

# MacKillop Family Services

## NSW-P-004 Responding to allegations of abuse and complying with Reportable Conduct obligations

### 1. PURPOSE

MacKillop Family Services (MacKillop) has a responsibility to ensure the services provided meet the safety need of children and young people. The purpose of this procedure is to ensure that MacKillop in NSW meets its responsibilities for:

- investigating complaints or allegations of child abuse and/or neglect and/or reportable conduct
- reporting findings of investigations

### 2. SCOPE

This procedure applies to all staff, foster carers and kinship carers (collectively referred to as 'employees' throughout this document) engaged in work or activities associated with MacKillop in NSW.

Although this procedure specifically applies to out-of-home care services, other residential or accommodation services that form part of MacKillop in NSW, specifically Specialist Homelessness Services may also be in scope of this procedure.

There are three key pieces of child protection legislation in NSW. These are the:

- *Children and Young Persons (Care and Protection) Act 1998*
- *The Child Protection (Working with Children) Act 2012 (and the Child Protection (Working with Children) Regulation 2013)*
- *Ombudsman Act 1974 [Part 3A].*

The legislation is designed to be complementary. When an allegation is made against an employee, the head of agency is required to determine whether:

- there are reasonable grounds to believe a child or young person is at 'risk of significant harm' (ROSH) under *the Children and Young Persons (Care and Protection) Act*, and
- the allegation constitutes a reportable allegation under the *Ombudsman Act*.

### 3. DEFINITIONS

Term	Definition
<i>Category One Notification</i>	<i>A Category One Notifications</i> applies in relation to relevant employment proceedings, and is where the investigation finds: <ul style="list-style-type: none"> <li>· reportable conduct occurred or</li> <li>· an act of violence took place</li> </ul>
<i>Category Two Notification</i>	<i>A Category Two Notifications</i> applies in relation to relevant employment proceedings, and is where the investigation finds: <ul style="list-style-type: none"> <li>· some evidence that reportable conduct occurred, but the finding is inconclusive, or</li> </ul>

	<ul style="list-style-type: none"> <li>· some evidence that an act of violence occurred, but the finding is inconclusive.</li> </ul>
<i>Children's Guardian</i>	The Office of the Children's Guardian is an independent statutory authority. Its regulatory functions relate to out-of-home care, voluntary out-of-home care and adoption services. The regulatory responsibilities of the Children's Guardian include the Working With Children Check.
<i>Exempt allegation</i>	<p>An allegation to which one or more of the exemptions to reportable conduct pursuant to the Ombudsman Act 1974 applies. These exemptions are:</p> <ul style="list-style-type: none"> <li>a). Conduct that is reasonable for the purpose 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</li> <li>b). Any conduct that is reasonable use of physical force to properly support a child or children, for example <ul style="list-style-type: none"> <li>○ disarming a young person seeking to harm themselves or others</li> <li>○ separating young people who are in the act of fighting; or</li> <li>○ moving a young person from a place where he or she may be harmed</li> </ul> </li> <li>c). Reasonable use of physical force in an act of self defence against acts or threats of physical contact by a child or young person</li> <li>d). The use of physical force that, in all the circumstances, is trivial and negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures,</li> </ul> <p>Some examples of conduct that would not constitute reportable conduct include:</p> <ul style="list-style-type: none"> <li>· Conduct that is established to be accidental</li> <li>· Touching a non-intimate part of the body of a child or young person in order to attract the attention of the child or young person, to guide a child or young person or to comfort a distressed child or young person</li> <li>· Staff or carers raising their voice in order to attract attention or restore order</li> </ul> <p>Matters exempted for non-government out-of-home care agencies that have been granted a five year accreditation by the Children's Guardian: Specific exemptions for trivial and negligible used of physical force:</p> <ul style="list-style-type: none"> <li>○ First time reports of smacking</li> <li>○ An isolated incident of inappropriate pushing and pulling of a child</li> </ul>
<i>Head of Agency</i>	Where legislation identifies responsibility for reportable conduct sitting with the <i>Head of Agency</i> , these procedures reflect the delegation of responsibility to the MacKillop General Manager NSW Services, reporting to and in consultation with the MacKillop Director Operations or equivalent.
<i>Investigation</i>	An investigation involves collecting adequate information to enable the making of sound decisions in relation to the employee, the child(ren) involved and any witnesses. There must be clear and sufficient information

