

Policy Directive



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Child Related Allegations, Charges and Convictions against NSW Health Staff

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Functional Sub group Personnel/Workforce - Conduct and ethics

Summary This Policy Directive sets out the mandatory requirements for managing child related allegations, charges or convictions against anyone working in NSW Health, where the alleged victim was under 18 years of age at the time of the alleged conduct. This extends to child pornography, non work related and historical matters.

Replaces Doc. No. Child Related Allegations, Charges and Convictions Against Employees [PD2006_025]

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Applies to Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, NSW Ambulance Service, Ministry of Health, Public Health Units, Public Hospitals, NSW Health Pathology, Cancer Institute (NSW)

Audience Workforce & Clinical Governance Directorates, Professional Standards & Conduct Units, all Managers

Distributed to Public Health System, Community Health Centres, Divisions of General Practice, Environmental Health Officers of Local Councils, Government Medical Officers, Health Associations Unions, NSW Ambulance Service, Ministry of Health, Private Hospitals and Day Procedure Centres, Tertiary Education Institutes

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This Policy Directive may be varied, withdrawn or replaced at any time.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 OR CONVICTIONS AGAINST NSW HEALTH STAFF

PURPOSE

This Policy Directive and the attached Procedures set out the mandatory requirements for managing child related allegations, charges and convictions involving NSW Health staff, which includes, for the purpose of this policy, anyone working in NSW Health, whether as a paid staff member or engaged in any other capacity, including as a volunteer, Visiting Practitioner, student attending clinical placement or anyone else appointed on an honorary or contractual basis. It also applies to staff of the NSW Ministry of Health.

Child related allegations and convictions include any alleged behaviour or criminal charges or convictions against NSW Health staff that may constitute reportable conduct, as specified under Part 3A of the *Ombudsman Act 1974*, where the alleged victim was under the age of 18 years at the time of the alleged behaviour; this extends to child pornography, non-work related and historical matters.

This Policy Directive includes the requirements of the *Ombudsman Act 1974* and the requirements of Part 5 of the *Child Protection (Working with Children) Act 2012*.

MANDATORY REQUIREMENTS

All child related allegations and convictions against current NSW Health staff members must be:

- Reported to the [Child Protection Helpline](#) if there is suspected risk of significant harm relating to a child or a class of children:
 - Where there are concerns about a child that do not meet the threshold for a mandatory report, the [NSW Health Child Wellbeing Unit](#) must nevertheless be contacted.
- Reported to the NSW Police if there is alleged criminal conduct
- Notified to the employing Chief Executive (or Secretary, NSW Health in the case of NSW Ministry of Health staff), including where the person works in a different NSW Health organisation to where the allegation has been identified
- Notified to the NSW Ministry of Health via a Reportable Incident Brief (RIB) by the Chief Executive (or delegated person) within 24 hours
- Investigated (unless the facts are clear and uncontested), risk managed and findings made, consistent with the processes in the NSW Health policy on [Managing Misconduct](#) (or *Government Sector Employment Act* in the case of NSW Ministry of Health staff) and the requirements of this policy
- Notified to the NSW Ombudsman using [Part A](#) of the Ombudsman's Notification Form as soon as possible and in any event within 30 days of the matter being brought to the attention of the NSW Health organisation (unless the matter falls outside of the definition of reportable conduct)

- The NSW Ombudsman must also be notified of the outcome using [Part B](#) of the Ombudsman's Notification form and, unless otherwise advised by the Ombudsman, be provided with the documentation relevant to the investigation and findings.
- Notified to the Children's Guardian if the staff member is classified as a child related worker and there has been a finding of sexual misconduct committed against, with or in the presence of a child, or a serious physical assault of a child
- Notified to the Australian Health Practitioner Registration Agency:
 - If there is a reasonable belief of notifiable conduct by a registered health practitioner. Under the [Health Practitioner Regulation National Law \(NSW\)](#) notifiable conduct includes practising while intoxicated by alcohol or drugs; sexual misconduct in the practice of the profession; placing the public at risk of substantial harm because of an impairment (health issue); or placing the public at risk because of a significant departure from accepted professional standards
 - Any conduct of a registered health practitioner that the Chief Executive suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the [Health Practitioner Regulation National Law \(NSW\)](#).

Service Check Register records must be created in accordance with the requirements of the NSW Health [Service Check Register](#) Policy.

Where a child related allegation, charge or conviction is work related and involves a former NSW Health staff member, the Chief Executive of the relevant NSW Health organisation must be notified, support offered to the alleged victim and reports made to external agencies as appropriate. Any available information should also be reviewed from a systemic perspective and a focus on ensuring the ongoing safety of children.

