



Child Protection Policy

Sutherland Shire Council

Document review and approval

This document has been approved by

	Name	Minute No	Date approved
1	Directors Committee WKS162-05	1120	9 May, 2005
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3			

Revision history

Version	Author	Date	Revision
1	Manager – Childrens Services	26 April, 2005	Original Version
2	Manager – Childrens Services	17 May, 2012	<i>Reviewed by Manager under Annual review process, policy is current however adjustments may be necessary in the near future.</i>
3	Manager – Childrens Services	14 March, 2013	<i>Reviewed by Manager under Annual review process, policy is current however minor adjustments were made to reflect the new definition of “significant harm.”</i>
4	Manager – Childrens Services	18 May, 2014	<i>Reviewed by Manager under Annual review process, policy is current subject to a significant review, current policy to stand until new policy is adopted.</i>
5	Manager – Childrens Services	1 October, 2014	<i>Policy completely updated and re-written to form a single up to date policy replacing the previous three policies:</i> <ol style="list-style-type: none"><i>1. Child Protection Policy.</i><i>2. Employment Guidelines to protect children from harm.</i><i>3. Policy Procedures for Mandatory reporting of suspected abuse or neglect of children.</i>
6	Manager Children's Services	1 April, 2015	<i>New Fact Sheet 9 added – Sharing of Information</i>

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Everyone in society has a moral and ethical responsibility to keep children safe and to protect them from harm. The complexity of abuse and neglect and the resultant trauma on children themselves requires a united response from government and non-government agencies, community welfare groups, various professionals and individual citizens.

Sutherland Shire Council has a place in ensuring that children are protected from harm and believes that all children have a right to be kept safe. Sutherland Shire Council can use a range of opportunities to educate the community about keeping children safe from harm.

Council acknowledges their responsibility both to protect children and protect staff from allegations of child abuse. This policy is designed to assist in this process and to ensure that all current legislative requirements are met.

Sutherland Shire Council recognises that abuse can take many forms, these are sometimes hard to recognise and they occur across all socio-economic groups. Council has a responsibility to provide training for staff to assist them in recognising the indicators of abuse and in the mandatory reporting of child abuse (where applicable).

It is essential for staff to adopt and adhere to work practices that not only ensure the safety of children, but also minimise the possibility of allegations of child abuse and neglect being made against them, vexatious or otherwise. Where allegations against a staff member is made, Council holds a responsibility to investigate these.

Who does this Child Protection Policy apply to?

This policy applies to any Sutherland Shire Council employee; permanent, casual full-time and part-time, councillor, contractor, consultant and volunteer. A reference to 'employee' for the purposes of this policy includes all of these people.

This policy is particularly relevant to staff employed in positions with direct contact with children. This will include but is not limited to positions in the following areas:

- Early Education Services
- Out of School Hours and Vacation Care services
- Libraries
- Swimming pools
- Youth centres
- Art galleries
- Community services where engagement with children is undertaken

These positions will be referred to as "identified positions".

Some departments within Council (e.g. Children's Services) have Policies and Procedures in addition to this policy. These departmental policies address specific workplace issues and needs. Staff in these departments must also refer to relevant departmental policies before making any decisions or taking any action.

Objectives

To ensure the requirements of relevant legislation are being met. Including but not limited to:

- Ombudsman Act 1974
- Ombudsman Amendment (Child Protection and Community Services) Act 1998
- Children & Young Persons (Care & Protection) Act 1998
- Child Protection (Prohibited Employment) Act 1998
- Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009
- Child Protection (Working with Children) Act 2012
- Child Protection (Working with Children Regulation 2013).
- Victims' Rights and Support Act 2013 – in the case of an investigation regarding an allegation against an employee.

To ensure that a system exists for the reporting of all reportable conduct allegations under the Ombudsman Act, 1974, and to encourage and facilitate the reporting of children and young persons at risk of significant harm as outlined in the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 and the 'Keep Them Safe' (KTS) Mandatory Reporter Guide.