	to support actions taken by the agency.
<i>Investigation Team</i>	An <i>Investigation Team</i> means the person who is appointed as the Investigator and any other persons who are engaged to make enquiries into the specific allegations.
<i>NSW Ombudsman</i>	Part 3A of the Ombudsman Act 1974 requires NSW Ombudsman to monitor and scrutinize the systems that government and certain non-government agencies in NSW, including MacKillop, have in place for preventing reportable conduct and handling reportable allegations and convictions involving their employees.
<i>Relevant employment proceedings</i>	A <i>relevant employment proceeding</i> is a completed disciplinary proceeding where an employer or a professional body finds reportable conduct occurred (or evidence of reportable conduct) or an act of violence occurred (or evidence that it occurred) in the course of employment and in the presence of a child.
<i>Reportable conduct</i>	<i>Reportable conduct</i> is any sexual offence or sexual misconduct that is committed by employees or carers against, with or in the presence of a child or young person (including a child pornography offence), or any assault, ill-treatment or neglect of a child or young person, or any behaviour that causes psychological harm to a child or young person, whether or not in any case, with the consent of the child or young person. For further information see <a href="#">Defining Reportable Conduct</a> NSW Ombudsman

## 4. PROCEDURE

### 4.1 Initial Assessment of Allegations of Reportable Conduct

MacKillop has a responsibility to notify the police when there is an allegation or evidence that a criminal offence may have been committed. If a police report is made by MacKillop, a clear rationale for this decision will be recorded.

If the allegation involves reportable conduct, or misconduct that may involve reportable conduct, a decision must be made about whether the allegation:

- Is notifiable to NSW Ombudsman and/ or
- Concerns conduct that is required to be investigated by the agency but is exempted from notification to NSW Ombudsman under sections 25A or 25C of the Ombudsman Act

Reportable allegations must be:

- Notified to NSW Ombudsman within 30 days of the Head of Agency becoming aware of the allegation, and
- Reported to the Office of the Children's Guardian at the conclusion of any investigation, if the investigation constitutes 'relevant employment proceedings' under that Act

### ***Inappropriate Behaviour versus Reportable Conduct***

There are behaviours that may demonstrate inappropriate professional conduct or misconduct, but would not be regarded as reportable conduct and would not need to be reported to NSW Ombudsman.

It is expected that relevant employees of MacKillop will follow the usual disciplinary procedures for dealing with such behaviour (HR-P-017 Managing Unsatisfactory Performance, Misconduct and Serious Misconduct). Examples of inappropriate professional conduct or misconduct may include:

- Telling inappropriate jokes to a child or young person
- Yelling inappropriately at a child or young person or group of children or young people
- Making rude gestures to a child or young person
- Making inappropriate references to a child or young person such as, “stupid” or “smelly”
- Unreasonably discussing personal family issues with a child or young person

While such matters are not formally reported to NSW Ombudsman, they may be subject to an internal investigation. Some examples of situations which would warrant an internal investigation may include (but are not limited to):

- Concerns, especially ongoing or repeated concerns, about hygiene in the caregiver’s home (including foster care, kinship care, and residential care); quality of diet provided to the child or young person; inappropriate clothing; poor levels of supervision; or inappropriate behaviour management
- The methods used to discipline a child (that have already been determined not to constitute abuse or neglect)
- Where it is alleged that the caregiver or member of their household has been engaged in criminal or violent behaviour
- Inappropriate behaviour by caregivers, such as not cooperating with reasonable contact arrangements; making derogatory comments about the child or their family; not accepting reasonable visits from the MacKillop; or treating a child in a discriminatory manner, for example providing them with a lower standard of care than the carer’s birth children

The decision to investigate such matters is to be made by the General Manager, NSW Services in consultation with the Director Operations or equivalent.

