

	Version: 2.0
	Date Approved: 05/02/2015
	Next Review Date: 05/08/2015
MM HR 512- NSW REPORTABLE CONDUCT POLICY	

1. Purpose

This policy is written in accordance with child protection legislation in New South Wales. It draws on Marymead's key values in making a firm commitment to the safety and protection of children. It ensures that all employees are aware of their legal and ethical rights and responsibilities in relation to any allegations of inappropriate behaviour towards children that may be made against them.

2. Policy Statement

As Marymead is an agency providing substitute residential care ("Foster Care") it is deemed to be a designated non-government agency. Marymead is required by the *Ombudsman Act 1974* to report to the NSW Ombudsman any allegation or conviction of reportable conduct against an employee, ie all Marymead employees who receive a salary or wage payment from Marymead and anyone engaged by Marymead to provide services to children.

Marymead is required to make a report to the NSW Ombudsman regardless of where the alleged incident with a child occurred.

The role of the Office of the NSW Ombudsman is to ensure employers respond appropriately to allegations and that the process is effective, accountable and fair.

Non-reportable matters that are subject to a reporting exemption (as specified in the Act and defined below in Section 4) are dealt with as appropriate under workplace procedure, with the outcome documented and may be subject to audit by the Ombudsman.

Marymead is committed to:

- acting fairly and without bias
- conducting an investigation without undue delay
- ensuring that the case is not investigated or determined by someone with a conflict of interest
- urging all parties to maintain confidentiality during the investigation
- ensuring that the outcome is supported by evidence.

Employees must advise Marymead of any allegation of reportable conduct made against a Marymead employee, regardless of whether the matter arose in the workplace or elsewhere. This includes the employee's obligation to self-report to Marymead. Marymead also complies with requirements to notify the Commission for Children and Young People (CCYP) of completed 'relevant employment proceedings' for inclusion in the CCYP database that is used for background checking a person's suitability for child related employment. Notifications made to CCYP include relevant employment proceedings where it is found there is evidence of:

- reportable conduct by an employee, or
- an act of violence committed by an employee in the course of employment and in the presence of a child.

3. Procedures

3.1 Prevention

Marymead is committed to a child safe environment, and works to reduce the risk of abuse and neglect within its services in the following ways:

- conducting the required screening and checks prior to the commencement of any employee or volunteer to ensure that those engaged are fit and proper persons to work at Marymead
- participation by all new employees in a structured induction program
- education and training programs to improve Marymead employees' knowledge of child protection, abuse and best practice in preventing and reporting allegations and concerns
- further levels of training for relevant managers and co-ordinators to equip them for their more demanding role in child protection
- support for employees in maintaining professional standards, as well as professional boundaries with respect to relationships with children and young people, recognising the vulnerability that a breach of boundaries can create, the risk of significant harm, and mandatory reporting obligations in a range of child protection matters
- regular professional guidance for all staff
- annual formal performance appraisals.

3.2 Responding to allegations against employees

Marymead has systems in place to respond to allegations involving employees, at all times holding paramount the safety and best interests of the child and the right of the employee to a proper investigation. Procedures ensure fair handling, privacy, support, and any necessary discipline and preventative measures are put in place.

These procedures are set out in the brochure *Professional Conduct & Child Protection: Responding to allegations involving people working for Marymead*, which is provided to any employee against whom an allegation is made. (brochure to be developed) In the interim please [click here](#) to access the NSW Ombudsman Fact Sheet, *Planning and conducting an Investigation* to assist the employee to understand what he/she can expect from the organisation in this process.

The Chief Executive Officer is to be advised as soon as practicable of any allegations against Marymead employees. Although this would normally be through the relevant Director, any staff member may advise the Chief Executive Officer if there is likely to be a delay.

An allegation of reportable conduct is notified to the Ombudsman within 30 days. A report is made to the NSW Ombudsman by using the **Employment-related child protection notification form**, available at the following link: <http://www.ombo.nsw.gov.au/what-we-do/our-work/?a=4203>

Part A of the **Employment-related child protection notification form**, relating to the details of the people involved, the allegation and the agency's initial response, is to be sent to the Ombudsman's office within 30 days of the head of agency becoming aware of the reportable allegation or conviction against an employee. If the investigation has been completed within those 30 days.

The Chief Executive Officer authorises an investigation in relation to both allegations of reportable conduct and exempt matters and appoints a Director to manage the process, including an assessment in relation to the safety of the child(ren) involved.

Employees against whom allegations are made are advised of their rights and responsibilities and provided with a copy of the brochure *Professional Conduct & Child Protection: Responding to allegations involving people working for Marymead*.

