

Policy Directive



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Child Related Allegations, Charges and Convictions Against Employees

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 Personnel/Workforce - Conduct and ethics
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Summary This policy directive sets out the mandatory requirements for responding to any allegation, charge or conviction against a NSW Health employee where it involves children. The policy includes the mandatory responsibilities to be complied with by health services for the management of reportable (child-related) allegations and convictions against employees.

Replaces Doc. No. Child Abuse Allegations - Ombudsman Amendment (Child Protection and Community Services) Act 1998 [PD2005_574]

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Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, NSW Ambulance Service, NSW Dept of Health, Public Health Units, Public Hospitals

Audience All staff

Distributed to Public Health System, Community Health Centres, Dental Schools and Clinics, Health Associations Unions, NSW Ambulance Service, NSW Department of Health, Public Health Units, Public Hospitals

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Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.



**CHILD RELATED ALLEGATIONS, CHARGES AND
CONVICTIONS AGAINST EMPLOYEES.**

April 2006

Title: Child related allegations, charges and convictions.

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1 Introduction

1.1 Purpose and scope of the Policy Directive

This Policy Directive applies to the Department of Health, Area Health Services, Statutory Health Corporations, declared and non-declared Affiliated Health Organisations, and the Ambulance Service of NSW, collectively referred to as “Health Services” for the purposes of this Directive.

A child-related allegation is an allegation that something has happened to a child or in the presence of a child.

The Directive outlines requirements for handling and responding to child-related allegations, charges and convictions made against persons working in Health Services (including contractors, sub-contractors, volunteers and trainees) and employees of the Government of New South Wales (NSW Health Service) for whom Health Services have delegated employment responsibilities, collectively referred to as “employees” for the purposes of this Directive.

1.2 Related NSW Health Policy Directives

In cases where criminal conduct is alleged or established but does not concern persons under 18 years old at the time of the alleged conduct, the NSW Health Policy Directive PD2006_026 *Criminal Allegations, Charges and Convictions*, should be followed.

Where a Health Service employee reasonably believes that a child or children are at risk of harm, NSW Health Policy Directive 2005-299, *Protecting Children and Young People*, should also be read and applied in conjunction with this Directive.

NSW Health Policy Directive PD2005_632 *Communications Systems: Use of NSW Health Communication Systems* provides that any person facing disciplinary proceedings involving the use of NSW Health communication systems and devices to produce, disseminate or possess child pornography should be suspended from duty until those disciplinary proceedings are finalised.

Where an allegation involves the conduct of a health practitioner or health service provider, the NSW Health Policy Directive concerning the management of a complaint or concern about a clinician (*Complaint or concern about a clinician – principles for action PD2005_007*) should be consulted and appropriate action should be taken to inform registration authorities and other bodies, as relevant.

This Policy Directive should also be read in conjunction with relevant Policy Directives concerning employment screening (PD2005_177, PD2005_193 and PD2005_196).

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2 Glossary

The following are definitions for some terms used in this Directive:

CCYP: Commission for Children and Young People.

Chief Executive: The principal officer of a Health Service.

Child: A person under the age of 18. (*Ombudsman Act 1974, Section 25A(1)*)

Child-related employment: Employment of the following kind [selected with possible relevance to Health Services] that primarily involves direct contact with children where that contact is not directly supervised:

- Employment in wards of public or private hospitals in which children are patients;
- Employment involving the direct provision of child health services;
- Employment involving the provision of counselling or other support services to children;
- Employment in detention centres (within the meaning of the *Children (Detention Centres) Act 1987*);
- Employment in schools or other educational institutions (not being universities);
- Employment in pre-schools, kindergartens and child care centres (including residential child care centres);
- Employment in refuges used by children;
- Employment at overnight camps for children;
- Employment involving the provision of child protection services;
- Employment in entertainment venues where the clientele is primarily children. (*Child Protection (Prohibited Employment) Act 1998, Section 3*)

Employee¹: A person engaged in employment by or in connection with a Health Service.

Employment: Employment means:

- Performance of work under a contract of employment or as the holder of a remunerated position;
- Performance of work as a self-employed person or as a sub-contractor;
- Performance of work as a volunteer for an organisation;
- Undertaking practical training as part of an educational or vocational course;
- or**
- Performance of work as a minister of religion or other member of a religious organisation. (*Commission for Children and Young People Act 1998, Section 33(1)*)

Employment Screening and Review Unit (ESRU): The Unit within the Department of Health that provides Health Services with advice and support in

¹ Whilst s25A(1) of the *Ombudsman Act 1974* restricts the definition of employee to persons subject to a contract of employment, and other persons engaged to provide services to children (including in the capacity of a volunteer), it is NSW Health policy that employee is defined with reference to the broader definition of employment used in this Directive in reporting matters to the Ombudsman under Part 3A of the *Ombudsman Act*.

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responding to child-related and criminal allegations, charges and convictions, and which monitors performance in responding to such matters. The Unit also coordinates employment screening for the NSW Health system.

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

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

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

Health Service: The Department of Health, Area Health Services, Statutory Health Corporations, declared and non-declared Affiliated Health Organisations, and the Ambulance Service of NSW.

Ombudsman: An independent review body, whose primary role is to promote good conduct and fair decision-making in the interests of the NSW community. The Ombudsman also has a child protection responsibility to ensure that reportable allegations and convictions against employees are effectively and fairly investigated and that any risk posed by those employees is properly assessed and managed.

Procedural Fairness: In terms of investigations and risk assessments, procedural fairness involves informing the employee of the substance, with as much detail as possible, of the allegation made against them; providing the employee opportunity to put forward their case; making reasonable inquiries during the investigation stage; considering all relevant evidence, ensuring that there is no conflict of interest; acting fairly and without bias; conducting investigations and risk assessments without undue delay; and, maintaining good records in relation to these matters.

Relevant employment proceedings: Disciplinary proceedings (in NSW or elsewhere) against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, being proceedings involving:

- (a) Reportable conduct by the employee, or
- (b) An act of violence committed by the employee in the course of employment and in the presence of a child,

Unless there is a finding that the allegation in such proceedings was not reportable conduct, was false, was vexatious, or was misconceived (*Commission for Children and Young People Act 1998, Section 33(1) and Section 39(1) – Commission for Children and Young People Regulation 2000, Clause 8*).

Reportable allegation: An allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct (*Ombudsman Act, Section 25A.*)

A reportable allegation includes a charge for an offence involving reportable conduct, where there has been no conviction in respect of that charge.

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Reportable Conduct (*Ombudsman Act, section 25A(1)*):

- a) Any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence); or
- b) Any assault, ill treatment or neglect of a child; or
- c) Any behaviour that causes psychological harm to a child,

Whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to:

- a) Conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- b) The use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- c) Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA of the *Ombudsman Act 1974*.

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 (*Ombudsman Act 1974, Section 25A(1)*)

Sexual misconduct (as it applies to children): Describes a range of behaviours or a pattern of behaviour aimed at the involvement of children in sexual acts. Some of these behaviours may include:

- Inappropriate conversations of a sexual nature;
- Comments that express a desire to act in a sexual manner;
- Unwarranted and inappropriate touching;
- Sexual exhibitionism;
- Personal correspondence (including electronic communication) with a child or young person in respect of the adult's sexual feelings for a child or young person;
- Deliberate exposure of children and young people to sexual behaviour of others, including the display of pornography.

Sexual misconduct includes 'grooming behaviour' (see separate definition).

Support Person: A person nominated by an employee to support them during any investigation or inquiry into the employee. The support person's role is to offer support to the employee and does not include direct involvement in the investigation or inquiry, other than when the employee requests the support person attend meetings and interviews. The support person in these circumstances may advise the employee in respect to answering questions and discussing issues, however may not interrupt or bring into consideration issues on behalf of the employee.

Where an employee has limited communication skills, the support person may be nominated to talk on the employee's behalf.

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3 Overview of legislation

3.1 Ombudsman Act 1974 and Ombudsman Regulation 2005

Part 3A of the *Ombudsman Act 1974* and the *Ombudsman Regulation 2005* require Health Services to notify the Ombudsman of allegations (including charges) and convictions against employees that involve or may involve “reportable conduct” - that is, allegations or convictions of conduct that may constitute:

- A sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence);
- Assault, ill treatment or neglect of a child; or
- Behaviour that causes psychological harm to a child,

subject to the exceptions identified in the definition of “reportable conduct” in the Glossary to this Directive.

This extends to allegations and convictions for conduct or alleged conduct that occurred outside the course of, or prior to, the employee’s employment with a Health Service.

The Act also requires Health Services to inform the Ombudsman of the results of investigations into reportable allegations and convictions and the action taken, or proposed to be taken, in response to such an allegation or conviction.

Under the Act, the Chief Executive is required to establish policies and procedures for preventing reportable conduct by employees, and for responding to allegations and convictions involving reportable conduct by employees.

Chief Executives must also ensure that employees are informed of their obligation to notify the Chief Executive when they become aware of any reportable allegation or conviction, and that there are clear internal reporting lines to facilitate this.