Records relating to child related allegations, charges and convictions must be kept securely and maintained for 100 years before being destroyed, noting that they may be subject to audit by the NSW Ombudsman.

IMPLEMENTATION

The following have key responsibilities in relation to this Policy Directive:

Chief Executives are required to:

- Have in place procedures for ensuring that all staff are made aware of their responsibilities for reporting child related allegations, charges or convictions involving anyone working in NSW Health
- Have in place procedures for managing child related allegations, charges or convictions, including the requirement for the Chief Executive to be notified.

Workforce Directorates / Human Resource Departments / Internal audit Units / Governance or Professional Conduct and Standards Units are required to

- Ensure provision of information, advice and monitoring as necessary to support effective implementation of this policy.

All staff are required to:

- Notify their line manager or supervisor, or other delegated position, as specified in local procedures, if they become aware of any child related allegations, charges or convictions involving a NSW Health staff member
- Self-disclose any child related criminal charges and/or convictions against them.

REVISION HISTORY

Version	Approved by	Amendment notes
PD2016_025 (June 2016)	Deputy Secretary Governance Workforce and Corporate	Updated to link more closely to the Misconduct Policy and to clarify requirements around the management of historic and outside work matters
PD2006_025 (April 2006)	Director General	More detailed processes included
PD2005_574 (April 2005)	Director General	New Policy replacing Circular 99/65

ATTACHMENT

1. Child Related allegations, Charges and Convictions against NSW Health Staff: Procedures.

**Child Related Allegations, Charges and Convictions
Against NSW Health Staff**



Issue date: June-2016

PD2016_025

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1 BACKGROUND

1.1 About this document

Child related allegations, charges and convictions involving anyone engaged in work in NSW Health, whether for paid or unpaid work, must be managed in accordance with this Policy Directive and Procedures and consistent with the processes outlined in the NSW Health policy on [Managing Misconduct](#), or in the case of staff of the Ministry of Health, the *Government Sector Employment Act 2013*, supported by the NSW Public Service Commission's Employment Portal.

These Procedures set out the requirements for managing child related allegations, charges and convictions, **where the requirements vary from, or are in addition to**, those of the NSW Health policy for [Managing Misconduct](#).

This Policy Directive and Procedures should be read in conjunction with other relevant NSW Health policies, such as those on [Child Wellbeing and Child Protection](#), [Sexual Assault Services](#), [Service Check Register for NSW Health](#), [Managing Concerns or Complaints About Clinicians](#) and [Incident Management](#)

1.2 Key definitions

Child is, for the purpose of this policy, a person under the age of 18 years of age as defined by the *Ombudsman Act 1974* and the *Child Protection (Working with Children) Act 2012*. Refer to section 1.3.3 of these Procedures for the definition of a child and young person under the *Children and Young Person's (Care and Protection) Act 1998*.

Child related allegation is an allegation or criminal charge against a current NSW Health staff member that involves reportable conduct or misconduct that may involve reportable conduct.

Child related conviction is a conviction, including a finding of guilt without the court recording a conviction, against a NSW Health staff member, for an offence involving reportable conduct.

Child-related worker is defined by the *Child Protection (Working with Children) Act 2012* and *Child Protection (Working with Children) Regulation 2013*. Refer to NSW Health's policy on [Employment Checks](#) for further information.

Class of children is a group of children who may be at risk of harm from abuse because of a person or situation.

NSW Health Child Wellbeing Units are units staffed by child protection professionals who are able to provide telephone advice and support to NSW Health workers in determining the level of risk of harm and responding to the needs of vulnerable children, young people, pregnant women and families.

NSW Health organisation is, for the purposes of this policy, any public health organisation as defined under the *Health Services Act 1997*, NSW Ambulance, Health Infrastructure, HealthShare NSW, NSW Health Pathology, E-Health, any other administrative unit of the Health Administration Corporation, and Albury-Wodonga Health

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in respect of staff who are employed in the NSW Health Service, and the NSW Ministry of Health.

NSW Health Service includes all persons employed under Chapter 9, Part 1 of the [Health Services Act 1997](#).

JIRT is a Joint Investigation Response Team made up of the Department of Family and Community Services (FACS), NSW Police Force and NSW Health Professionals working collaboratively to jointly manage statutory child protection matters (reports of sexual abuse and serious physical abuse and neglect of children and young people) that require a criminal justice and health response.