To ensure the prompt notification to the Ombudsman's Department, and the efficient and equitable investigation of allegations of reportable conduct.

To establish practices to ensure any person engaged in child related employment is suitable for such employment.

To build a workforce committed to child protection through a range of policies and work practices designed to ensure that services are provided to children in a healthy, happy and safe environment.

Factsheets Relevant to Undertaking requirements of Policy

Mandatory Reporters	Child Protection Fact Sheet 1
Reporting Child Protection Concerns	Child Protection Fact Sheet 2
Notification of Allegations against Employees	Child Protection Fact Sheet 3
Investigating Allegations against Employees	Child Protection Fact Sheet 4
Keep Them Safe	Child Protection Fact Sheet 5
Indicators of Abuse	Child Protection Fact Sheet 6
Protective Behaviours for Staff	Child Protection Fact Sheet 7
Undertaking a Working With Children Check	Child Protection Fact Sheet 8
Sharing of Information	Child Protection Fact Sheet 9

Definitions

Child Related Employment

is "any employment that involves direct contact with children where the contact is not directly supervised" (Prohibited Employment Act 1998, Section 3 and Commission for Children and Young People Act, Section 33).

Direct supervision

A person is present at all times. The supervisor is observing and is capable of directing, if required, the contact by the person under supervision with any child. The contact with children is part of the duties performed by the person under supervision or can reasonably be expected to occur during the performance of those duties.

Employee

Any person who is engaged in a child related employment role in the following capacities:

- Paid employment
- Sub-contractors
- Volunteers
- Ministers of religion
- Members of religious organisations; or
- Training as part of an educational or vocational course

Child

A person under the age of 18 years.

Designated Government Agency

Sutherland Shire Council is considered a designated government agency under the definitions of the Ombudsman Act 1974. Section 25A of the Ombudsman Act defines a designated government agency as:

“... (c) any other public authority prescribed by the regulations for the purposes of this definition”

Section 5 of the Ombudsman Act 1974 states that a public authority is a local government authority.

Head of Agency

The Head of Agency is the General Manager under Section 25A of the Ombudsman Act.

Prohibited Person

A person who is convicted of any 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.

A prohibited person includes a registrable person.

At risk of harm

Section 23 of the Children and Young Persons (Care and Protection) Act 1998 (the Care Act) defines a child or young person to be at risk of harm if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence of any one or more of a number of circumstances.

A child/young person at risk of harm is one whose:

- Basic physical or psychological needs are not being met; or
- Necessary medical care has not been arranged/or
- Has been, or is at risk of being physically or sexually abused or ill treated; or
- Is living in an environment of domestic violence and is at risk of serious physical or psychological harm; or
- Someone has behaved in such a way toward the child/young person that they have suffered serious psychological harm.

At risk of significant harm

From January 2010, the statutory threshold – the point at which a concern should be reported to Community Services Helpline (ph: 132 111) – changed from ‘risk of harm’ to ‘risk of **significant** harm’.

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or wellbeing of the child or young person are present to a significant extent.

What is meant by ‘significant’ in the phrase ‘to a significant extent’?

- Sufficiently serious to warrant a response by a statutory authority **irrespective of a family’s consent**.
- Not minor or trivial
- May be reasonably expected to produce a **substantial and demonstrably adverse impact** on the child or young person’s safety, welfare or wellbeing.
- Can result from a **single act or omission or an accumulation of these**.

For unborn children, what is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child’s birth.

Section 23 of the Children and Young Persons (Care and Protection) Act 1998 (the Care Act) outlines the grounds for reporting to Community Services which include:

- Physical abuse
- Sexual abuse
- Psychological harm
- Neglect
- Exposure to domestic violence
- Parental substance abuse and
- Parental mental health concerns

In addition, the Act now contains an additional two grounds for reporting. They are:

- Parents or carers have not made proper arrangements and are unable or unwilling to arrange for their child to receive an education.