## **4.2 Initial response**

If staff or foster carers become aware or suspect that a child or young person has been harmed or is likely to be harmed, the matter **must** be reported to the MacKillop General Manager, NSW Services **immediately**. Where allegations involve the MacKillop General Manager, NSW Services, employees must report the matter immediately to the MacKillop Director Operations or equivalent. An Incident Report is to be completed at the earliest opportunity and no later than 1 working day following staff becoming aware of the incident (see CO-P-08 Incident Reporting and Review).

Staff or foster carers should avoid making enquiries about or investigating the specific allegations. Such action could prejudice a fair and just investigation of the matter.

Staff or foster carers **must only** obtain information that establishes the following:

- Details of what has been alleged by the notifier
- Name of the child or young person subject of the allegations (victim), (this information may be different to the notifier)
- Date of birth of the child or young person
- Name and contact details of the notifier, noting that they may choose to remain anonymous
- Date, time and location of the alleged abuse
- Name of the person subject of the allegations
- Cultural background of the child or young person

Staff and foster carers **must** maintain confidentiality in relation to the entire matter, except for disclosure to the General Manager NSW Services and/or any other person or agency as required under these procedures and the law.

Staff or foster carers **must not** make any comments to the media about the reportable conduct.

Whatever the outcome, the notifier must be taken seriously and listened to carefully. Employees in whom notifiers confide need to convey that they will deal with the disclosure in a trustful and sensitive manner. Staff or foster carers must explain to the notifier that they will do their best to assist, but they will need to inform the General Manager NSW Services in order to safeguard the child and young person and meet particular legal obligations.

### 4.3 Mandatory reporting

According to the *Children and Young Persons (Care and Protection) Act 1998*, all employees are mandated to report to the Director-General of the Department of Family and Community Services that a child or young person (under 16) is at significant risk of harm. Reference is made to the document NSW-P-003 – *Mandatory Reporting*.

Where the matter involves “reportable conduct”, the General Manager NSW Services must also report to NSW Ombudsman in relation to children under the age of 16 years.

#### 4.3.1 Mandatory reporting and 16-17 year olds

Where the General Manager NSW Services is concerned that a young person aged 16-17 years is at risk of harm, he/she will make a report. The young person should be involved in the decision to report, unless there are exceptional reasons for excluding him/her. If the young person is against the report being made, this information must be conveyed to the Child Protection Helpline which must consider the young person’s wishes in any assessments and investigations.

The needs of young people over 16 years can vary from the needs of children and the General Manager NSW Services will be required to use his/her judgement about the risks facing a young person in this category.

#### **4.4 MacKillop Family Services Incident Reporting**

Refer to CO-P-08 Incident Reporting and Review.

#### **4.5 Allegations in relation to an Aboriginal or Torres Strait Islander child or young person or child or young person from a culturally and linguistically diverse background**

Where a reportable allegation involves an Aboriginal or Torres Strait Islander child or young person, the General Manager NSW Services will follow the principles outlined in the document, NSW-P-006 – Aboriginal and Torres Strait Islander Child Placement Principle, in particular the inclusion of an Aboriginal or Torres Strait Islander support person in the investigation of the reportable allegations.

Similarly, where a reportable allegation involves a child or young person from a culturally and linguistically diverse background, the General Manager NSW Services will ensure there is opportunity for a support person from the appropriate background to be involved in the investigation.

### **5. INVESTIGATION**

On receiving a complaint or allegation of child abuse, neglect or reportable conduct the General Manager NSW Services will undertake the following tasks:

#### **Safety**

- In consultation with the Director Operations or equivalent make a determination as to:
  - The immediate safety needs of the child or young person, including whether the child or young person is to be moved from the placement
- AND
- if the staff or foster carer's current duties are appropriate while an investigation is being conducted (for staff see HR-P-17 Managing Unsatisfactory Performance).