Reportable conduct is defined under Part 3A of the [Ombudsman Act 1974](#) as:

- a. Any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material) 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.

The Ombudsman Act also states that reportable conduct does not include:

- 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
- 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.

For further information about what constitutes reportable conduct, refer to the NSW Ombudsman's Fact Sheet [Defining Reportable Conduct](#).

Staff member, for the purpose of this policy, is anyone working in NSW Health, whether as a paid staff member or engaged in any other capacity, including as a volunteer, Visiting Practitioner, student attending clinical placement or anyone else appointed on an honorary or contractual basis.

1.3 Legal and Legislative Framework

1.3.1 Ombudsman Act 1974 and Ombudsman Regulation 2011

The [Ombudsman Act 1974](#) and the [Ombudsman Regulation 2011](#) prescribe the responsibilities of heads of agencies for preventing, and for responding to, child related allegations, charges and convictions against staff. Consistent with this Act, NSW Health Chief Executives are required to notify the NSW Ombudsman of all child related allegations, charges or convictions involving NSW Health staff as soon as is practical or at the latest within 30 days of becoming aware of the matter.

Child related allegations and convictions notifiable to the Ombudsman include conduct that has occurred outside of work or prior to the staff member's engagement in NSW Health, including historic matters where the alleged victim may now be an adult.

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NSW Health organisations are required to inform the Ombudsman of the results of their investigations into child related allegations and convictions and the action taken, or proposed to be taken, in response to such allegations or convictions.

Chief Executives are also required to ensure that all staff are informed of their obligation to notify the Chief Executive when they become aware of any child related allegation, charge or conviction against anyone working in NSW Health, and to ensure that there are clear internal reporting lines to facilitate this.

For further information, including contact details for the NSW Ombudsman's office, refer to the Ombudsman's website at www.ombo.nsw.gov.au

1.3.2 The *Child Protection (Working with Children) Act 2012*

The [Child Protection \(Working with Children\) Act 2012](#) requires notifications to the Office of the Children's Guardian (the Children's Guardian) of investigation findings where a child-related worker has been found to have engaged in either sexual misconduct (including sexual offences) committed against, with, or in the presence of a child, or a serious physical assault of a child.

The notification should be completed as soon as a final determination has been made by the NSW Health organisation that sexual misconduct or serious physical assault has occurred, even if appropriate disciplinary action in respect of the misconduct has not yet been determined or review or appeal processes remain available.

For further information about matters requiring notification to the Children's Guardian, refer to their [Fact Sheet](#) 'Information for Reporting Bodies: Reporting Certain Misconduct Involving Children'.

1.3.3 *Children and Young Persons (Care and Protection) Act 1998*

The [Children and Young Persons \(Care and Protection\) Act 1998](#) provides for the care and protection of, and the provision of services to, children and young people. Under this Act, a child is defined as a person who is under the age of 16 years and a young person is a person who is aged 16 and above but under the age of 18 years.

A key object of this Act is for all institutions, services and facilities responsible for the care and protection of children and young people to provide an environment for them that is free of violence and exploitation. It prescribes the role of the Community Services and the role of families, agencies and communities in relation to child protection, and the role of mandatory reporters. It also provides the mechanisms by which prescribed bodies may exchange information relating to the safety, welfare or well-being of a particular child or young person or class of children or young persons. For further information, refer to the current NSW Health policies on [Child Wellbeing Units and Child Protection Policies and Procedures for NSW Health](#).

2 INITIAL REVIEW AND RESPONSE

A child related allegation or conviction may arise or be identified through a number of sources, including:

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- Information provided from a Child Wellbeing Unit, JIRT Referral Unit, local JIRT Unit, the Police, Family and Community Services, to the NSW Health organisation directly or via the NSW Ministry of Health's Workplace Relations Branch
- Complaints or concerns, including those made by patients, their carers, or anonymously and including those relating to clinical procedures
- From a presentation to an Emergency Department or other NSW Health facility
- From a manager's or colleague's observations
- Self-disclosure by a staff member or
- From information in circulation in the public domain, either through formal channels arising from coverage of matters under investigation (i.e. press reporting) or informal channels (social media channels etc.).

The NSW Health policy on [Child Protection](#) should be referred to for guidance on how to respond to disclosures of child wellbeing concerns or abuse.

Once action has been taken to address any immediate risks, the information should be forwarded to the Workforce Director or equivalent of the NSW Health organisation, or other position as specified in local procedures, to determine if the matter constitutes a child related allegation or conviction requiring notification to the Chief Executive and to the Ombudsman.