- A series of acts or omissions when viewed together may establish a pattern of significant harm (cumulative impact).

The Mandatory Reporter Guide (MRG) should be used to determine if the circumstances that are causing concern for the safety, welfare or wellbeing of the child or young person are present to a significant extent. For information on the MRG Tool refer to the Child Protection Team (members listed in Clause 5.3 of this policy).

Mandatory Reporter

Someone who is required by law to make a report to Community Services (via Community Services Helpline on 132 111) where they find, through the use of the Mandatory Reporter Guide (MRG), a child or young person to be at 'risk of **significant harm**'.

A mandatory reporter is any person who delivers the following services to children as part of their paid work:

- Health Care (eg Doctors, Nurses, Dentists and other health workers)
- Welfare (eg Psychologists, Social Workers, Youth Workers)
- Education (eg Teachers)
- Children's Services (eg Child Care Workers, FDC Carers and Home-based Carers)
- Residential Services (eg Refuge Workers)
- Law Enforcement (eg Police)

You are also a mandatory reporter if you hold a management position, either paid or voluntary, in any of these services and your duties include direct responsibility for, or direct supervision of, the provision of these services.

It should be noted that as well as raising the reporting threshold to risk of significant harm, related legislative changes include removal of criminal penalties for not reporting.

Reportable Allegation

Includes an allegation of reportable conduct, and an allegation of misconduct that may involve reportable conduct. An allegation may be written, verbal or anonymous. However, the allegation should provide sufficient information. An allegation must have the following three elements:

1. The person who is the subject of the allegation must be a current employee or have been an employee at the time the allegation was made and must be clearly identifiable. This does not necessarily mean identified by name, as a person may be identifiable by other information including their description and work schedules of the agency;
2. It must refer to a description of behaviour that may constitute reportable conduct;
3. The alleged victim must have been a child under the age of 18 years at the time of the alleged incident or behaviour. The alleged victim may be an adult now and the alleged incident or behaviour may have occurred years before.

It is important that this information is collected to ensure that the requirements of the Ombudsman's Checklist are met.

Registrable person

A person who has been found guilty of a registrable offence against children under the Child Protection (Offenders Registration) Act 2000.

Reportable conduct

Section 25A(1) of the Ombudsman Act defines 'reportable conduct' as:

- any sexual offence or sexual misconduct committed against, with or in the presence of a child - including a child pornography offence
- any assault, ill-treatment or neglect of a child
- any behaviour that causes psychological harm to a child – even if the child consented to the behaviour.

Section 25A(1) of the Act also states that 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
- (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
- (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

Child Abuse

A term commonly used to refer to different types of child maltreatment. It refers to the non-accidental physical injury, neglect, emotional abuse, and sexual exploitation and abuse of children. Child abuse means:

- Assault (including sexual assault) of a child, or
- Ill treatment or neglect of a child, or
- Exposing or subjecting a child to behaviour that psychologically harms the child

Sexual offence

Sexual offences include sexual assault, the involvement of children in sexual acts or acts of indecency and any sexual threat imposed on a child. Sexual assault refers to sexual intercourse by a person with a child.

Sexual misconduct

Sexual misconduct 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:

- any sexual relationship with a child;
- inappropriate conversations of a sexual nature;
- comments that express a desire to act in a sexual manner with individual children or young people;
- unwarranted and inappropriate touching of a child, or in the presence of a child;
- sexual exhibitionism in the presence of a child;
- 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 display of pornography;
- possession of child pornography; and
- patterns of behaviour aimed at engaging or 'grooming' a child as a precursor to sexual abuse

- Sexual misconduct includes 'grooming behaviour'. This means patterns of behaviour aimed at engaging or 'grooming' a child as a precursor to sexual abuse.

Physical assault

Physical assault is only reportable where it includes all of the following elements:

- it is an act committed on or towards a child; and
- it involves either the application of force to a child or an act that causes a child to think that immediate force will be used on them; and
- it is either hostile or reckless (a reckless act is one where a person would reasonably foresee the likelihood of inflicting injury or fear and ignores the risk); and
- A child fears that he or she will be harmed as a result of the act, though the harm does not need to actually happen.