3.2 Commission for Children and Young People Act 1998 and Commission for Children and Young People Regulation 2000

The *Commission for Children and Young People Act 1998* and Regulation, and NSW Health delegations, require Health Services to notify CCYP of relevant employment proceedings, being disciplinary proceedings against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, involving:

- (a) Reportable conduct by the employee, or
- (b) An act of violence committed by the employee in the course of employment and in the presence of a child,

unless there is a finding that reportable conduct did not occur or the allegation was false, vexatious, or misconceived.

Matters where there is some evidence that reportable conduct has occurred but the finding is inconclusive, or that are not sustained because of insufficient evidence, must also be reported to CCYP.

Relevant employment proceedings include proceedings that have been completed through the actions of the employee, for example where the employee resigns before the disciplinary investigation is finalised.

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3.3 Child Protection (Prohibited Employment) Act 1998

The Act makes it an offence for a person who has been convicted of a serious sex offence, or a person who is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*, to apply for, undertake or remain in child-related employment, unless CCYP, the Industrial Relations Commission or the Administrative Decisions Tribunal has made an order (which may be subject to conditions) that the Act does not apply to the person.

Persons who cannot lawfully work in child-related employment are known as “prohibited persons”.

The Act also makes it an offence for an employer to commence employing, or continue to employ, a person that the employer knows to be a prohibited person in child-related employment.

This means that the Act will need to be considered in determining appropriate action in response to some reportable convictions.

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

The Act focuses on children and young persons at ‘risk of harm’ and prescribes the role of the Department of Community Services (DoCS) and the role of families, agencies and communities in relation to child protection.

Under the Act and ministerial directives, Health Service employees must report to the DoCS ‘helpline’ any reasonable belief that a person or class of persons under the age of 16 is ‘at risk of harm’.

The Act also enables Health Service employees to report to DoCS a reasonable belief that a young person (child aged 16 or 17) or class of young persons is at risk of harm.

NSW Health Policy Directive 2005-299 *Protecting Children and Young People*, outlines the responsibilities of Health Services and Health Service employees under the Act and in protecting and supporting children.

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4 Chief Executive and employee responsibilities

4.1 Employee responsibilities

Employees who become aware of a child-related allegation, charge or conviction against another employee of their Health Service must report that matter to their supervisor or the designated person within their Health Service.

In accordance with the NSW Health Code of Conduct, employees must also report to their supervisor or the designated person within their Health Service any behaviour or circumstances that lead them to suspect another employee has engaged in reportable conduct.

Where an employee becomes aware of a child-related allegation, charge or conviction concerning the employee of another Health Service, or the Chief Executive or senior member of staff of their Health Service, these matters must be reported to ESRU and may also be reported to the Ombudsman.

Under the *Public Sector Employment and Management (General) Regulation 1996* an officer of the Department of Health who is charged with having committed, or is convicted of, a serious offence is required to immediately report that fact to the Director-General (clause 100A). A serious offence is an offence that may be punishable by imprisonment for 12 months or more.

Under the *Health Services Act 1997*, a member of the NSW Health Service or a visiting practitioner of a Health Service who is charged with having committed, or is convicted of, a serious sex or violence offence, must report the fact in writing to the Chief Executive of the Health Service within 7 days of the charge or conviction.

Serious sex or violence offences are offences committed in any jurisdiction that involve sexual activity, acts of indecency, physical violence or the threat of physical violence that, if they were or if they had been committed in NSW, may be punishable by imprisonment for 12 months or more.

In accordance with the NSW Health Code of Conduct, all employees are required to report to their Chief Executive any charges brought against them relating to the production, dissemination or possession of child pornography.

4.2 Chief Executive responsibilities

Chief Executives must:

- Have in place procedures for ensuring that all employees are made aware of their responsibilities in responding to child-related allegations, charges or convictions;
- Have in place procedures for Chief Executives to be notified of all child-related allegations, charges or convictions;
- Identify persons responsible for conducting risk assessments and investigating such allegations, charges and convictions; and,
- Ensure all appropriate bodies, such as Police, the Department of Community Services and NSW Ombudsman are notified as relevant.

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4.2.1 Notifying the Ombudsman of reportable allegations and convictions

In accordance with Part 3A of the *Ombudsman Act 1974*, Chief Executives of Health Services **must** notify the NSW Ombudsman of the following:

- Any reportable allegation, or reportable conviction, against an employee of the Health Service,
- Whether or not the Health Service proposes to take any disciplinary or other action in relation to the employee and the reasons why it intends to take or not to take any such action,
- Any written submissions made to the Chief Executive concerning any such allegation or conviction that the employee concerned wished to have considered in determining what (if any) disciplinary or other action should be taken in relation to the allegation or conviction.

The notification of a reportable allegation or reportable conviction **must** be undertaken as soon as practicable **and must be made, in any event, within 30 days** of the Chief Executive becoming aware of the allegation or conviction (or within such further period as may be agreed to by the Ombudsman).

Chief Executives must provide the Ombudsman with any documents or information the Ombudsman requests in respect to the Health Service's handling of the reportable allegation or conviction, and must allow an officer of the Ombudsman to attend interviews or confer with the Health Service's investigator, if requested.

Upon being satisfied that the investigation into the reportable allegation or conviction is concluded, the *Ombudsman Act* also requires Chief Executives to, as soon as practicable:

- Send the Ombudsman a copy of any report prepared by or provided as to the progress or results of the investigation, and copies of all statements taken in the course of the investigation and of all other documents on which the report is based, and
- Provide the Ombudsman with such comments on the report and statements as the Chief Executive thinks fit, and
- Inform the Ombudsman of the action that has been taken or is proposed to be taken with respect to the reportable allegation or conviction.

4.2.2 Responding to reportable allegations and convictions

In responding to reportable convictions or allegations of reportable conduct, irrespective of when and where the conduct occurred or allegedly occurred, Chief Executives must ensure that Health Services:

- Conduct an immediate risk assessment to determine whether there is any risk of further or ongoing harm to the child and whether the employee subject to the allegation or conviction requires relocation, supervision or suspension².
- Notify NSW Police where an allegation involves possible criminal conduct.
- Notify DoCS where there is a reasonable belief that a child or class of children is at risk of harm.

² At any point during either a risk assessment or investigation where there is a reasonable belief that conduct has occurred that would constitute a serious criminal offence, the employee should be suspended pending investigation and a decision with respect to disciplinary action.

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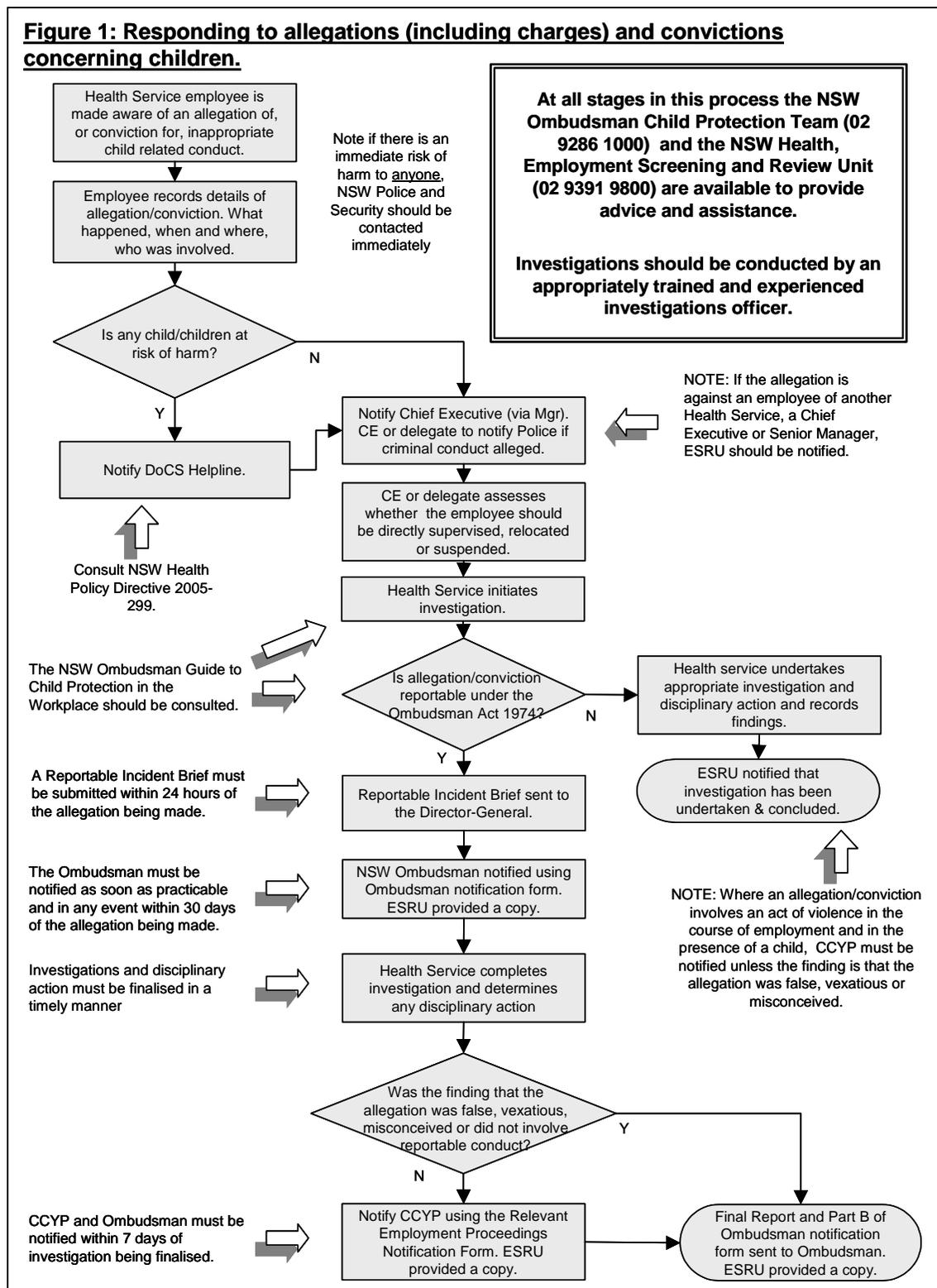
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- Submit a Reportable Incident Brief to the Director General within 24 hours of the Chief Executive becoming aware of the allegation or conviction.
- Notify the Ombudsman in accordance with the *Ombudsman Act 1974* and provide a copy of the formal notification to ESRU.
- Ensure a suitably qualified person undertakes an investigation into the matter in a transparent, accountable and confidential manner.
- Keep appropriate records of the investigation.
- Provide copies of the final investigation report and other relevant material to the Ombudsman and ESRU within 7 days of completion of the investigation.
- Notify CCYP of any completed relevant employment proceedings.