#### **Screening**

- Direct relevant staff to obtain sufficient information to make a determination as to whether, at face value, the allegation or evidence constitutes reportable conduct
- Determine whether the alleged conduct is reportable on face value (see Definitions 'Exempt allegation')
- Assess whether the allegations involve a child or young person at risk of significant harm and notify the Child Protection Helpline (see also Section 8)

### **Notifying / Reporting**

- Advise the Manager of the complaint or allegation
- Report to NSW Police if there is evidence or an allegation that a criminal offence has occurred (see also Section 8)
- Complete Part A of the *Notification Form* and forward the document to NSW Ombudsman **within 30 days of receiving an allegation of reportable conduct**
- Provide non-identifiable details to the relevant body in relation to insurance
- Provide details of the complaint or allegations to the relevant Department of Family and Community Services, Partnerships and Planning Directorate
- Notify the person who is the subject of the allegations about the concerns and explain the process of investigation (see NSW-F-58 Investigations – Initial letter to person subject of the allegations), including the notification to NSW Ombudsman, the importance of confidentiality and access to the employee assistance scheme and confirm this in writing

### **5.1 Lead Investigator / Investigation Team**

MacKillop considers information of allegations of abuse as serious matters and will adopt the following position in terms of transparency and objectivity:

The Lead Investigator will make all necessary enquiries in relation to the specific allegations. The Lead Investigator must have sufficient skills and knowledge to make such enquiries.

All investigations must be conducted in an impartial, independent and objective manner. The investigator selected must not have, nor be perceived to have, any conflict of interest. (For further direction on managing conflict of interest consult [NSW Ombudsman Fact Sheets Recognising and managing conflict of interests](#)).

The General Manager, NSW Services, in consultation with the Director Operations (or equivalent), will determine the most appropriate person to investigate the allegation from the following list:

- Manager from another MacKillop NSW program
- MacKillop Manager from Victoria or Western Australia
- Manager from another designated agency
- An external investigator

The selection of Lead Investigator and the level of investigation will be in keeping with the assessed seriousness of the allegation. A MacKillop Manager may be the most appropriate investigator for less serious or low risk matters. An external investigator may be more appropriate when the matter is serious or complex and requires particular expertise or if there is a potential conflict of interest. If necessary, advice may be sought from NSW Ombudsman regarding the level of investigation that is appropriate in a particular circumstance.

## 5.2 Investigation Process

The following steps will be undertaken:

- The General Manager, NSW Services will brief the investigation team on the allegations and provide any necessary written information and oversee support provided to the carer subject of the allegation (see NSW-F-057 Carer Support Plan – Template)
- The Lead Investigator, in consultation with the General Manager NSW Services and the Director Operations, will plan the investigation process
  - The General Manager NSW Services will notify the parents/guardians of the notified child or young person (victim), verbally and in writing, unless to do so may compromise the investigation (See NSW-F-059 Letter to Parents-Guardian - Template). Where a decision is made that an investigation may be compromised by the involvement of a parent/guardian, the reasons for the decision must be documented and included in the final report to the NSW Ombudsman
  - The General Manager NSW Services will seek appropriate permission, or request an appropriate MacKillop officer to seek appropriate permission, to interview the child or young person and offer support during the investigation process. If the child is in the care of the Minister, permission will be sought from FACS. In circumstances where the child is in the care of the Minister and MacKillop has case management responsibility for the child or young person it is not necessary to seek the permission of the FACS. For children not in the care of the Minister permission will be sought from their appropriate family member e.g. parent or guardian.
- The Lead Investigator will develop interview questions in consultation with the General Manager NSW Services
- The Lead Investigator will arrange interviews with any witnesses at a time and place, convenient to all parties, but with at least 24 hours' notice
- The Lead Investigator will ensure that Support Persons understand their role
- The Lead Investigator will inform witnesses that they are able to bring a Support Person to the interview (Refer to Section 4.2.4 – *Support Persons* in this document).
- The Lead Investigator (and investigation team) can obtain information from a number of sources including, but not limited to:
  - Direct evidence or information (i.e. interviewing witnesses). (For further information on interviewing children see Section 8G *Child protection in the workplace: Responding to allegations against employees* [NSW Ombudsman]) consult the General Manager NSW Services for a copy
  - Physical evidence (i.e. obtaining rosters, mobile telephone records or computer records, inspecting locations, taking photographs and making drawings or diagrams of the locations)
  - Expert evidence (i.e. information from persons who have a specialised knowledge in a specific field)
  - Other investigative agencies e.g. FACS, Police, Joint Investigative Response Team (JIRT). Relevant information can be requested via s. 248 and Chapter 16A of the *Children and Young People (Care and Protection) Act 1998*

