



## Wesley Mission guidelines

# Child protection

### Definitions

**Mandatory reporting** applies when there are reasonable grounds to support there is a risk of significant harm to a child or young person *and* the grounds arise during or from a person's work.

**Risk of harm** refers to the likelihood that a child or young person may suffer physical, psychological or emotional harm as a result of what is done (physical, sexual or emotional abuse) or not done (neglect) by another person (often an adult responsible for their care). Risk of harm can also refer to physical, psychological, sexual or emotional harm as a result of environmental factors (e.g. homelessness) or self-harming behaviour

Risk of harm exists when there is a current concern for the safety, welfare or well-being of a child or young person because of one or more of the following:

- the child's basic physical or psychological needs are not being met
- the child's parents are unwilling or unable to arrange necessary medical care
- the child is the subject of physical or sexual abuse or ill-treatment
- the child is living with domestic violence (and as a consequence is at risk of serious physical or psychological harm)
- the child's parent's behaviour is resulting in, or at risk of resulting in, serious psychological harm
- the child is of compulsory school age and is not enrolled in, or is habitually absent from education.

**Reportable behaviour by employees** - there are two groups of people who are considered to be employees and who may have reportable allegations made against them or be the subject of a reportable conviction (S. 25(1) of the Ombudsman Act,)

The two groups are:

- any employee of the agency, whether or not employed in connection with any work or activities of the agency, that relates to children.
- any individual engaged by the agency to provide services to children such as;
  - contractors or sub-contractors
  - foster carers
  - volunteers
  - work experience participants, and students on placements, (e.g. TAFE)
  - clergy, ministers of religion, members of religious orders and instructors of religion who provide pastoral or liturgical services for schools, hospitals or other agencies.

**Reportable conduct** ( Section 25A of the Ombudsman Act)

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

N.B. These actions are also reportable if they take place outside of working hours.

Reportable conduct does not extend to:



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- conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards
- the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures
- conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA. (at this time Wesley Mission does not have any exemptions).

Note: Examples of conduct that would not constitute reportable conduct include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; raising his or her voice in order to attract attention; and conduct that is established to be accidental.

**Allegation of reportable conduct** must be reported to the Commission for Children and Young People. Category 1 (see policy) reports may be taken into account in future applications for child related employment. Category 2 (see policy) reports, by themselves, will not show up in a future Working With Children Check, but should a further Category 2 notification occur, it could be taken into account during the employment screening process.

**A prohibited person** is a person who is convicted of the following (whether in NSW or elsewhere):

- serious sex offence
- child-related personal violence offence
- murder of a child
- indecency offences punishable by imprisonment of 12 months or more
- kidnapping (unless the offender is or has been the child's parent or carer)
- offences connected with child prostitution
- possession, distribution or publication of child pornography or
- attempt, conspiracy or incitement to commit the above offences.

It is an offence for prohibited persons to apply for or otherwise attempt to obtain, undertake or remain in child-related employment in any capacity, whether paid, volunteering or self employed.

**Forms of sexual abuse of a child or young person.** These include but are not limited to:

- unwarranted or inappropriate touching
- inappropriate conversations of a sexual nature
- suggestive remarks or actions including showing publications, electronic media, or illustrations which are sexually suggestive
- jokes of a sexual nature
- obscene gestures
- sexual exhibitionism
- personal correspondence with a child in respect of the employee's feelings (including sexual feelings) for the child
- deliberate exposure of children to the sexual behaviour of others, other than in the case of approved teaching material with the written approval of management.

**Forms of psychological abuse of a child or young person.** These include but are not limited to:-

- subjecting a child to harsher or more humiliating punishment than other children
- using belittling or derogatory comments to a child on a continual or persistent basis



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- “isolating” a child by denying the child any opportunities to engage in social activities, or restricting their movement within the environment.

**Orientation and Child protection training** is provided for all new employees working in child related settings. Following is an example of the subject areas new employees are provided with:

- applicable legislation, such as Child Protection Act 1998, Work Health and Safety legislation and the Privacy Amendment Act 2000
- Personal Review and Development Program
- Wesley Mission’s policy and procedures and
- Industry group policy and procedures.

In relation to child protection all employees and volunteers are inducted to Responding to Children at Risk of Harm MP HR-09A and Responding to Allegations of Reportable Conduct MP HR-09B. All employees, volunteers and carers are to attend Child Protection training. (training is currently provided free of charge by DOCS.)