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5 Procedure for responding to child-related allegations, charges and convictions

The procedure for responding to child related allegations (including charges) and convictions is depicted in Figure 1 below.



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Before an investigation is conducted, there are a number of steps that need to be taken in order to protect the interests of the child and the employee.

5.1 Recording the details of a child-related allegation or conviction

Where the allegation has not been received in writing, the allegation should be recorded to clarify what is being alleged. The words used by the person making the allegation must be recorded word for word, if possible, and clarified with the person making the verbal allegation.

If it is necessary to seek clarification of a verbal allegation, ensure that the person making the allegation explains events in their own words. Asking leading questions (eg: Did he touch you there?) may compromise future criminal investigations.

Details of any information received about a child-related charge or conviction should also be recorded.

5.2 Considering risk of harm to a child or class of children

NSW Health Policy Directive 2005-299 *Protecting Children and Young People* requires Health Service employees to report to the DoCS 'helpline' any reasonable belief that a person or class of persons under the age of 16 is 'at risk of harm'.

Under that Directive and section 24 of the *Children and Young Persons (Care and Protection) Act 1998*, a Health Service employee may also report concerns about risk of harm to a person aged 16 or 17 (a young person) or class of young persons. Where a Health Service employee is concerned that a young person or class of young persons is at risk of harm from abuse or neglect, they should make a report to DoCS.

In assessing whether a child-related allegation, charge or conviction should be reported to DoCS, consideration needs to be given to whether the person who is the subject of the allegation may continue to pose a risk to classes of children and young people (such as patients).

For example, a report should be made to DoCS where a person who has previously abused a child works with children.

If there are concerns about the immediate safety of a child or young person, a class of child or young person, or any other staff, patient or client, Health Service employees should also contact Police (000) and security staff.

According to Section 23 of the *Children and Young Persons (Care and Protection) Act 1998*, a child or young person is at risk of harm if current concerns exist for the safety, welfare and well-being of the child or young person because of the presence of one or more of the following circumstances:

- The child or young person has been or is at risk of being physically or sexually assaulted or ill-treated;
- The child or young person's basic physical or psychological needs are not being met or are at risk of not being met;
- The parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care;
- The child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child young person is at risk of serious physical or psychological harm; or,

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- A parent or caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.

Policy Directive 2005-299 *Protecting Children and Young People* outlines procedures for contacting the DoCS Helpline. If the DoCS Helpline is contacted, this must be referred to in notifying the Ombudsman.

5.3 Notifying the Chief Executive or ESRU/the Ombudsman

Health Service employees should immediately report all child-related allegations and convictions to the Chief Executive (via their manager, if available). An appropriate initial response is extremely important in order to:

- Protect children and other vulnerable clients/patients from potential harm.
- Protect employees from malicious gossip or unfounded accusations.
- Demonstrate that such allegations and convictions are treated seriously.

Where an employee becomes aware of a child-related allegation, charge or conviction concerning the employee of another Health Service, or the Chief Executive or senior member of staff of their Health Service, these matters should be immediately reported to ESRU and may also be reported to the Ombudsman's Child Protection Team. ESRU and the Ombudsman Child Protection Team can assist in determining the appropriate course of action, including assessing the immediate risk to patients, clients and other staff, assessing whether any other Health Services or external agencies may need to be notified, and whether an external investigator should undertake an investigation.

5.4 Assessing the risk to patients, clients and employees

Upon being informed of a child-related allegation, charge or conviction against an employee, the Chief Executive must ensure that the allegation, charge or conviction is assessed in terms of the immediate risk to patients, clients and employees.

Appropriate counselling and medical services must be arranged immediately for any alleged victim or any employee, as appropriate.

Note that where a conviction prior to employment has previously been risk assessed as part of the employment screening process and it has been determined that the conviction does not pose an unacceptable risk to patients, clients, staff or the NSW Health system, it should not be investigated again. ESRU should be consulted where this may be the case and the Ombudsman should still be notified of the conviction and the action that was undertaken.

The process of risk assessment should continue throughout the investigation of an allegation or charge, and at the conclusion of the process when a decision is made concerning any disciplinary action to be taken against the employee.

For all child-related allegations and charges the Chief Executive or an appropriately delegated officer must decide whether the employee/volunteer should be placed under **direct supervision** or **re-located immediately** on a "without prejudice" basis to a work area where there is no direct contact with patients/clients. If this is not possible, and if necessary to protect the safety of others, the employee should be **suspended**, pending investigation and a decision concerning any disciplinary action to be taken. This will involve an assessment of the duties of the employee and the risk posed to other patients, clients or employees of the Health Service. If a visiting

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practitioner is to be suspended, the Health Service should refer to the contract with the visiting practitioner.

During risk assessment, factors that should be considered in determining whether to leave an employee in a position include (but are not limited to):

- The nature and seriousness of the allegation or conviction
- The vulnerability of children and other patients/clients
- The nature of the position occupied by the employee and their level of supervision
- The period of time since the relevant conduct occurred or allegedly occurred
- The age of the employee at the time the relevant conduct occurred or allegedly occurred
- The age of any victims or alleged victims at the time the relevant conduct occurred or allegedly occurred, and the difference in age between the employee and each such victim or alleged victim
- The disciplinary history of the employee
- The safety of the employee
- Any risk to the investigation or to criminal or child protection investigations that may be conducted by NSW Police and/or DoCS.

The protection of children and a Health Service's patients, clients and employees is to be paramount.

If at any point in the assessment or investigation of an allegation there is a reasonable belief that conduct may have occurred that constitutes a serious offence, that is one that may be punishable by imprisonment for 12 months or more, the **employee should be suspended immediately** pending finalisation of the investigation and a decision concerning any disciplinary action to be taken.

For all serious child-related charges or convictions, including serious sex and violence offences, the employee should be **suspended immediately** pending finalisation of the investigation and a decision concerning any disciplinary action to be taken.

Health Services and Health Service employees should be mindful of the fact that a decision to take administrative action or make administrative changes in relation to the employee due to the risk assessment process is in no way an indication as to whether the allegation will be substantiated.

At the stage of initial risk assessment, it is not appropriate to inform the employee of the full details of the allegation, as this may compromise criminal investigations or expose any victim or witness to additional risk. The circumstances in which these details can be disclosed are addressed later in this Directive.

If the employee is to be placed on alternate or restricted duties, or is to be suspended, then the employee should be informed that an allegation has been made against them (without going into detail) and provided with an explanation about the process to be followed by the Health Service.

5.5 Notifying appropriate bodies.

After the initial risk assessment is completed, the Health Service must commence an investigation. Section 6 of this Directive outlines procedures for undertaking an investigation.

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Prior to undertaking the investigation Health Services must ensure that appropriate bodies are notified of the allegation, charge or conviction.

NSW Police must be informed if any child-related allegation against an employee involves or may involve criminal conduct. Where NSW Police is undertaking a criminal investigation, or advises that it may undertake such an investigation, an ongoing liaison should be maintained to ensure that criminal and disciplinary investigations are coordinated effectively. ESRU and the Ombudsman's Office can facilitate communication with NSW Police.

Where there is a reasonable belief that a child or class of children are at risk of harm, and DoCs has not already been notified, they should be notified at this point.

The Chief Executive or delegate must also assess whether the allegation or conviction involves or may involve conduct that is reportable to the Ombudsman under Part 3A of the *Ombudsman Act 1974*.