2.1 Determining if a matter constitutes a child related allegation or conviction?

A child related allegation or conviction must contain the following three elements:

- A description of alleged behaviour or details of a criminal charge or conviction that may constitute reportable conduct, and
- The allegation or conviction is against a current NSW Health staff member as defined in section 1.2 of this policy, and
- The alleged victim was under the age of 18 years at the time of the alleged behaviour or incident.

Note that child related allegations and convictions include outside work matters, historical matters and child pornography.

2.2 Initial Notifications

All child related allegations and convictions are required to be:

- Reported to the [Child Protection Helpline](#) if there is suspected risk of significant harm relating to a child or a class of children (refer to the NSW Health policy on [Child Protection](#))
 - A report to the Child Protection Helpline may also include information about the person's role in NSW Health in relation to contact with children, any risk management action planned or being taken and a contact person for consultation and ongoing exchange of information.

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- Where there are concerns about a child that do not meet the threshold for a mandatory report, the [NSW Health Child Wellbeing Unit](#) must be contacted.
- Reported to the NSW Police if there is alleged criminal conduct; this reporting requirement is in addition to any report to the Child Protection Helpline, and includes matters that may not meet the threshold for a report to the Child Protection Helpline (for example, child pornography, historical abuse, etc.).
- Notified to the relevant NSW Health Chief Executive (or Secretary, NSW Health in the case of the NSW Ministry of Health staff).
 - Where the person works in a different NSW Health organisation to where the alleged reportable conduct has been identified, information must be immediately forwarded to the relevant other NSW Health organisation to manage the allegation against the staff member. This would usually be through the relevant Workforce Director or equivalent.
 - In these cases, the NSW Health organisation that identified the allegation is still responsible for ensuring any immediate safety or child protection issues are addressed, including reporting to the Child Protection Helpline, Child Wellbeing Unit, Police, referral to Sexual Assault Services, etc.
 - Information about any immediate risk action taken should be also provided to the NSW Health organisation where the staff member works.
- Notified to the NSW Ombudsman using [Part A](#) of the Ombudsman's Notification Form as soon as possible and in any event within 30 days of the matter being brought to the attention of the NSW Health organisation.
- Notified within 24 hours to the NSW Ministry of Health via a Reportable Incident Brief (RIB).
- If there is a reasonable belief that a registered health practitioner has behaved in a way that constitutes notifiable conduct, professional misconduct or unsatisfactory professional conduct under the Health Practitioner Regulation National Law (NSW), a notification is required to the Australian Health Practitioner Regulation Agency.

3 MANAGING RISKS

A risk assessment and ongoing risk management strategy must be put in place as soon as possible, consistent with the requirements in the NSW Health policy on [Managing Misconduct](#), which outlines the options available for managing risk involving NSW Health employees. A Risk Assessment template is available on the [NSW Health Intranet](#).

Where risk management action is required to be taken against the staff member, the NSW Health policy on the [Service Check Register](#) should be reviewed to determine any requirement for the creation of a Service Check Register record.

To ensure that child protection and patient safety issues and / or victim needs' are considered and addressed, the management of child related allegations and convictions should include consultation with child protection workers, sexual assault services and / or senior clinical staff, as relevant.

3.1 Responsibilities to the alleged victim

The NSW Health organisation has a responsibility to ensure that, as far as possible, the needs of any alleged victims and their non offending family are being addressed, and appropriate crisis assessment and treatment, counselling, medical services or sexual assault services are offered, as appropriate.

The NSW Health organisation should ensure that the alleged victim and / or their non offending family are advised of the responsibilities of the NSW Health organisation in respect of child related allegations and convictions and that they are provided with information about the progress of any investigation, advised of the findings and are kept informed of any action planned or being taken in response to the alleged conduct.

They should also be advised of NSW Health's reporting requirements to the NSW Ombudsman, the NSW Police and to Family and Community Services, as applicable and offered support in making a report to the NSW Police themselves, as appropriate. A nominated NSW Health contact should also be made available to them during the process.

The NSW Health organisation should liaise with the relevant contact officer of the NSW Police, JIRT or Community Services if they are involved in the matter, regarding the needs of the alleged victim and / or their non offending family.