### **Agency Responsibilities under the Commission for Children and Young People Act 1998 Part 3 sections 17 and 18**

#### **Director General’s request for services from other agencies**

“In deciding what action should be taken to promote and safeguard the safety, welfare and well-being of a child or young person, the Director General may request a government department or agency or non-government agency in receipt of government funding, to provide services to the child or young person or to his or her family.”

#### **Obligation to co-operate**

“The government department or agency or the non-government agency, must use its best endeavours to comply with a request made to it under section 17 if it is consistent with its own responsibilities and does not unduly prejudice the discharge of its function.

Subsection (1) does not, in the case of a non-government agency in receipt of government funding, limit any obligation imposed on the agency in accordance with the agreement under which it receives that funding”

### **Guidelines for Synods when a minor is to be interviewed**

#### Principles

1. The dignity and rights of every child are to be respected in every circumstance.
2. In interviewing and reporting on children, special attention is to be paid to each child’s right to privacy and confidentiality, to have their opinions heard, to participate in decisions affecting them and to be protected from harm and retribution, including the potential of harm and retribution.
3. The best interests of each child are to be protected over any other consideration, including over advocacy for children’s issues and the promotion of child rights.
4. When trying to determine the best interests of a child, the child’s right to have their views taken into account are to be given due weight in accordance with their age and maturity.
5. Those closest to the child’s situation and best able to assess it are to be consulted about the political, social and cultural ramifications of any reportage.



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### The child or young person

- Legal guardian – contact must be made to the legal guardian to seek permission to interview.
- Age – a child is defined as being under the age of 16 years, where a young person is between 16 – 18 years. Research into the skills necessary for people to reliably respond to questions in an investigative interview are acquired between the ages of 4 and 9 years (Stacey & Page 2012).
- Maturity – what life experiences may have influenced the child or young persons' development.
- Developmental stage – what expectations for vocabulary, memory and ability to articulate ideas is the child or young person at. Do they have a mental health diagnosis, disability or special needs to consider for them to participate.
- Cultural background – is the child or young person from a CALD background or an indigenous Australian.

Understanding of the child or young person's needs is important when considering the most appropriate investigator or interviewer.

### Guidelines for interviewing children (required by statutory authorities)

When an allegation involved "risk of significant harm" use of Mandatory Reporting must be considered when the information is received.

Physical/Sexual Abuse is a criminal matter and is required to be reported.

The initial interview with a child is a delicate situation requiring skill and tact. The setting for the interview should be chosen as carefully as possible.

The interview should be held in a neutral setting where the child feels comfortable and not threatened. When a child is fairly young, his/her general schedule (e.g. naps) should be considered when scheduling interviews.

The interview will be enhanced if a cooperative adult accompanies the child and acts as liaison between the child and the interviewer. The adult can introduce the interviewer to the child as someone who is specially trained to help children. In addition, the adult can encourage the child to tell the interviewer everything that happened, thereby giving the child permission to talk freely.

It is important to conduct the interview in a quiet setting with minimal disruptions. It is also important to keep in mind that a child rarely feels free to disclose sensitive information when a parent or relative is present. However, if the child is extremely distressed or unwilling to be questioned alone, a non-offending parent or other supportive adult may sit quietly in during the interview. Although multiple interviews may be necessary, the original interviewer should either conduct them or be present to introduce the child to the new interviewer. This preserves the rapport between the interviewer and the child and protects the child from unnecessary anxiety. However, it is extremely important to minimise the number of interviews and professionals the child experiences. The greater the number of interviews, the more trauma the child suffers. Whenever possible, the same individual, either the interviewer or a volunteer, should accompany the child to all appointments and proceedings



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relative to the case. The child is thus provided with a familiar and supportive person throughout the legal process.

In addition, the investigator must be extremely careful how he/she reacts to the child's statements. Inexperienced investigators hearing the graphic details of child sexual abuse for the first time from a small child may inadvertently display shock or discomfort. Most children are very perceptive and "pick up" on even subtle reactions by the adults around them. If the child believes the interviewer really does not want to hear the information, he/she may stop talking about the very issues that necessitated the interview in the first place. New investigators must become comfortable with the slang language of sexual assault and be able to talk about the details of abuse without emotion. Even body language and facial responses must be carefully controlled. The investigator must use his/her words and demeanour to encourage, not discourage, open communication.

*There is only a few exceptions where interviewing a child without an adult present is acceptable and only a social worker or Police officer exercising their role as a mandated officer under the relevant Act are able to do this and even then, unless there is a risk of immediate harm (which is often determined by the Police), the person in authority has to notify the parent or caregiver an interview has taken place, often within hours and in person of the interview taking place.*

### **Process**

An issue to consider is that all interviews with children should be documented fully by the interviewer.