A definition of reportable conduct appears in the Glossary to this Directive. For detailed information on determining whether an allegation or conviction is reportable, please consult Part 3 of the NSW Ombudsman Guide to Child Protection in the Workplace (<http://www.ombo.nsw.gov.au>).

Where an allegation or conviction is reportable to the Ombudsman:

- The Director-General must be notified no later than 24 hours after the allegation is made, using the Reportable Incident Briefing system.
- The Ombudsman must be notified as soon as practicable and in any event within 30 days of the Chief Executive receiving notice of the allegation or conviction, using the Ombudsman Notification Form (Attachment 9.1). A copy of this notification must also be submitted to ESRU.

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6 Investigating an allegation of reportable conduct

Child-related convictions, and child-related allegations involving criminal conduct, that do not involve reportable conduct are to be investigated and managed in accordance with the process of investigation outlined in Policy Directive PD2006_026 *Criminal allegations, charges and convictions – responding to*.

Child-related allegations that do not involve reportable or criminal conduct are to be investigated in accordance with the NSW Health Policy Directive concerning the disciplinary processes for NSW Health (PD2005_225) or in the case of the Department of Health the Personnel Handbook for the NSW Public Service.

Where a Health Service becomes aware that an employee has a reportable conviction, no independent investigation of the employee's conduct is required. In such cases, risk assessment is to take place, pending the determination of any disciplinary action.

6.1 Objectives of an investigation into a reportable allegation

The Health Service must coordinate an internal investigation into an allegation of reportable conduct, irrespective of whether the allegation is or has been investigated by NSW Police or any other investigative body.

Although Police may decide against taking further investigative action where they believe the matter will not be prosecuted successfully, this does not mean the alleged behaviour did not occur. Irrespective of any action the Police or any other investigative body may take, Health Services need to investigate allegations to make sound risk management and disciplinary decisions.

The investigation should determine whether there is evidence for the allegation to be sustained, not sustained (insufficient evidence), false (the matter did not occur), vexatious, misconceived (the allegation was made in good faith but made on a misunderstanding of what actually occurred) or whether it does not involve reportable conduct.

It should be noted that the strict rules of evidence that apply in court do not apply to investigations of allegations against employees. The civil standard of proof, that is, the 'balance of probabilities' applies to this type of investigation. This means that the Chief Executive need only be satisfied that it is more likely than not that the allegation is true in order to sustain an allegation.

The Health Service should not conduct investigations to establish proof to a criminal standard ('beyond a reasonable doubt) or for the purpose of obtaining statements or other evidence that may be used at trial. These are matters for NSW Police and the Director of Public Prosecutions.

The investigation process must be conducted in accordance with the principles of procedural fairness and be transparent, accountable and treated as highly confidential in order to protect the alleged victim, person making the allegation and the employee.

Title: Child related allegations, charges and convictions.

For detailed information on conducting an investigation into reportable allegations, please consult Part 5 of the NSW Ombudsman Guide to Child Protection³ in the Workplace.

6.2 Appointing an Investigator

An appropriately trained and experienced investigations officer or external investigator must conduct investigations into allegations of reportable conduct. When appointing an investigator, any actual or potential conflicts of interests must be considered, particularly in relation to the employee or the child. Any cultural issues and/or special needs should also be considered.

Investigations officers with experience in child related matters are preferred. It is desirable that investigators can show proof or evidence that they have experience or have had training in conducting investigations of a similar nature, and previous experience in health related investigations, including timeliness in conducting and reporting on investigations.

All investigators used by Health Services should be able to provide at least two recent referees who are able to be contacted for a referee check.

In appointing an external investigator, Health Services should consider the panel of investigators established by the Department.

Where a Health Service is unable to source an appropriate investigator, ESRU should be contacted for advice.

Whilst ESRU will provide Health Services with advice concerning investigations, it will not conduct investigations outside the Department of Health except in exceptional circumstances, including matters where:

- A Health Service has a conflict of interest;
- There are cross-Health Service impacts; and/or
- The Director-General directs ESRU to conduct an investigation.

When interviewing children as a part of the investigation process, permission **must** be sought from the child's parent or guardian before an interview takes place. Only persons with sufficient skill or expertise in obtaining children's evidence may interview children with respect to serious matters.

6.3 Informing the employee

Any communication with the employee about the details of a reportable allegation that involves or may involve criminal conduct should only be made in consultation with NSW Police and DoCS, to avoid contaminating their investigations and to prevent reinterviewing.

ESRU and the Ombudsman's Office can facilitate communication with NSW Police and DoCS.

Where the Police or DoCS have requested non-disclosure, due to a risk of jeopardising a Police or DoCS investigation, Health Services should obtain advice from ESRU or the NSW Ombudsman's Office on how to progress the matter.

³ Available at:
<http://www.ombo.nsw.gov.au/guideorganisations/guidewrkchildprotiss.html>

Title: Child related allegations, charges and convictions.

When the employee can safely be informed of the details of the allegation, this must be done in writing. The employee must also be informed in writing of their right to make contact with a support person or organisation of their choosing, including a union, legal representative, staff counsellor or (if appropriate) employee assistance program.

Due consideration must be given to the welfare of the employee during an investigation, with counselling services being offered, where applicable. Likewise, a direction is to be given to the employee to maintain confidentiality about the allegation (particularly important where there is more than one person the subject of an investigation).

The employee must be given the opportunity to discuss the circumstances surrounding the allegation with the investigator or with a relevant senior line manager, and also to respond to the allegation, putting forward any matters they believe relevant, before any disciplinary action is taken.

Employees must also be notified in writing of any interviews they need to attend relating to the investigation, whether they are a witness or the subject of the allegation. Notice should be given within a reasonable timeframe and not less than 24 hours prior to an interview date. Employees must be informed of their right to bring a support person of their choosing to the interview, and that any failure to fully cooperate with the investigation may result in disciplinary action.

6.4 Investigation Length

Investigations must be completed in a timely manner.

Investigations of low risk allegations should be able to be completed within three months. Investigations of more complex matters should generally take no longer than six months.

If an investigation cannot be completed within these timeframes, for example, whilst a police investigation is ongoing or court proceedings are pending, written notification must be sent to relevant persons and bodies, including ESRU, the Ombudsman's Office, the employee, and the person making the allegation, advising of the circumstances resulting in the delay.

6.5 Concluding the investigation and taking disciplinary action

An investigation into a child-related allegation will be concluded upon the submission of an investigation report to the Chief Executive and the Chief Executive being satisfied that the investigation is complete.

If, at the conclusion of the investigation, there is appropriate evidence to support the allegation, the Health Service must conduct a risk assessment to assist in determining the further action required. If the matter is considered sufficiently serious, the investigator may make a recommendation to take disciplinary action.

Where the matter involves a child-related conviction, the Health Service is to conduct a risk assessment to assist in determining any disciplinary action that is required.

If the allegation is found to have been made in bad faith, a decision should be made regarding what action to take, if any, against the person making the allegation.

Title: Child related allegations, charges and convictions.

The employee and, when appropriate, the person making the allegation should be notified in writing within 7 days of completion of the investigation and of the findings in relation to each allegation.

Where applicable, the employee should also be informed of the date it is estimated a decision will be made in relation to disciplinary action. An offer to discuss the findings should also be made to the employee in circumstances where a decision may be made to relocate the employee or impose conditions on their employment.

The employee must be given a reasonable opportunity to respond to these findings and to proposed disciplinary action.

Reportable convictions may also be serious sex and violence offences within the meaning of the *Health Services Act 1997*.

Serious sex or violence offences are offences committed in any jurisdiction that involve sexual activity, acts of indecency, physical violence or the threat of physical violence that, if they were or if they had been committed in NSW, may be punishable by imprisonment for 12 months or more.

Section 118 of that Act requires members of the NSW Health Service to be given a reasonable opportunity to make written submissions concerning convictions for serious sex or violence offences and the proposed disciplinary action to be taken (Chief Executives have delegated responsibility for all of the Director-General's functions under section 118).

Non-declared affiliated health organisations are required to put in place systems that reflect section 118 as part of their conditions of subsidy.

Section 100 of the *Health Services Act* provides for similar arrangements before terminating visiting practitioners contracted to public health organisations who have been convicted of a serious sex or violence offence, except that final responsibility for approving termination lies with the Department of Health's Director-General or Deputy Director-General, Health System Support.

Disciplinary action may include, but is not limited to, terminating the employee's employment, imposing conditions on the employee, or transferring the employee to a position that does not involve child-related employment (defined in the Glossary).

Disciplinary action must be undertaken in accordance with Policy Directive 2005_225, *A Framework for Managing the Disciplinary Process in NSW Health* or, in the case of the Department of Health, in accordance with the Personnel Handbook for the NSW Public Service.

6.5.1 Child Protection (Prohibited Employment) Act 1998

That Act makes it an offence for a person who has been convicted of a serious sex offence, or a person who is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*, to apply for, undertake or remain in child-related employment.

Disciplinary action should accord with any restrictions on employment resulting from a conviction imposed by the *Child Protection (Prohibited Employment) Act 1998*.

Title: Child related allegations, charges and convictions.