3.2 Advising the staff member

The timing of advice to a staff member about a child related allegation should be part of the risk assessment and should involve consideration of the following factors:

- Does the information received require further clarification before it can be determined if it meets the threshold for reportable conduct?
- Are there any particular risks that would suggest the timing of the advice needs to be delayed (for example, a statement is yet to be obtained from an alleged victim)?
- Is immediate risk management action required necessitating advice to the staff member?
- Has an external agency, such as the Police or Family and Community Services, asked the NSW Health organisation to delay notifying the staff member?
- Has a notification been made to the Child Protection Helpline or the NSW Police, and if not, does this need to be completed before any advice is provided to the staff member?
- In all circumstances, the paramount responsibility of the NSW Health organisation is the protection of all children in its care; where there are identified risks requiring risk management action, this should be conveyed to the external agency, along with a timeframe for commencing the risk management action and the associated advice proposed to be provided to the staff member.

Any decision to delay notifying the staff member should be clearly documented.

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The staff member should be advised of the responsibilities of the NSW Health organisation in responding to child related allegations and convictions, provided with information about the process, offered support as required and afforded procedural fairness. Refer to the [Managing Misconduct policy](#) for further information.

They should also be advised, at an appropriate time, of the notification requirements to the Ombudsman's Office and at the conclusion of the investigation, be provided with details of any findings with regards to reportable conduct and any requirement to notify the Office of the Children's Guardian.

4 INVESTIGATION

Irrespective of any action the Police or any other external agency may take, NSW Health organisations are required to investigate (unless the facts are clear and uncontested, such as with convictions) child related allegations and to make their own findings and decisions about any disciplinary action.

The NSW Health organisation should generally not commence an internal investigation until they have been given the clearance to do so by the external agency or until the external agency has completed their inquiries, and all child protection / criminal investigations have concluded or been closed. Consultation with any external agencies must take place to ensure that any external investigations are not compromised.

4.1 Concurrent Community Services, Police or JIRT investigation

Where NSW Police / JIRT / Family and Community Services are undertaking a criminal / child protection investigation, or have advised that they may undertake such an investigation, an ongoing liaison should be maintained to ensure that criminal, child protection and disciplinary investigations are coordinated effectively, and that information is exchanged as required to assist in the ongoing assessment and management of risk.

The NSW Health organisation must still complete all relevant notifications and continually assess and manage the risks based on available information but would generally not commence its internal investigation until the external investigations and any associated proceedings have concluded **and** the external agency has indicated that they have no objections to NSW Health commencing its investigation.

The NSW Health organisation should request information from any external agencies involved in the matter to assist in assessing potential workplace risk and to assist in completing its investigation, when appropriate to do so. In certain circumstances it may be necessary to clarify with the Police whether they have closed or suspended their investigation and the extent of the information that may be provided to the staff member.

Information requested may include details of the complaint or disclosure (including the name and age of the alleged victim if not already known), records of interview with the alleged victim or any other relevant parties and any other relevant information. A template letter is available on the [NSW Health Intranet](#).

The NSW Health organisation must:

- Review the information provided by the external agency
- Identify and undertake any further enquiries or information as required

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- Determine what needs to be put to the staff member for response, and
- Make its own findings.

Where the matter has been before the courts, information may also need to be requested about the court outcome; this should be done by asking the staff member to provide relevant documentation. It may also be appropriate to write to the court to request information. A template letter is available on the [NSW Health Intranet](#).

In limited circumstances, if the NSW Health organisation is satisfied, after reviewing the information provided by the external agency, that it conclusively demonstrates that the allegation was false and that no further information is required, the matter may move directly to a finding and the staff member advised.

Where an external agency has substantiated an allegation, but there is no criminal conviction, the NSW Health organisation must still afford the staff member procedural fairness and make its own findings.

In exceptional circumstances, it may be appropriate to commence and conclude the employer investigation while the external criminal or child protection investigations are ongoing, noting that the Ombudsman's office may still request that the NSW Health organisation monitor the outcome of the external proceedings. However, there must be close and ongoing liaison with the Police and / or Family and Community Services, as well as ongoing consideration and management of the risks associated with this course of action; these risks include the contamination of a criminal investigation as well as unnecessary interviewing of victims, not having access to all relevant evidence and management of a staff member's right to silence in criminal matters, etc.

The reason for commencing the investigation in these circumstances must be documented and approved by the Chief Executive or their delegate.

4.2 Managing Child Related Criminal Charges

For child related criminal charges, it is generally appropriate to wait until the court process has been completed before finalising the employer investigation. All relevant notifications should still be made and a risk assessment completed.

To assist in the risk management decision making, the staff member should be asked for information and any relevant documentation regarding:

- The charges against them
- Any statements they have provided to the police
- Court dates
- How they intend to plead and
- Any other information that may be relevant to assess the risks.

Information should also be requested directly from the Police, Family and Community Services and / or courts.