- The Lead Investigator:
  - will conduct enquiries regarding any additional allegations that emerge during the course of the investigation.
  - is responsible for ensuring all stages of the investigation and all decisions made are clearly documented and recorded on file. This includes a chronology of events for inclusion in the final report
  - will document all advice (both given and received) and discussions in relation to the investigation, and provide copies to the General Manager NSW Services. This includes communication with FACS, Police, JIRT, the Ombudsman and other relevant parties. Copies must be provided to the General Manager NSW Services
  - prepare the transcripts of all interviews and ensure that all witnesses are satisfied with the contents of the transcripts. Where possible, the transcripts should be signed and dated by all involved. All transcripts will be provided to the General Manager NSW Services with the final report.
  - will provide a report and make recommendations to the General Manager NSW Services in relation to the findings of the enquiries. The rationale behind the recommendations should be clearly documented.
  - is able to seek clarification from the General Manager NSW Services at any time during the investigation phase.
- The General Manager NSW Services will:
  - undertake an ongoing risk assessment during the investigation process.
  - consult with and brief the Director Operations or equivalent at the point of notification and throughout the process of investigation.

### 5.3 Support Persons

All witnesses, including the notified child or young person and the person who is the subject of the allegations are entitled to have a Support Person during the interviews.

The role of the Support Person during interviews and throughout the investigation phase is to:

- Ensure that information is understood by the witness and to assist the witness to articulate his/her point of view and to share information
- Attend to the personal support needs of the witness
- Help ensure that the process of investigation is fair and accountable and considerate of the needs of the witness being supported

However, the support person:

- Is not a legal advocate or representative and is not to intervene in, or influence, the investigation, procedures or outcomes except to confirm that the witness understands what is being asked of him/her
- Is not a party to the investigation and is not to speak on behalf of the witness

- Should remain focused on the safety and care needs of the child or young person and on attaining an accountable outcome

In the event that a support person's conduct in an interview is adversely impacting on the integrity of the investigation process or otherwise hindering a fair and just investigation of the matter, the Lead Investigator is to suspend the interview to further clarify the role of the Support Person and seek a commitment from the Support Person to conduct themselves consistent with the role set out in this procedure.

#### 5.4 Making a Finding

The Lead Investigator should document all of the information gathered during the investigation, draw conclusions, make findings and put forward recommendations based on this information (See NSW-F-052 Record of Discussion - Template, NS, NSW-F-055 Investigation Outcome Report - Template).

The possible findings are:

- Sustained (i.e. a finding that the conduct occurred), or
- Not sustained – insufficient evidence (i.e. there is some evidence of weight however there is insufficient evidence available to reasonably establish that the alleged conduct did occur), or
- Not sustained – lack of evidence of weight (i.e. where the evidence is of such poor probative value or lacking in weight, such as to warrant a finding that, on the balance of probabilities, the conduct did not occur), or
- False (i.e. where inquiries into the matter show reportable conduct or an act of violence did not occur). Some of these matters may be vexatious, for example where inquiries into the matter show the allegation was made without substance and to cause distress to the person against whom the allegation was made, or
- Not reportable conduct (i.e. where inquiries into the matter show the conduct was not reportable). For example, use of force that was trivial or negligible in the circumstances, conduct that was reasonable in the circumstances or accidental

This may include 'misconceived' matters, where inquiries into the matter show 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. This material is to be provided to the General Manager NSW Services.

