker (e.g. warnings, counselling etc) and the behaviour is repeated.

18.2 Findings of relevant misconduct involving children

A misconduct finding is made when FSGA has completed an investigation and made a final determination that sexual misconduct or serious physical assault has occurred.

Even if appropriate disciplinary action in respect of the misconduct has not yet been determined or review or appeal processes remain available, the General Manager – Service Support is responsible for ensuring the findings are reported.

To submit a relevant misconduct finding in respect of a child-related worker contact the Office of the Children's Guardian on (02) 9286 7219 to request authority to do so. Once permission is granted, you will be able to submit your reports online using FSGA login details.

Go to www.check.kids.nsw.gov.au

1. Click the 'Start here' button on the right-hand side. A new screen will appear.
2. Under the 'Verify' section, click 'Employer log in' and verify.
3. Enter the FSGA login details and click 'Submit'.
4. Select the 'Submit workplace report finding' tab across the top of the screen.
5. A form will appear. Fill in the required fields and click 'Submit'.

If help is needed with any part of this process, call the Office of the Children's Guardian on (02) 9286 7276.

18.3 Keeping records

FSGA must keep all records of allegations, investigations and findings about a notification for at least 30 years, unless the records are given to the Office of the Children's Guardian. If a

reporting body or any successor to a reporting body ceases to exist all records must be lodged with the Office of the Children's Guardian before the body or successor ceases to exist.

18.4 Informing workers who are the subject of a relevant misconduct finding

The General Manager – Service Support must inform a worker who is the subject of a relevant misconduct finding of that finding and that that his or her employer has a statutory obligation to report the misconduct to the Office of the Children's Guardian.

Workers are able to use the Government Information (Public Access) Act 2009 (GIPA) to seek access to information held by government agencies about the recorded misconduct finding. They may do this even after they have left the reporting body's organisation, and cannot be charged any fees by the reporting body to access this information.

18.5 Potential consequences for the worker

As well as a national criminal history check, an application for a Working with Children Check involves a review of workplace records. Applicants who receive a clearance are subject to ongoing monitoring for a period of five years, which is how long a Working with Children Check clearance remains valid.

A new criminal or workplace record which appears against a worker's name during this five year-period may trigger a risk assessment and in some cases result in a bar or interim bar against working with children, depending on the seriousness of the offence or conduct concerned.

18.6 Withdrawing a finding of relevant misconduct

FSGA may amend or withdraw a notification of a finding of relevant misconduct if:

- the finding was quashed, withdrawn or amended
- there was an error in the notification or the finding
- the notification was wrongly made
- the person against whom the finding was made has died.

The Office of the Children's Guardian requires written notification of amendments or withdrawals of a finding of relevant misconduct. The General Manager – Support Services must provide a statutory declaration as to the reasons for the amendment or withdrawal.

Appendix A - Sexual abuse indicators

How to recognise child sexual abuse

Reference: [Child sexual abuse - Child Safety Services, Department of Communities, Child Safety and Disability Services \(Queensland Government\)](#)

Some indicators of child sexual abuse may include:

- displaying greater sexual knowledge than normally expected for their age or developmental level
- inappropriate sexual play and behaviour with themselves, other children or dolls and toys
- hints about sexual activity through actions or comments that are inappropriate to the child's age or developmental level
- excessive masturbation or masturbation in public after kindergarten age
- persistent bedwetting, urinating or soiling in clothes
- persistent sexual themes in their drawings or play time
- running away
- destroying property
- hurting or mutilating animals
- creating stories, poems or artwork about abuse
- difficulty concentrating or being withdrawn or overly obedient
- having unexpected redness, soreness or injury around the penis, vagina, mouth or anus
- having torn, stained or bloody clothing, especially underwear
- recurring themes of power or control in play.