Should the matter not proceed to a conviction or finding of guilt, the matter should be dealt with as an allegation and the NSW Health organisation must complete its investigation and make its own findings.

Should the court proceedings result in a conviction or a finding of guilt, the NSW Health organisation should obtain details of the conviction or finding of guilt, complete its risk assessment to determine whether any action is required to be taken against the staff member, provide the staff member with procedural fairness regarding any proposed adverse action and finalise the matter in accordance with the requirements of this policy and consistent with the [Managing Misconduct policy](#).

In certain limited circumstances it may be appropriate to finalise the investigation in terms of making findings and decisions about disciplinary action, subject to procedural fairness requirements as above, prior to the completion of the court process, for example, where a guilty plea has been entered, noting that the Ombudsman's office may still request that the NSW Health organisation monitor the outcome of the external proceedings.

4.3 Interviewing children

For child related allegations, consideration must always be given to whether it is necessary to interview the child who is the alleged victim.

In certain situations, it may not be appropriate or necessary to interview the child. Where this decision is made, it must be clearly documented and included in the final investigation report. Factors that may affect the decision to interview the child include:

- Sufficiency of the available information about the alleged conduct, i.e. for a young child, it has been reported by a colleague / parent who directly witnessed the alleged behaviour and they have provided detailed information
- The child has already been interviewed by an external agency and the NSW Health organisation has obtained details of the interview:
 - If there are concerns about the sufficiency of the information obtained, they should be raised with the external agency.
- The child's age / developmental stage or other factors impact on the child's ability to provide detailed information.
- Whether the child parents / guardians consent to their child being interviewed and for older children whether the child also consents
- Any other factors that indicate an interview may result in further trauma or be detrimental to the welfare of the child.

A decision to interview a child must be made in consultation with child protection workers, and if a child is to be interviewed, it must only be by persons with sufficient skill or expertise in obtaining children's evidence. Child protection staff and in some instances Aboriginal Health workers may be best placed to conduct an interview with a child.

5 ISSUES ARISING IN CHILD RELATED MATTERS

5.1 Allegations arising from clinical procedures

Where a child related allegation has arisen out of a clinical procedure, it must still be managed in accordance with this policy; however the NSW Health policy on [Managing Complaints or Concerns about Clinicians](#) should also be consulted.

In certain cases, to assist in the initial review in determining whether the allegation meets the definition of reportable conduct (see section 1.2), an appropriately qualified and independent clinician may need to review whether the conduct being alleged is reasonable for the purpose of the management or care of the child having regard to their age, maturity, health or other characteristics and to any relevant code of conduct or professional standard and therefore whether further investigation under this policy is warranted.

A decision that the allegation or complaint does not constitute an allegation of reportable conduct and therefore is not required to be managed as a child related allegation under this policy should be approved by an appropriately delegated person and the records maintained securely and centrally, noting that such records may be subject to audit by the NSW Ombudsman.

5.2 Anonymous allegations

Anonymous allegations must still be managed in accordance with this policy.

Action taken will depend on the level of detail provided, and the ability to obtain further detail. Where there is insufficient information or details to make any enquiries or take any action, this should be noted and the complaint filed in a secure and confidential place.

Where the information provided meets the definition of alleged reportable conduct, an Ombudsman notification is required and the NSW Health organisation is required to complete an investigation, make findings and decisions about any disciplinary action.

When assessing action to take in response to an anonymous complaint, the following factors should be considered:

- Any details in the allegation that can be confirmed or refuted (for example, was any context provided, were there details of the alleged behaviour, was there a time frame, was any workplace named or details of any alleged victims or witnesses or any physical or other evidence provided)
- Contact with the NSW Police and FACS to confirm if they have any information in relation to the allegation; and if so that they give their consent to that information being put to the staff member
- Is the complainant able to be identified and contacted if further clarification is required? Note that non identification of the complainant does not preclude action being taken

5.3 Non work related and historical child related allegations

Non work related and historical child related allegations, charges or convictions against current NSW Health staff, including matters where the alleged victim is now an adult, must still be managed in accordance with the requirements of this policy, including:

- Reporting to the Child Protection Helpline where there is a current risk of significant harm to a child or class of children. The [Online Mandatory Reporter Guide](#) or the [NSW Health Child Wellbeing Units](#) can assist identify in determining whether the risks meet the threshold for reporting to the Helpline. If they do not

meet the threshold, a referral may still need to be made to the Child Wellbeing Unit.