Serious sex offences include offences involving sexual activity or acts of indecency (if the indecent act would be an offence in a private place) that carry a penalty of more than 12 months imprisonment, sexual servitude offences, child prostitution offences, and child pornography offences, whether committed in NSW or elsewhere.

A person who has a conviction for a serious sex offence that is no longer an offence (for example, an offence involving consensual homosexual intercourse with a 16 or 17 year old male) is not covered by the Act.

NSW Police has information on whether particular persons are registrable persons.

Persons who cannot lawfully work in child-related employment are known as “prohibited persons”.

This restriction on employment can only be overturned if CCYP, the Industrial Relations Commission (IRC) or the Administrative Decisions Tribunal (ADT) have made an order (which may be subject to conditions) that the Act does not apply to the person. Such an order can only be made if the body making the order considers that the person does not pose a risk to child safety.

It is an offence for a Health Service to knowingly employ or continue to employ a prohibited person in child-related employment. Health Services must also not employ a person in a manner that is inconsistent with any conditions imposed by CCYP, the IRC or ADT.

If the Health Service does not terminate a person’s employment following being made aware that a person is a prohibited person, then it must ensure that the person does not undertake any child-related employment within the Health Service.

6.6 Notifying the Ombudsman following investigation into reportable allegations or convictions

The Chief Executive of a Health Service must, within 7 days of being satisfied that the investigation has been concluded:

- (a) Send to the Ombudsman a copy of any report prepared by or provided to the Chief Executive as to the progress or results of the investigation, and copies of all statements taken in the course of the investigation, and all other documents on which the report is based;
- (b) Provide the Ombudsman with such comments on the report and statements as the Chief Executive thinks fit; and
- (c) Inform the Ombudsman of the action that has been taken or is proposed to be taken with respect to the reportable allegation or conviction.

The report to the Ombudsman should be made using Part B of the Ombudsman Notification Form and include a copy of the investigation report. A copy of the form and investigation report must also be sent to ESRU.

The Ombudsman must be informed of the outcome of all matters involving reportable allegations or convictions, not just those that are sustained.

Title: Child related allegations, charges and convictions.

6.7 Notifying CCYP of prohibited employment and completed relevant employment proceedings

6.7.1 Prohibited employment

Where a Health Service is made aware that a prohibited person has been working in child-related employment within the Health Service, the Health Service is to notify ESRU and CCYP to enable the consideration of laying criminal charges against the employee.

6.7.2 Completed relevant employment proceedings

Health Services must advise CCYP of all completed disciplinary proceedings by the Health Service or a relevant professional body that supervises the professional conduct of the employee (for example, the Health Care Complaints Commission or a professional registration board) involving:

- (a) Reportable conduct by an employee (ie: reportable allegations and convictions);
- (b) An act of violence committed by the employee in the course of employment and in the presence of a child,

Unless there is a finding that the allegation in such proceedings was not reportable conduct, was false, was vexatious, or was misconceived.

For such matters, the Chief Executive must send a completed Relevant Employment Proceedings Notification form (Attachment 9.2) to CCYP within 7 days. A copy of this notification must also be sent to ESRU.

The employee must also be advised of any notification to CCYP by way of a Relevant Employment Proceedings Employee Notification form.

Health Services should advise ESRU within 7 days of any investigation where the respondent leaves the Health Service. Health Services must still complete the investigation to the best of their ability, make a finding, and notify CCYP if required.

Title: Child related allegations, charges and convictions.

7 Keeping Records

Whilst responding to child related allegations, charges and convictions, it is important to ensure adequate records are kept and stored in a file which is readily located and separate to the employee's HR file. In addition, the following information must be documented for future audits and assessment:

- Any allegation which was made, and who made the allegation.
- Any conviction which was advised, and who advised of the conviction.
- The initial response that was taken by the Health Service, such as any counselling that was offered to the alleged victim and the employee who is the subject of the allegation.
- An investigation plan listing the steps that will be taken to undertake the investigation, possible witnesses to be interviewed and relevant documents which need to be considered.
- The initial risk assessment and any subsequent risk assessments.
- All interviews undertaken, including the initial questions that were asked and the responses.
- Any decision made during the investigation and at the conclusion of the investigation. The rationale for these decisions must also be documented as well as the name and position of the person who made the decision.
- The investigation report.
- Any written submissions received from the employee in response to a conviction or the findings of an investigation, or to proposed disciplinary action.
- A signed and dated File Note must be kept of each telephone conversation, interview, notification sent and advice received during an internal investigation.
- All e-mail correspondence.

Good record keeping is imperative. Not only does it protect the investigator if challenged regarding process, it is important for future audits. Under section 25B of the *Ombudsman Act*, the Ombudsman may request any investigation file at any time in order to scrutinise the process undertaken. Poor record keeping reflects on the decisions made by the Health Service and the process undertaken by the investigator.

The *Freedom of Information Act 1989* entitles any person to access documents held by their employer, whether public or private, pertaining to relevant employment proceedings taken against them (subject to relevant exemptions in that Act).

Such documents may also be subpoenaed and used in court proceedings.

Title: Child related allegations, charges and convictions.

8 Contact information

NSW Ombudsman Child Protection Team - (02) 9286 1000

Employment Screening and Review Unit - (02) 9391 9800

Department of Community Services Helpline - 13 36 27

Title: Child related allegations, charges and convictions.

9 List of Attachments

9.1 Ombudsman Notification Form

Available for download at:

<http://www.ombo.nsw.gov.au/complaints/wrkchildpronotiform.html>

9.2 Relevant Employment Proceedings Notification Form

Available for download at:

http://www.kids.nsw.gov.au/files/8_employer_notif_form.pdf

9.3 Responding to Allegations involving children flowchart

For printing and display on notice boards etc – for quick reference

Notification form

Instructions for completing and sending the notification form to the Ombudsman

Completing the form

Part A of the 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, please also complete **Part B** of the notification form, which details the findings of the investigation. This Part of the form can also be used as the basis for the final report to the Ombudsman if the investigation takes longer than 30 days to finalise.

If some sections of the form cannot be completed, please leave them blank.

The notification form can be **photocopied** for multiple use.

Delivery instructions

To maintain a high level of confidentiality, the notification form and any other documents relating to the investigation of an allegation or conviction of reportable conduct against an employee should be sent to the Ombudsman either by:

- registered mail
- hand delivery, or
- courier

Addressed to:

Attention – Child Protection Team
NSW Ombudsman
Level 24
580 George Street
Sydney NSW 2000

Note: Parts A & B of the notification form and accompanying documents should NOT be sent to the Ombudsman by normal mail, by email or fax.

Attachment 9.1

PART A

1. Details of Agency

1.1	Name of agency:	Your case/ref number:
1.2	Type of agency: <input type="checkbox"/> Designated government agency <input type="checkbox"/> Designated non-government agency <input type="checkbox"/> Non-government school <input type="checkbox"/> Public authority (other than a designated government agency) <input type="checkbox"/> Child care centre <input type="checkbox"/> Substitute residential care service (i.e. out of home care service)	
1.3.	Nature of service provided by your agency:	
1.4	Does your agency have a policy or procedures specifically relating to allegations of reportable conduct against employees or members of staff?	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.5	Has your agency already supplied the Ombudsman with a copy of the most current policies or procedures?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If the agency has not already supplied the Ombudsman with a copy of the most current policies or procedures, please attach.	

2. Head of agency details

2.1	Head of agency name:	
2.2	Position title:	
2.3	Address (Agency address: not a home address):	
2.4	Telephone:	Fax:
	Signature:	Date:
	If another officer of the agency is preferred as the contact for any further inquiries in relation to this notification from the Ombudsman, please also provide their details below. Unless other arrangements have been made, formal correspondence from the Ombudsman will be addressed to the nominated head of agency.	
2.5	Contact officer name:	
2.6	Position title:	
2.7	Address:	
2.8	Telephone:	Fax:
	Please identify the person in your agency who is responsible for investigating the reportable allegation(s) or who is responsible for liaison with any other agency that may be investigating the reportable allegations(s):	
2.9	Investigating officer:	
2.10	Position title:	
2.11	Address:	
2.12	Telephone:	
2.13	If this notification relates to any other notifications made to the Ombudsman, please provide our reference number(s) or other details	

Attachment 9.1

3. Details of the person against whom the allegation has been made

3.1	Does this notification contain allegations of reportable conduct against more than one employee? <input type="checkbox"/> Yes <input type="checkbox"/> No	
3.1a	If yes, how many? <i>(Please copy this page for each employee)</i>	
3.2	Family name:	
3.3	Given name:	
3.4	Sex: Male <input type="checkbox"/> Female <input type="checkbox"/>	
3.5	Date of birth:	Place of birth:
3.6	Home address:	
3.7	Home phone:	
3.8	Position title at time allegation made:	
3.9	Employee identification no. (if relevant):	
3.10	Current employment status with agency (tick all applicable): <input type="checkbox"/> Permanent <input type="checkbox"/> Part-time <input type="checkbox"/> Foster carer <input type="checkbox"/> Casual <input type="checkbox"/> Contractor <input type="checkbox"/> Volunteer <input type="checkbox"/> Other (state)	
3.11	Current work address:	
3.12	Work phone:	
3.13	Is the employee aware that a reportable allegation has been made against them? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	
3.13a	If yes, who informed the employee: Your agency (name of person): Another agency (state which): Other (describe): Unknown: Date informed:	
3.13b	Is the employee aware of: <input type="checkbox"/> Full details of the reportable allegation? <input type="checkbox"/> Type of reportable conduct or broad nature only? <input type="checkbox"/> Only that there has been a reportable allegation not the type?	
3.14	Has counselling or other support been offered/provided to the employee? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	
3.15	If yes, what kind?	
3.16	If no, why not?	