#### 5.5 Follow up Action

In consultation with the Director Operations and, where appropriate he Director Human Resources or their delegate, the General Manager NSW Services has the following responsibilities, to:

- Make a decision about what action should be taken as a result of the investigation, including any disciplinary action against the person subject of the allegations
- Consider previous relevant matters relating to the person subject of the allegations, when deciding the appropriate action as a result of the investigation
- Develop an action plan (Refer to Section 5.6.1 – *Development of an Action Plan* in this document

- Inform the person subject of the allegations, verbally and in writing of the outcome of the investigation (see NSW-F-060 Letter to person subject of alleg.- outcome of invest), the proposed action plan, the ongoing requirement for confidentiality, rights of review and access to the employee assistance scheme
- Inform the child or young person (victim) and the parents/guardian in writing of the outcome of the investigation (see NSW-F-059 Letter to parent-guardian - Investigation outcome), the ongoing requirement for confidentiality, relevant supports and rights of review. The information should take account of the privacy rights of the person subject of the allegations and the child or young person (victim)
- Where appropriate inform the notifier in writing of the outcome of the investigation. The information should take account of the privacy rights of the person subject of the allegations
- Complete Part B of the *Notification Form* (available on the website of NSW Ombudsman) and forward with all relevant documentation to the NSW Ombudsman
- Where necessary, notify the Office of the Children's Guardian about the completed employment proceedings (Refer to Section 7. – *Relevant Employment Proceedings* in this document)

### 5.5.1 Development of an Action Plan

The General Manager NSW Services will develop an action plan (See NSW-F-056 Actions Arising from Investigation Outcome Report – Template) that may consider any of the following options:

- No further action
- Monitoring of work performance
- Modifications to work arrangements
- Training and development or re-training
- Counselling
- Professional supervision
- Re-deployment
- Termination of employment
- Changes to work practices
- Review and make amendments to policies and procedures
- Action taken in relation to the child or young person or other parties

## 6. FINAL REPORT TO NSW OMBUDSMAN

A final report to NSW Ombudsman shall include findings in relation to each reportable allegation, the reasons for those findings and the action that the General Manager NSW Services has taken or intends to take as a result of the investigation. The information provided to NSW Ombudsman should be sufficient to enable an understanding of the actions taken by MacKillop Family Services in relation to the matter.

The following documentation should be provided to NSW Ombudsman:

- Details of the investigation plan (see NSW-F-054 Investigation Plan - Template)

- Records documenting an assessment of risk that the person subject of the allegations might pose to working with children and young people (see NSW-F-053 Initial Response and Risk Assessment - Template)
- Details of any support provided to the person subject of the allegations, the child or young person (victim) and parents/guardians during the investigation
- A chronology of events
- A transcript of any interviews conducted, including details of questions and responses
- Notes of any conversations between the person subject of the allegations and the agency (see NSW-F-052 Record of Discussion - Template).
- Notes of any conversations and/or actions between parties involved in the investigation process
- Any statements or submissions made by the person subject of the allegations
- Findings made by the agency, including any factors that were considered in reaching the findings
- Action to be taken, or has been taken as a result of the investigation
- A copy of the final correspondence to the person subject of the allegations
- Any other documents that were considered in making the final decision about the reportable allegations
- Copy of any notification to the Office of the Children's Guardian

An employee who is the subject of a relevant misconduct finding must be informed of that finding and that his or her employer has a statutory obligation to report the misconduct to the Office of the Children's Guardian. Consideration must also occur as to whether MacKillop has an obligation to notify any other employers of the worker (the rationale for notifying or refraining from notifying must be documented on the investigation file).

### **Record Keeping**

MacKillop and the NSW Ombudsman maintain records relating to all notified matters, regardless of the results of the investigation. All information received is kept permanently by MacKillop and NSW Ombudsman and is archived.

MacKillop is required by the Ombudsman to set up systems for keeping records concerning the handling of allegations against employees. Records relating to the allegation should be kept on a file that is separate to the employee's personnel file, and should be kept permanently. All records should be kept confidentially and securely, with access granted to only those persons in the agency who have a need to know about that situation. A file note will be placed on the employee's local file to alert the reader that information about a reportable allegation and/or investigation is held by the General Manager NSW Services.