If more than one interviewer is present, the professional not interviewing the child should take notes of the child's statements. These notes should be as exact as possible using the specific words of the child rather than an interpretation by the adult of what the child has said.

It is generally advisable for the interviewer not to initiate physical contact with children during questioning.

### **Encouraging children to use their own language**

Strategies to encourage children to use their own language include the following:

Use verbal prefaces (e.g. "It is important for you to tell me so I can help you.")

Avoid direct and leading questions. An example of a leading question is, "Your father took your clothes off, didn't he?"

Encourage clarification. As the interview progresses, the child will often make a vague reference to "trouble at home" or "the thing that happened after school". The interviewer might encourage clarification by paraphrasing the child's statement or by forming questions from key words that the child has used such as, "What kind of trouble at home do you mean?" or "Can you tell me about the thing that happened after school?"

Do not use bribes or enticements. A child who has probably been told to be silent by a perpetrator will only be further confused when offered ice cream or toys as a reward for revealing information.

Deal with the child's fear and try to decrease the child's anxiety. One way to do this is to let the child tell his/her account at his/her own pace.



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## The Roles and responsibilities of specialist bodies

### The NSW Ombudsman's Office

The New South Wales Ombudsman Office has, as a result of the 1997 Police Royal Commission, received new powers under the Ombudsman Amendment (Child Protection and Community Services) Act 1998. In short, the Act extended the Ombudsman's powers over government organisations and non-government designated agencies to oversee and monitor investigations of child abuse against an employee.

An employee of an agency is defined as (S25 of the Ombudsman Amendment):

- any employee of the agency, whether or not employed in connection with any work or activities of that agency that relates to children, and
- any individual engaged by the agency to provide services to children (including in the capacity of a volunteer).

Thus, all Wesley Dalmar carers, employees and volunteers are subject to the Ombudsman's powers under the Act.

After receiving a notification from an agency the Ombudsman's Office may:

- oversee or monitor the progress of any investigation conducted on behalf of the Agency
- observe interviews conducted on behalf of the Agency
- confer with the persons conducting the investigation about the conduct of the investigation
- ask for any information relating to the investigation
- undertake their own direct investigation (if there are complaints about the handling of or response to a child abuse allegation)
- investigate the handling of an investigation arising from a complaint from a parent or an employee who has been the subject of an investigation.

NSW Ombudsman  
 Level 3, 580 George Street,  
 Sydney NSW 2000  
 General enquires: (02) 9286 1000  
 Toll Free: 1800 451 524

### NSW Department Family and Community Services (FACS)

When a report is received at NSW Community Services (CS) Helpline, a Child Protection Caseworker shall:

- make an initial assessment on the risk of harm, the level of safety and the need for further investigation, assessment or other action that is required
- prepare a recommended action plan that is approved by an authorised officer
- provide feedback in writing of what action has been taken to the person reporting.

FACS is mandated to decide how to proceed and who will be involved. Issues relating to decisions made by FACS should be dealt with in accordance with Interagency Guidelines and the Disputes Resolution Protocols.

In certain circumstances decisions made by FACS may be appealed.

To make a report call:



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Mandatory reports only: 13 3627, or

for the general public: 13 2111 (non-mandatory reporters).

When making a report, if contact with the Helpline does not occur within a reasonable length of time, the report may be faxed through to FACS Helpline Fax 02 9633 7666.

The person who makes the report to FACS may contact the FACS Helpline after 24 hours to request information about action taken.

### **NSW Police Force**

The NSW Police force has a key role in recognising and reporting children and young people who are suspected of being at risk of harm. The police shall:

- undertake a joint investigation with other agencies on reports that may be subject to criminal charges, such as child sexual abuse and serious child physical abuse (as defined in the Joint Investigation Response Team (JIRT) policy and procedures manual) or extreme neglect
- intervene in child abuse and neglect cases, applying for Apprehended Violence Orders (AVOs) laying criminal charges and commencing criminal proceedings as needed
- refer children and young people to emergency interim placements following accidents and disasters where the parent/carer has been hospitalised, arrested or has died
- deliver crime prevention programs aimed at identifying and diverting children and young people at risk of becoming young offenders

### **Commission for Children and Young People (CCYP)**

The Commission shall:

- promote and monitor the overall safety, welfare and wellbeing of children and young people in the community
- promote the participation of children and young people in decisions that affect them
- monitor and conduct activities associated with the NSW Working with Children Check