Attachment 9.1

4. Details of the alleged victim(s)

4.1	Does this notification contain allegations of reportable conduct upon more than one child or young person? <input type="checkbox"/> Yes <input type="checkbox"/> No
4.1a	If yes, how many? <i>(Please copy and complete this page for each child)</i>
4.2	Family name:
4.3	Given name:
4.4	Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female
4.5	Date of birth or current age:
4.6	Age of the child at the time of the alleged reportable conduct (if different from above):
4.7	Is the child: Aboriginal or Torres Strait Islander? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown From a non-English speaking background? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
4.8	Does the child have a disability or disorder? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
4.8a	If yes, (tick all relevant and describe): <input type="checkbox"/> Intellectual <input type="checkbox"/> Physical <input type="checkbox"/> Sensory <input type="checkbox"/> Behavioural <input type="checkbox"/> Other
4.9	Home address:
4.10	Home phone:
4.11	Is the child a state ward? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
4.12	Are the child's parents or guardians aware of the allegations? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Not applicable
4.12a	If no, why not?
4.12b	If yes, who informed them? <input type="checkbox"/> Child <input type="checkbox"/> Your Agency (name of person): <input type="checkbox"/> Unknown Date informed:
4.13	Has counselling or other support been offered/provided to the alleged victim? <input type="checkbox"/> Yes <input type="checkbox"/> No
4.13a	If yes, what kind?
4.13b	If no, why not?

Attachment 9.1

5. Details of the allegation(s)

5.1	Does this notification concern more than one incident* of reportable conduct? <input type="checkbox"/> Yes <input type="checkbox"/> No						
5.1a	If yes, how many?						
*Note: Please use this page for the primary or most serious incident and copy for additional incidents.							
5.2	Date of alleged incident:						
5.3	Location of alleged incident:						
5.4	Description of reportable allegation (attach documentation where available):						
5.5	Type of reportable conduct alleged (tick all relevant to incident described above)						
<table border="0"> <tr> <td> Physical assault <input type="checkbox"/> Hitting/ kicking <input type="checkbox"/> Shaking/ throwing <input type="checkbox"/> Pushing/ shoving/ grabbing/ pinching/ poking <input type="checkbox"/> Inappropriate restraint/excess force <input type="checkbox"/> Indirect – use of object/substance/threat </td> <td> Psychological harm* <input type="checkbox"/> Persistent hostility/rejection <input type="checkbox"/> Exposure to violence (including domestic violence) <input type="checkbox"/> Scapegoating <input type="checkbox"/> Humiliation/belittling </td> </tr> <tr> <td> Sexual offence <input type="checkbox"/> Assault (indecent/ touching/ molestation) <input type="checkbox"/> Penetration / intercourse <input type="checkbox"/> Production, dissemination or possession of child pornography </td> <td> Neglect <input type="checkbox"/> Clothing/food <input type="checkbox"/> Medical care <input type="checkbox"/> Shelter <input type="checkbox"/> Supervision <input type="checkbox"/> Environment not supportive </td> </tr> <tr> <td> Sexual misconduct <input type="checkbox"/> Exploitation: non physical <input type="checkbox"/> Deliberate exposure to sexual behaviour/sexual exhibitionism / exploitation / pornography <input type="checkbox"/> Obscene language/gestures <input type="checkbox"/> Harassment (inappropriate words/gestures/correspondence) </td> <td> Ill-treatment <input type="checkbox"/> Excessive discipline/punishment) <input type="checkbox"/> Other excessive behaviour </td> </tr> </table>		Physical assault <input type="checkbox"/> Hitting/ kicking <input type="checkbox"/> Shaking/ throwing <input type="checkbox"/> Pushing/ shoving/ grabbing/ pinching/ poking <input type="checkbox"/> Inappropriate restraint/excess force <input type="checkbox"/> Indirect – use of object/substance/threat	Psychological harm* <input type="checkbox"/> Persistent hostility/rejection <input type="checkbox"/> Exposure to violence (including domestic violence) <input type="checkbox"/> Scapegoating <input type="checkbox"/> Humiliation/belittling	Sexual offence <input type="checkbox"/> Assault (indecent/ touching/ molestation) <input type="checkbox"/> Penetration / intercourse <input type="checkbox"/> Production, dissemination or possession of child pornography	Neglect <input type="checkbox"/> Clothing/food <input type="checkbox"/> Medical care <input type="checkbox"/> Shelter <input type="checkbox"/> Supervision <input type="checkbox"/> Environment not supportive	Sexual misconduct <input type="checkbox"/> Exploitation: non physical <input type="checkbox"/> Deliberate exposure to sexual behaviour/sexual exhibitionism / exploitation / pornography <input type="checkbox"/> Obscene language/gestures <input type="checkbox"/> Harassment (inappropriate words/gestures/correspondence)	Ill-treatment <input type="checkbox"/> Excessive discipline/punishment) <input type="checkbox"/> Other excessive behaviour
Physical assault <input type="checkbox"/> Hitting/ kicking <input type="checkbox"/> Shaking/ throwing <input type="checkbox"/> Pushing/ shoving/ grabbing/ pinching/ poking <input type="checkbox"/> Inappropriate restraint/excess force <input type="checkbox"/> Indirect – use of object/substance/threat	Psychological harm* <input type="checkbox"/> Persistent hostility/rejection <input type="checkbox"/> Exposure to violence (including domestic violence) <input type="checkbox"/> Scapegoating <input type="checkbox"/> Humiliation/belittling						
Sexual offence <input type="checkbox"/> Assault (indecent/ touching/ molestation) <input type="checkbox"/> Penetration / intercourse <input type="checkbox"/> Production, dissemination or possession of child pornography	Neglect <input type="checkbox"/> Clothing/food <input type="checkbox"/> Medical care <input type="checkbox"/> Shelter <input type="checkbox"/> Supervision <input type="checkbox"/> Environment not supportive						
Sexual misconduct <input type="checkbox"/> Exploitation: non physical <input type="checkbox"/> Deliberate exposure to sexual behaviour/sexual exhibitionism / exploitation / pornography <input type="checkbox"/> Obscene language/gestures <input type="checkbox"/> Harassment (inappropriate words/gestures/correspondence)	Ill-treatment <input type="checkbox"/> Excessive discipline/punishment) <input type="checkbox"/> Other excessive behaviour						
*Note: There must be evidence of related harm to the child that was alleged to have been caused by the employee. See 3.5.7 in the Ombudsman guidelines for more information about this definition. For more information about definitions of reportable allegations see 3.5 of the guidelines							
Misconduct which may involve reportable conduct <input type="checkbox"/> Unwarranted / inappropriate touching (not indecent) <input type="checkbox"/> Inappropriate relationship with child (not sexual) <input type="checkbox"/> Inappropriate comments / jokes of a sexual nature <input type="checkbox"/> Other							
5.6	Date your agency became aware of the allegations(s):						
5.7	Name of person initially informed:						
5.7a	Position title and location:						

Attachment 9.1

6. -Interim action taken or proposed in respect of the reportable allegation(s)

6.1	Has DoCS been informed by your agency? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Not applicable
6.1a	Date of report to DoCS:
6.2	Is DoCS investigating this reportable allegation? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
6.2a	If yes, name of DoCS officer:
6.2b	Which Community Service Centre or Joint Investigation Response Team?
6.2c	Contact number (if known):
6.3	Have the Police been informed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Not applicable
6.3a	Are the police investigating this reportable allegation? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
6.3b	If yes, name of police officer:
6.4	Which police station or Local Area Command?
6.4a	Contact number (if known):
6.5	Have prior reportable allegations been made against the employee? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
6.5a	If yes, when was the most recent? <input type="checkbox"/> Within 2yrs. <input type="checkbox"/> 2-5yrs <input type="checkbox"/> More than 5yrs ago
6.5b	What was the result or finding of the investigation into the prior allegation/s? <input type="checkbox"/> False <input type="checkbox"/> Vexatious <input type="checkbox"/> Misconceived <input type="checkbox"/> Allegation sustained <input type="checkbox"/> Not sustained – insufficient evidence <input type="checkbox"/> Not reportable conduct
6.6	What action has been taken or is proposed by the agency in respect of the employee pending completion of investigation? <input type="checkbox"/> No action (state why) <input type="checkbox"/> Increased supervision (describe) <input type="checkbox"/> Restriction on current duties (specify) <input type="checkbox"/> Transferred to alternate duties (specify) <input type="checkbox"/> Suspended with pay <input type="checkbox"/> Suspended without pay <input type="checkbox"/> Not re-engaged <input type="checkbox"/> Not relevant as matter finalised
6.6a	Is this standard procedure when responding to allegations of child abuse made against your employee? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Not applicable