A copy of all completed investigation reports is to be forwarded to the Director of Policy and Quality.

The Office of the Children's Guardian stipulates that employees (who have been subject to reportable conduct allegations) 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. This is stipulated in section 46(2) of the Child Protection (Working with Children) Act 2012. However, the complaint handling, investigation and reporting records of NSW Ombudsman are not publicly accessible, as they are exempt from disclosure under Freedom of Information legislation and cannot be requested or subpoenaed as evidence in a court under s.35 of the *Ombudsman Act 1974*.

## 7. RELEVANT EMPLOYMENT PROCEEDINGS

A relevant employment proceeding is a completed disciplinary proceeding, and is considered completed when MacKillop has undertaken an investigation, the investigation has ended, a finding has been made and a decision about disciplinary action has been made. Once these things have occurred, the proceeding is considered completed, even if no disciplinary action has been taken and/or the employer is considering an appeal.

MacKillop must notify the Office of the Children's Guardian of the details of any employee against whom relevant employment proceedings have been completed, using the *Relevant employment proceedings notification and summary* form on the Office of the Children's Guardian website.

This form should be sent as soon as possible so that children in other workplaces are protected. If, after making a notification, it is discovered that a relevant employment proceeding was wrongly notified, the Children's Guardian must be advised in writing.

There are two categories of relevant employment proceedings. Category One matters trigger an estimate of risk when the person holds a Working With Children Check. Category Two matters are only considered in an estimate of risk if there are additional relevant records for the person.

Category One is where the investigation finds:

- reportable conduct occurred or
- an act of violence took place.

Category Two is where the investigation finds:

- some evidence that reportable conduct occurred, but the finding is inconclusive, or
- some evidence that an act of violence occurred, but the finding is inconclusive.

For further information see [Information for reporting bodies: Reporting certain misconduct involving children](#), Office of the Children's Guardian.

## 8. INVOLVEMENT OF THE DEPARTMENT OF FAMILY AND COMMUNITY SERVICES (FACS) AND NSW POLICE

The safety of the children and young people in our care is our primary responsibility. It is the responsibility of MacKillop to ensure allegations are investigated in circumstances where the individual subject to the allegation is a staff member, volunteer or carer<sup>1</sup> of MacKillop. In investigating allegations, the General Manager NSW Services and /or the Lead Investigator will liaise with the relevant officer within FACS and negotiate any specific roles and responsibilities and clarify any action by MacKillop that may jeopardise the investigation of the matter.

Ultimate responsibility for determining if a placement meets the safety needs of the child or young person rests with MacKillop.

If FACS has assessed risk of significant harm, the General Manager NSW Services may decide what other evidence needs to be collected so that a decision regarding the employee subject of the allegations can be made. This information may include information held by FACS, e.g. a second risk of harm assessment.

Where FACS has conducted enquiries, the General Manager NSW Services will request relevant information under s.248 and Chapter 16A of the *Children and Young People (Care and Protection) Act 1998* that may relate to the safety, welfare and well-being of a child or young person, if the information is likely to assist in the decision to assess risks to children or young people by the person who is the subject of the allegation or may be relevant to the MacKillop investigation MacKillop. Chapter 16A requests should be directed to [Information.Exchange@facs.nsw.gov.au](mailto:Information.Exchange@facs.nsw.gov.au) using the relevant form.

If the NSW Police are investigating, the General Manager NSW Services will suspend the investigation until the Police investigation is finalised given that any investigation undertaken by MacKillop may have a prejudicial impact on any such Police investigation.

If the NSW Police lay charges as the result of their investigation, the General Manager NSW Services will suspend the investigation until the charges have been dealt with. If the person subject of the allegations is not charged, the General Manager NSW Services will proceed with MacKillop's investigation.

The General Manager NSW Services will seek any relevant information from the NSW Police in relation to its investigation via the investigating unit, which may be the Local Area Command, the Child Abuse Squad or JIRT. This may include information available under s.248 and chapter 16 of the *Children and Young people (Care and Protection) Act 1998*. Chapter 16A requests should be directed to the Child Abuse Squad at [subpoenascc@police.nsw.gov.au](mailto:subpoenascc@police.nsw.gov.au) using the relevant form.