- Reporting to the NSW Police where there is alleged criminal behaviour.
- Offering support to the alleged victim (or their family) in making a report to the NSW Police.
- Completing an investigation (unless the facts are clear and uncontested) and making findings and managing risk.
- Completion of all other notifications in accordance with the requirements of this policy, including to the NSW Ombudsman.

5.4 What happens if the Police do not charge the NSW Health staff member or the Court makes a finding of ‘not guilty’?

For child related allegations where Police involvement has not resulted in criminal charges or in a guilty finding at court, the NSW Health organisation must still manage workplace risks while any criminal proceedings are ongoing; once they are finalised, undertake its own investigation (unless the facts are clear and uncontested), and make its own findings and complete all relevant notifications.

The NSW Health organisation’s actions should include a review of information obtained from the Police or from the court (refer to section 4); the evidence considered and the rationale for decisions made, noting there are many reasons that matters do not proceed to charges or to a conviction, where the standard of proof required is 'beyond reasonable doubt', whereas in civil matters, the standard is the 'balance of probabilities', subject to the “Briginshaw v Briginshaw principle”, that is, the more serious the potential misconduct, and therefore the more serious the consequences for the staff member, the stronger the evidence must be to support an adverse finding.

The staff member should still be afforded procedural fairness and provided with an opportunity to respond to the allegations and any proposed adverse findings or action.

5.5 Exchanging information with Family and Community Services / Police / JIRT

Where Family and Community Services / Police or JIRT have involvement in a matter or may have information relevant to the NSW Health organisation’s investigation and assessment of potential risk to the workplace, separate requests for information should be made to each external agency in accordance with Chapter 16A of the *Children and Young Persons (Care and Protection) Act*. A Template letter is available on the [NSW Health Intranet](#).

Information may also need to be provided by the NSW Health organisation to Family and Community Services / Police or JIRT regarding risk management action it is taking or planning to take in response to the child related allegation and the nature of any potential risks in terms of the person’s role within the workplace.

For further information about exchanging information under Chapter 16A, refer to the NSW Health policy on [Child Protection](#).

5.6 Allegations involving child pornography or child abuse material

Where an allegation involves child pornography or child abuse material, the NSW Police must be contacted immediately and advice sought before initiating an internal investigation or alerting the staff member. If the alleged use involves a NSW Health device, it should be quarantined without warning so that there is no opportunity for files to be deleted or the computer to be switched off or on or other evidence tampered with.

Special care must be taken to ensure that any alleged child abuse material is not unnecessarily transmitted or disseminated within the NSW Health organisation, that it is contained and that only a limited number of nominated senior staff members are involved in any investigation and that the process for making any decisions or assessment of the material is clearly documented as part of the investigation.

As part of the response to an allegation involving child abuse material, the NSW Health organisation should audit the staff member's use of NSW Health devices, subject to identifying any potential risks to the investigation.

The NSW Health organisation should be guided by the Police in respect of the classification of material as child pornography.

5.7 What happens if the staff member no longer works in NSW Health?

Where an allegation relates to conduct that has occurred within NSW Health by a former staff member who is not engaged in the NSW Health Service or in the NSW Ministry of Health at the time of receipt of the information, the relevant Chief Executive (or Secretary in the case of a matter relating to a person formerly engaged in the NSW Ministry of Health) must still be notified and appropriate reports to external agencies must be completed, including to the Child Protection Helpline if there is a risk of significant harm to a child or class of children, the Australian Health Practitioner Regulation Agency if the person is a registered health practitioner and the information received suggests such a notification is required, or the NSW Police if required.

The alleged victim should be offered support, as appropriate, which may include supporting them in reporting the matter to the NSW Police or to any other external oversight or investigative agency. Depending on the level of information available, the circumstances of the alleged conduct should be reviewed with a focus on ensuring the ongoing safety of children.

Refer to the NSW Health policy on [Child Protection](#) for further advice.

5.8 What if the alleged victim is now an adult?

If the allegation relates to a current NSW Health staff member, it must be managed in accordance with the requirements of this policy, regardless of the current age of the alleged victim (see section 5.3).

Refer to the NSW Health policies on [Child Protection](#) and [Sexual Assault Services](#) for further information on managing disclosures from adults.

5.9 What happens if the allegation is retracted, the complaint withdrawn, or the alleged victim wants no action taken?

In these circumstances, the NSW Health organisation is still required to fulfil the requirements of this policy, including notifying the Ombudsman, notifying Family and Community Services or the NSW Police, as warranted, providing the staff member with procedural fairness and making findings based on the available information.