They are also advised of appeal and review mechanisms including the option of lodging a complaint with the Ombudsman Office.

Employees may choose to have a support person appointed or seek union or legal advice. In addition the employee will be offered access to counselling. There may be occasions when an application needs to be made for paid leave.

The Chief Executive Officer decides on what action is taken as a result of any investigation and appoints a Director to assess and monitor the risk of the employee having continued access to children using Marymead services.

In relation to allegations of reportable conduct the Chief Executive Officer ensures that the outcome of the investigation is reported to the Ombudsman. **Part B** of the **Employment-related child protection notification form**, which details the findings of the investigation, should be completed when the investigation has been finalised. Part B should be accompanied by copies of all documentation relevant to the investigation and decision making.

Exempt matters are dealt with under appropriate workplace procedure and the outcome documented.

Employees have the right to appeal or complain to Marymead if they are not satisfied with Marymead's response to their complaint or the conduct of an investigation. Such complaints are addressed to the Chief Executive Officer within one calendar month of a decision having been notified to the party concerned. Parties to a matter have the right to

take it to an external agency, such as NSW Ombudsman, if they are not satisfied with the management of the investigation or a decision that has been made.

3.3 Support to victims, witnesses and reporters

Children or young people who are victims or witnesses in a matter that relates to an employee are given sensitive, ongoing support from Marymead staff. Every effort is made to ensure that those in this situation are treated fairly and with respect. Directors ensure that children are informed of:

- their right to be treated fairly and without discrimination or intimidation
- their right to choose not to be interviewed or give a statement
- their entitlement to support
- the support services available to them, both from Marymead and other agencies

The person who makes the allegation may not necessarily be the victim or a witness. However it is recognised that he/she may experience distress at needing to take such action. Directors will monitor the wellbeing of this person and provide them with relevant information regarding the management of their complaint. Professional counselling arranged by Marymead may also be offered.

3.4 Documentation and Record Keeping

Comprehensive documentation, dated and signed appropriately, is kept of any investigation. Confidentiality and security of documents are given the utmost priority and access limited to senior staff involved in the resolution of the matter. Files are kept securely and separately to the employee's personnel file whilst an investigation is undertaken. However, in the event of a substantiation of reportable conduct, notations to this effect will be recorded on the employee's personnel file.

4. Definitions

The following definitions apply to this policy:

Child: a person under the age of 16 years - Children and Young Persons(Care and Protection) Act 1998, a person under the age of 18 years - Ombudsman's Act 1974 (NSW)

Employee: for the purposes of this policy - all Marymead staff who receive a salary or wage payment from Marymead and anyone engaged by Marymead to provide services to children including contractors, sub-contractors, foster carers and guardians, individuals sitting on boards, committees and sub-committees, work experience participants, student placements, clergy, ministers of religion and members of religious orders.

Exempt Behaviours: Allegations against employees that are exempt from notification to the Ombudsman, where the alleged behaviour involves either

- 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

- 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
- Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under s.25CA of the *Ombudsman Act*.

Reportable Allegation:

- an allegation of reportable conduct against an employee, or
- an allegation of misconduct that may involve reportable conduct

Reportable Conduct (refer *Section 25A “Ombudsman Act 1974”*)

- Any sexual offence, or sexual misconduct, committed against, with or in the presence of a child, or
- Any assault, ill-treatment or neglect of a child, or
- Any behaviour that causes psychological harm to a child, whether or not with the consent of a child

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

Young Person: 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*.

5. References

Related Policy

Engagement of Employees, HR, Operations Manual 2011
 Supervision, Support for Practice and Appraisal, HR, Operations Manual 2011
 Staff Professional Development HR, Operations Manual 2011
 Performance Management HR, Operations Manual 2011
 Child Protection Policy, MM SD 307
 Working with Children Screening Policy, MM HR 513

References

[Child protection in the workplace: Responding to allegations against employees](#), NSW Ombudsman, 2004.

Legislation

NSW Children & Young Persons (Care & Protection) Act 1998
 NSW Children & Young Persons (Care & Protection) Regulation 2012
 NSW Ombudsman Act 1974

Standards

NSW Standards for Statutory Out of Home Care, NSW Children’s Guardian. Standard 3, Child Protection.

6. Document Control Details

Reviewing and Approving this Policy		
Frequency	Policy Owner	Approval
3 years	Director of Corporate Services	CEO

Policy Review and Version Tracking			
Review	Date Approved	Approved By	Next Review Date
New Document	27 August 2012	CEO Hilary Martin	27 August 2014
Administrative changes	5 February 2015	Senior Manager Organisational Development	5 August 2015