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<sup>1</sup> Including members of the carer's family and other associates.

## **9. ALLEGATIONS IN RELATION TO EMPLOYEES NOT ON DUTY**

As a designated agency, MacKillop Family Services has a responsibility in relation to reportable conduct, regardless of where the alleged incident occurred, that is, either in the course of the employee's workplace or outside working hours.

In all instances, it is a requirement that MacKillop ensures that current employees are able to meet their duty of care to children and young people. All reportable allegations, whether they occurred in the workplace or not, will be investigated and undergo a risk management response.

### **9.1 Allegations Involving Former Employees or Employees Engaged After Notification of the Reportable Conduct**

If the person subject of the allegation employed by MacKillop at the time of the notification of the reportable conduct resigns before an investigation is completed, the General Manager NSW Services will notify the matter to NSW Ombudsman.

If the General Manager NSW Services becomes aware of the allegation of reportable conduct after an employee resigns, it is not necessary to notify NSW Ombudsman. However, the General Manager NSW Services will assess whether any child or young person is at risk of significant harm and will notify the Child Protection Helpline.

If the General Manager NSW Services becomes aware of reportable conduct in relation to a previous workplace after the engagement of an employee, the matter will be notified to NSW Ombudsman, and a risk assessment and an investigation will be completed.

## **10. DOCUMENTATION**

Any documentation concerning the reportable conduct and the investigation will be held separately by the General Manager, NSW Services, and only accessible to the Executive Director Operations (or equivalent) or those requiring access for a legitimate purpose. The documentation will be held in a secure place and separate to an employee's personnel file. A file note will be placed on the employee's local file to alert the reader that information about a reportable allegation and/or investigation is held by the General Manager NSW Services.

The General Manager, NSW Services will advise the person subject of the allegations in writing of the whereabouts of the file and the access arrangements in accordance with privacy requirements.

## **RELATED FORMS**

NSW-F-052 Record of Discussion - Template

NSW-F-053 Initial Response and Risk Assessment - Template

NSW-F-054 Investigation Plan – Template

NSW-F-055 Investigation Outcome Report – Template

NSW-F-056 Actions Arising from Investigation Outcome Report – Template

NSW-P-004 Responding to allegations of abuse and complying with Reportable Conduct

Approved: 13 February 2015

Authorisation: CEO

Version 3

Review Date: 13 August 2016

NSW-F-057 Carer Support Plan - Template

NSW-F-058 Initial letter to person subject of allegation

NSW-F-059 Letter to Parents-Guardian - Template

NSW-F-060 Letter to person subject of alleg.- outcome of invest

NSW-F-061 Letter to parent-guardian - Investigation outcome

## RELATED PROCEDURES

HR-P-014 Privacy and Confidentiality of Information

CO-P-07 Collection, Recording, Maintenance and Storage of Client Information

HR-P-013 Code of Conduct

HR-P-017 Managing Unsatisfactory Performance, Misconduct and Serious Misconduct

NSW-P-001 Head of Agency

NSW-P-003 Mandatory Reporting

NSW-P-006 Aboriginal and Torres Strait Islander Child Placement Principle

## ADDITIONAL RESOURCES

Child Protection in the Workplace: responding to allegations against employees, June 2004

NSW Ombudsman *Fact Sheets*

- Child Protection Practice Update: Defining Reportable Conduct
- Child Protection Practice Update: Making a finding
- Child Protection Fact Sheet 1: Keeping records
- Child Protection Fact Sheet 2: How we assess an investigation
- Child Protection Fact Sheet 3: Child protection legislation: what employers and employees need to know
- Child Protection Fact Sheet 4: Planning and conducting an investigation
- Child Protection Fact Sheet 5: Child protection: Responsibilities of heads of agencies
- Child Protection Fact Sheet 9: Risk management following an allegation against an employee

Office of the Children's Guardian *Fact Sheets*

- The new working with children check: Information for reporting bodies: Reporting certain misconduct involving children (September 2013)