Attachment 9.1

PART B

(To be completed at the conclusion of the investigation)

7. Findings

If the investigation of the allegation is completed, please attach copies of supporting final documentation and complete the following:

7.1	Describe the allegation that was put to the employee (or attach copy of relevant documents).						
7.1.1	<p>Allegation 1: category of reportable conduct</p> <table border="0"> <tr> <td data-bbox="310 676 1015 862"> <p>Physical assault</p> <input type="checkbox"/> Hitting/ kicking <input type="checkbox"/> Shaking/ throwing <input type="checkbox"/> Pushing/ shoving/ grabbing/ pinching/ poking <input type="checkbox"/> Inappropriate restraint/excess force <input type="checkbox"/> Indirect – use of object/substance/threat</td> <td data-bbox="1053 676 1450 862"> <p>Psychological harm*</p> <input type="checkbox"/> Persistent hostility/rejection <input type="checkbox"/> Exposure to violence (including domestic violence) <input type="checkbox"/> Scapegoating <input type="checkbox"/> Humiliation/belittling</td> </tr> <tr> <td data-bbox="310 897 1015 1017"> <p>Sexual offence</p> <input type="checkbox"/> Assault (indecent/ touching/ molestation) <input type="checkbox"/> Penetration / intercourse <input type="checkbox"/> Production, dissemination or possession of child pornography</td> <td data-bbox="1053 897 1450 1071"> <p>Neglect</p> <input type="checkbox"/> Clothing/food <input type="checkbox"/> Medical care <input type="checkbox"/> Shelter <input type="checkbox"/> Supervision <input type="checkbox"/> Environment not supportive</td> </tr> <tr> <td data-bbox="310 1052 1015 1234"> <p>Sexual misconduct</p> <input type="checkbox"/> Exploitation: non physical <input type="checkbox"/> Deliberate exposure to sexual behaviour/sexual exhibitionism/ exploitation / pornography <input type="checkbox"/> Obscene language/gestures <input type="checkbox"/> Harassment (inappropriate words/gestures/correspondence)</td> <td data-bbox="1053 1106 1450 1199"> <p>Ill-treatment</p> <input type="checkbox"/> Excessive discipline/punishment <input type="checkbox"/> Other excessive behaviour</td> </tr> </table>	<p>Physical assault</p> <input type="checkbox"/> Hitting/ kicking <input type="checkbox"/> Shaking/ throwing <input type="checkbox"/> Pushing/ shoving/ grabbing/ pinching/ poking <input type="checkbox"/> Inappropriate restraint/excess force <input type="checkbox"/> Indirect – use of object/substance/threat	<p>Psychological harm*</p> <input type="checkbox"/> Persistent hostility/rejection <input type="checkbox"/> Exposure to violence (including domestic violence) <input type="checkbox"/> Scapegoating <input type="checkbox"/> Humiliation/belittling	<p>Sexual offence</p> <input type="checkbox"/> Assault (indecent/ touching/ molestation) <input type="checkbox"/> Penetration / intercourse <input type="checkbox"/> Production, dissemination or possession of child pornography	<p>Neglect</p> <input type="checkbox"/> Clothing/food <input type="checkbox"/> Medical care <input type="checkbox"/> Shelter <input type="checkbox"/> Supervision <input type="checkbox"/> Environment not supportive	<p>Sexual misconduct</p> <input type="checkbox"/> Exploitation: non physical <input type="checkbox"/> Deliberate exposure to sexual behaviour/sexual exhibitionism/ exploitation / pornography <input type="checkbox"/> Obscene language/gestures <input type="checkbox"/> Harassment (inappropriate words/gestures/correspondence)	<p>Ill-treatment</p> <input type="checkbox"/> Excessive discipline/punishment <input type="checkbox"/> Other excessive behaviour
<p>Physical assault</p> <input type="checkbox"/> Hitting/ kicking <input type="checkbox"/> Shaking/ throwing <input type="checkbox"/> Pushing/ shoving/ grabbing/ pinching/ poking <input type="checkbox"/> Inappropriate restraint/excess force <input type="checkbox"/> Indirect – use of object/substance/threat	<p>Psychological harm*</p> <input type="checkbox"/> Persistent hostility/rejection <input type="checkbox"/> Exposure to violence (including domestic violence) <input type="checkbox"/> Scapegoating <input type="checkbox"/> Humiliation/belittling						
<p>Sexual offence</p> <input type="checkbox"/> Assault (indecent/ touching/ molestation) <input type="checkbox"/> Penetration / intercourse <input type="checkbox"/> Production, dissemination or possession of child pornography	<p>Neglect</p> <input type="checkbox"/> Clothing/food <input type="checkbox"/> Medical care <input type="checkbox"/> Shelter <input type="checkbox"/> Supervision <input type="checkbox"/> Environment not supportive						
<p>Sexual misconduct</p> <input type="checkbox"/> Exploitation: non physical <input type="checkbox"/> Deliberate exposure to sexual behaviour/sexual exhibitionism/ exploitation / pornography <input type="checkbox"/> Obscene language/gestures <input type="checkbox"/> Harassment (inappropriate words/gestures/correspondence)	<p>Ill-treatment</p> <input type="checkbox"/> Excessive discipline/punishment <input type="checkbox"/> Other excessive behaviour						
<p>*Note: There must be evidence of related harm to the child that was alleged to have been caused by the employee. See 3.5.7 in the Ombudsman guidelines for more information about this definition.</p>							
<p>Misconduct which may involve reportable conduct</p> <input type="checkbox"/> Unwarranted / inappropriate touching (not indecent) <input type="checkbox"/> Inappropriate relationship with child (not sexual) <input type="checkbox"/> Inappropriate comments / jokes of a sexual nature <input type="checkbox"/> Other							
<p>Description of reportable allegation:</p>							
<p>Employee response:</p>							

Attachment 9.1

7.1.2	<p>Agency Finding on first reportable allegation:</p> <p><input type="checkbox"/> False <input type="checkbox"/> Vexatious <input type="checkbox"/> Misconceived <input type="checkbox"/> Allegation sustained <input type="checkbox"/> Not sustained – insufficient evidence <input type="checkbox"/> Not reportable conduct</p>						
<p>Note: If there was only one allegation, go to Part 7.2. Please attach additional pages if there were more than two allegations.</p>							
7.1.3	<p>Allegation 2:</p> <table border="0"> <tr> <td data-bbox="307 734 1011 920"> <p>Physical assault</p> <p><input type="checkbox"/> Hitting/ kicking <input type="checkbox"/> Shaking/ throwing <input type="checkbox"/> Pushing/ shoving/ grabbing/ pinching/ poking <input type="checkbox"/> Inappropriate restraint/excess force <input type="checkbox"/> Indirect – use of object/substance/threat</p> </td> <td data-bbox="1070 734 1457 920"> <p>Psychological harm*</p> <p><input type="checkbox"/> Persistent hostility/rejection <input type="checkbox"/> Exposure to violence (including domestic violence) <input type="checkbox"/> Scapegoating <input type="checkbox"/> Humiliation/belittling</p> </td> </tr> <tr> <td data-bbox="307 948 1011 1073"> <p>Sexual offence</p> <p><input type="checkbox"/> Assault (indecent/ touching/ molestation) <input type="checkbox"/> Penetration / intercourse <input type="checkbox"/> Production, dissemination or possession of child pornography</p> </td> <td data-bbox="1070 948 1457 1134"> <p>Neglect</p> <p><input type="checkbox"/> Clothing/food <input type="checkbox"/> Medical care <input type="checkbox"/> Shelter <input type="checkbox"/> Supervision <input type="checkbox"/> Environment not supportive</p> </td> </tr> <tr> <td data-bbox="307 1101 1011 1287"> <p>Sexual misconduct</p> <p><input type="checkbox"/> Exploitation: non physical <input type="checkbox"/> Deliberate exposure to sexual behaviour/sexual exhibitionism / exploitation / pornography <input type="checkbox"/> Obscene language/gestures <input type="checkbox"/> Harassment (inappropriate words/gestures/correspondence)</p> </td> <td data-bbox="1070 1162 1457 1254"> <p>Ill-treatment</p> <p><input type="checkbox"/> Excessive discipline/punishment) <input type="checkbox"/> Other excessive behaviour</p> </td> </tr> </table>	<p>Physical assault</p> <p><input type="checkbox"/> Hitting/ kicking <input type="checkbox"/> Shaking/ throwing <input type="checkbox"/> Pushing/ shoving/ grabbing/ pinching/ poking <input type="checkbox"/> Inappropriate restraint/excess force <input type="checkbox"/> Indirect – use of object/substance/threat</p>	<p>Psychological harm*</p> <p><input type="checkbox"/> Persistent hostility/rejection <input type="checkbox"/> Exposure to violence (including domestic violence) <input type="checkbox"/> Scapegoating <input type="checkbox"/> Humiliation/belittling</p>	<p>Sexual offence</p> <p><input type="checkbox"/> Assault (indecent/ touching/ molestation) <input type="checkbox"/> Penetration / intercourse <input type="checkbox"/> Production, dissemination or possession of child pornography</p>	<p>Neglect</p> <p><input type="checkbox"/> Clothing/food <input type="checkbox"/> Medical care <input type="checkbox"/> Shelter <input type="checkbox"/> Supervision <input type="checkbox"/> Environment not supportive</p>	<p>Sexual misconduct</p> <p><input type="checkbox"/> Exploitation: non physical <input type="checkbox"/> Deliberate exposure to sexual behaviour/sexual exhibitionism / exploitation / pornography <input type="checkbox"/> Obscene language/gestures <input type="checkbox"/> Harassment (inappropriate words/gestures/correspondence)</p>	<p>Ill-treatment</p> <p><input type="checkbox"/> Excessive discipline/punishment) <input type="checkbox"/> Other excessive behaviour</p>
<p>Physical assault</p> <p><input type="checkbox"/> Hitting/ kicking <input type="checkbox"/> Shaking/ throwing <input type="checkbox"/> Pushing/ shoving/ grabbing/ pinching/ poking <input type="checkbox"/> Inappropriate restraint/excess force <input type="checkbox"/> Indirect – use of object/substance/threat</p>	<p>Psychological harm*</p> <p><input type="checkbox"/> Persistent hostility/rejection <input type="checkbox"/> Exposure to violence (including domestic violence) <input type="checkbox"/> Scapegoating <input type="checkbox"/> Humiliation/belittling</p>						
<p>Sexual offence</p> <p><input type="checkbox"/> Assault (indecent/ touching/ molestation) <input type="checkbox"/> Penetration / intercourse <input type="checkbox"/> Production, dissemination or possession of child pornography</p>	<p>Neglect</p> <p><input type="checkbox"/> Clothing/food <input type="checkbox"/> Medical care <input type="checkbox"/> Shelter <input type="checkbox"/> Supervision <input type="checkbox"/> Environment not supportive</p>						
<p>Sexual misconduct</p> <p><input type="checkbox"/> Exploitation: non physical <input type="checkbox"/> Deliberate exposure to sexual behaviour/sexual exhibitionism / exploitation / pornography <input type="checkbox"/> Obscene language/gestures <input type="checkbox"/> Harassment (inappropriate words/gestures/correspondence)</p>	<p>Ill-treatment</p> <p><input type="checkbox"/> Excessive discipline/punishment) <input type="checkbox"/> Other excessive behaviour</p>						
<p>*Note: There must be evidence of related harm to the child that was alleged to have been caused by the employee. See 3.5.7 in the Ombudsman guidelines for more information about this definition.</p>							
<p>Misconduct which may involve reportable conduct</p> <p><input type="checkbox"/> Unwarranted / inappropriate touching (not indecent) <input type="checkbox"/> Inappropriate relationship with child (not sexual) <input type="checkbox"/> Inappropriate comments / jokes of a sexual nature <input type="checkbox"/> Other</p>							
<p>Description of the reportable allegation:</p>							
<p>Employee response:</p>							