Where an allegation has been retracted, a complaint withdrawn, or an alleged victim wants no action taken, whether or not another agency remains involved, the NSW Health organisation is required to seek information to understand the reasons for the retraction and consider this in the assessment of risk and evidence when making a finding.

Where the reasons relate to concerns around personal safety, the NSW Health organisation should explore with the person the different options for addressing those concerns, including the involvement of the NSW Police.

6 MAKING FINDINGS

6.1 Findings for the Ombudsman

For the purpose of the Ombudsman's scheme, the following findings should be considered:

- **Substantiated** (i.e. a finding that the conduct occurred and is reportable conduct);
- **Not substantiated – 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);
- **Not substantiated – 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);
- **False** (i.e. where inquiries into the matter show reportable conduct or an act of violence did not occur).
 - Some of these matters may also 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;
- **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 found to be 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.

For further information, refer to the [NSW Ombudsman's Fact Sheet](#) on making findings for child related matters.

6.2 Misconduct findings

In addition, the NSW Health organisation must make findings about whether any substantiated conduct constitutes misconduct and therefore whether remedial, disciplinary or other action (in the case of volunteers etc.) is required, consistent with the [Managing Misconduct policy](#).

7 FINALISING THE PROCESS

7.1 Notifying affected parties of the outcome

The alleged victim and / or their family should be notified of any findings made by the NSW Health organisation and any action taken, including against the staff member in response to those findings and of any notifications made to external agencies.

7.2 Notifying the Australian Health Practitioner Regulation Agency

Where the staff member is a registered health practitioner, consideration must be given to any requirements to notify the Australian Health Practitioner Regulation Agency if such notification has not been completed already and there is a reasonable belief that the practitioner has behaved in a way that constitutes notifiable conduct, professional misconduct or unsatisfactory professional conduct under the *Health Practitioner Regulation National Law (NSW)*.

Notifiable conduct is defined under the *Health Practitioner Regulation National Law (NSW)* as including:

- Practising while intoxicated by alcohol or drugs
- Sexual misconduct in the practice of the profession
- Placing the public at risk of substantial harm because of an impairment (health issue) or
- Placing the public at risk because of a significant departure from accepted professional standards.

Professional misconduct and unsatisfactory professional conduct are defined in sections 139B–139D of the [Health Practitioner Regulation National Law \(NSW\)](#).

7.3 Notifying the Children’s Guardian

Any findings of sexual misconduct or serious physical assault against a child involving a child-related worker must be notified to the Children’s Guardian.

This must be done using the pre-existing “Working with Children Check Employer log in” details for the NSW Health organisation.

In certain circumstances, NSW Health may also provide information to the Children’s Guardian under Chapter 16A of the *Children and Young Person’s (Care and Protection) Act* if that information is considered relevant to an assessment of risk that the staff member may pose of a child or class of children.

Refer to the NSW Health policies on [Child Protection](#).

Child Related Allegations, Charges or Convictions Against NSW Health Staff



For further information about requirements for notifying the Children’s Guardian and how to make a notification, refer to their Fact Sheet “Information for reporting bodies: Reporting certain misconduct involving children” available on their [website](#).

7.4 Final notification to the Ombudsman

Once the investigation or other action is finalised, and findings (including those related to convictions) and final decisions made, the Ombudsman’s office must be notified using Part B of the Ombudsman Notification Form available from its [website](#).

Unless the Ombudsman has advised otherwise, the notification should be accompanied by copies of all material relevant to the investigation and decision making, including records of interview, memorandums or in-briefs, emails, file notes of conversations and correspondence related to the matter.

The [Summary of Notifications Information Sheet](#) available on the NSW Intranet also provides further guidance on other notification considerations.

7.5 Service Check Register

Service Check Register records must be created in accordance with the requirement so the NSW Health policy on the [Service Check Register](#).

7.6 Other action required

As part of finalising child related matters, NSW Health organisations should always review the circumstances of the alleged or substantiated conduct from a systemic perspective with a focus on ensuring the ongoing safety of children.

8 KEEPING RECORDS

Records relating to child related allegations and convictions, including false, malicious or disproven allegations should be kept on a file that is separate to the staff member’s personnel file in a central secure location, and must be retained for a minimum of 100 years and then destroyed in accordance with the [State Records](#) guidance GA 28.

Related files should be cross-linked to each other, for the purposes of future management.

All records relating to child related allegations and convictions, including where a decision has been made that a matter is not reportable to the Ombudsman, may be audited by the NSW Ombudsman’s Office.

Records relating to the management of child related allegations are subject to the provisions of the [Government Information \(Public Access\) Act 2009](#).