Attachment 9.1

7.1.4	Agency Finding on second reportable allegation: <input type="checkbox"/> False <input type="checkbox"/> Vexatious <input type="checkbox"/> Misconceived <input type="checkbox"/> Allegation sustained <input type="checkbox"/> Not sustained – insufficient evidence <input type="checkbox"/> Not reportable conduct
7.2	If no reportable allegations were put to the employee, please state why not (eg person left the agency and refused to be interviewed):
7.3	State the reason(s) for your finding(s):

8. Final action taken at the end of the agency investigation

8.1	Describe the action taken by your agency at the conclusion of the investigation in respect to the person the subject of the reportable allegation:	
8.2	What other issues arose during the investigation which your agency considers relevant?	
8.3	What other action has been taken or is proposed by your agency as a result of the investigation? (eg general staff training, changes to policies).	
8.4	Date investigation completed:	
8.5	Was the matter required to be notified to the Commission for Children and Young People (CCYP) as a completed relevant employment proceeding? <input type="checkbox"/> Yes <input type="checkbox"/> No	
8.6	If yes, has the matter been sent to the CCYP? <input type="checkbox"/> Yes * <input type="checkbox"/> No	
	* Note: Please attach a copy of the CCYP notification form	
8.7	Date sent to CCYP:	
8.8	Name and signature of person completing notification to Ombudsman:	
	Name:	Signature:
8.9	Date notification completed:	

ATTACHMENT 8

**RELEVANT EMPLOYMENT PROCEEDINGS
NOTIFICATION FORM**

Under Section 39 of the *Commission for Children and Young People Act 1998* employers are required to provide details to the Commission for Children and Young People of any employee (either paid or unpaid) who has been the subject of relevant employment proceedings completed since 3 July 1995.

The employment proceedings that are considered relevant are all disciplinary proceedings involving reportable conduct by the employee or an act of violence committed by the employee in the course of employment and in the presence of a child.

DO NOT NOTIFY the Commission for Children and Young People of employment proceedings which found such allegations to be false, vexatious or misconceived, or which found that reportable conduct or an act of violence did not occur. Further information in relation to relevant completed employment proceedings are contained in the Working With Children Check Guidelines.

In notifying the Commission for Children and Young People, employers must determine whether the relevant employment proceeding is a Category One or Category Two employment proceeding. Information to assist employers in determining the category of the employment proceeding is provided in the Working With Children Check Guidelines.

No additional details other than the information below are required by the Commission for Children and Young People.

EMPLOYEE DETAILS

First name: _____ Middle names: _____

Surname: _____

Previous names/aliases: _____

Gender: _____ Date of birth: _____

Place of birth (city, state, country): _____

EMPLOYER DETAILS

Employer/organisation name: _____

ABN: _____

Address: _____

Phone: _____ Fax: _____

Email Address: _____

Name of relevant contact person: _____

Position of relevant contact person: _____

Date of completion of proceedings: _____

Is the above individual currently an employee of your organisation? Yes No

ATTACHMENT 8 (CONTINUED)

Employer name: _____

Employee name: _____

**CATEGORY OF RELEVANT EMPLOYMENT PROCEEDING**

(Please tick the appropriate box)

This is a Category One proceeding This is a Category Two proceeding

I certify that the above mentioned individual has been the subject of employment proceedings involving reportable conduct or an act of violence and that I have the authority to submit these details to the Commission for Children and Young People for employment screening purposes.

This information may be used for monitoring and auditing compliance with the procedures and standards for employment screening in accordance with Section 36 (1) (f) of the Commission for Children and Young People Act 1998.

Name: _____ Position: _____

Signature: _____ Date: _____

Note: *This form must be forwarded to the Commission for Children and Young People only by employers and is not to be provided to any other person or organisation.*

Please fax this form to the Commission for Children and Young People on (02) 9286 7201.

NSW Commission for Children and Young People
04/04. Revised 10/05.

ATTACHMENT 9.3

Responding to allegations (including charges) and convictions concerning children.

Health Service employee is made aware of an allegation of, or conviction for, inappropriate child related conduct.

Employee records details of allegation/conviction. What happened, when and where, who was involved.

Note if there is an immediate risk of harm to anyone, NSW Police and Security should be contacted immediately

At all stages in this process the NSW Ombudsman Child Protection Team (02 9286 1000) and the NSW Health, Employment Screening and Review Unit (02 9391 9800) are available to provide advice and assistance.

Investigations should be conducted by an appropriately trained and experienced investigations officer.

Is any child/children at risk of harm?

Notify DoCS Helpline.

Consult NSW Health Policy Directive 2005-299.

The NSW Ombudsman Guide to Child Protection in the Workplace should be consulted.

A Reportable Incident Brief must be submitted within 24 hours of the allegation being made.

The Ombudsman must be notified as soon as practicable and in any event within 30 days of the allegation being made.

Investigations and disciplinary action must be finalised in a timely manner

CCYP and Ombudsman must be notified within 7 days of investigation being finalised.

Notify Chief Executive (via Mgr), CE or delegate to notify Police if criminal conduct alleged.

NOTE: If the allegation is against an employee of another Health Service, a Chief Executive or Senior Manager, ESRU should be notified.

CE or delegate assesses whether the employee should be directly supervised, relocated or suspended.

Health Service initiates investigation.

Is allegation/conviction reportable under the Ombudsman Act 1974?

Health service undertakes appropriate investigation and disciplinary action and records findings.

ESRU notified that investigation has been undertaken & concluded.

Reportable Incident Brief sent to the Director-General.

NSW Ombudsman notified using Ombudsman notification form. ESRU provided a copy.

NOTE: Where an allegation/conviction involves an act of violence in the course of employment and in the presence of a child, CCYP must be notified unless the finding is that the allegation was false, vexatious or misconceived.

Health Service completes investigation and determines any disciplinary action

Was the finding that the allegation was false, vexatious, misconceived or did not involve reportable conduct?

Notify CCYP using the Relevant Employment Proceedings Notification Form. ESRU provided a copy.

Final Report and Part B of Ombudsman notification form sent to Ombudsman. ESRU provided a copy.