Not all application of force is the source of real or feared harm, particularly where the force is gentle. Physical contact which is part of a work relationship is not automatically assault even if there is anger involved.

Physical assault does not include behaviour that is reasonable for discipline, management or care of children, or the use of physical force that is trivial or negligible.

Ill-treatment

Ill-treatment of a child occurs where correction or discipline administered is extreme and excessive for the situation.

For example, locking a child in a cupboard as punishment for talking, or tying a child to a chair because they wandered, are excessive and inappropriate forms of discipline that would be regarded as ill-treatment.

Supplying prohibited drugs to a child is another example of ill-treatment.

Discipline that breaches community standards, or that may affect the long-term well-being of the child, is likely to be classified as ill-treatment.

Neglect

Neglect occurs when a child is harmed by the failure to provide basic physical and emotional necessities of life. For example failure to provide or arrange for adequate and proper food, supervision, nursing, clothing, medical attention or lodging for a child in his or her care. Neglect can be ongoing or a single significant incident. However, neglect typically develops as a pattern of behaviour that results in harm to a child over a period of time.

Act of Violence

For an act of violence to be reportable, it must be an act or series of related acts that:

- involve violent conduct;
- are committed in the course of employment;
- are committed in the presence of a child; and
- result in injury, either physical or emotional, to the child

An act of violence is not necessarily committed on, or directed at, a child. It includes violence to property as well as to people. However, small and insignificant actions such as throwing a book or slamming a door do not constitute acts of violence and should not be reported.

A reportable act of violence does not include acts which are trivial or negligible. While anger and small "acts of violence" are undesirable in any workplace, they are not all relevant employment proceedings for the Working with Children Check.

Employment Screening

This is the process of gathering relevant information about an applicant for employment by an organisation. It enables the organisation to make an informed decision about whether to employ the applicant or not.

Successful applicants must provide personnel with relevant and current Working With Children Check documentation upon recruitment for personnel to verify.

Working with Children check

The Working With Children Check is a prerequisite for paid and unpaid child-related work. Under Part 2, section 6 of the Child Protection (Working with Children) Act 2012, child-related work is defined as work in a specific, child-related role or face-to-face contact with children in a child-related sector. Additional roles are identified in the Child Protection (Working with Children Regulation 2013). The process involves a national police check and a review of findings of misconduct. The result is either a clearance to work with children for five years or a bar against working with children. Barred applicants may not work with or volunteer with children.

The Working With Children Check obtains applicants' national criminal histories from CrimTrac. The records include:

- Convictions (spent or unspent)
- Charges (whether heard, unheard or dismissed)
- Juvenile records

Approved applicants will receive a Working with Children check number. To comply with the legislation, employers need to go online to verify the status of a Working with Children Check number for any paid or volunteer staff in child-related work.

Working with Children checks are valid for 5 years and have a fee attached of \$80. Costs for the Working with Children Check for existing employees will be borne by Sutherland Shire Council..

Sutherland Shire Council is registered with the Working With Children Check, as such;

- All paid and unpaid workers in child-related work are identified
- Individuals to whom an exemption applies for the Working With Children Check are identified
- All individuals who are identified have their Working With Children Check verified online (no notification or email from an employee or volunteer containing an application or clearance number will be accepted)
- Barred workers will be removed from child-related work.

Vexatious, frivolous or trivial complaints

Allegations of reportable conduct against employees that are unfounded (by colleagues or members of the public).

Legislative context

The Ombudsman Amendment (Child Protection and Community Services) Act 1998

The Child Protection (Prohibited Employment) Act 1998

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

Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009

Children Protection (Working with Children) Act 2012

Child Protection (Working with Children) Regulation 2013

Victims' Rights and Support Act 2013

Roles and Responsibilities in ensuring Child Protection at Sutherland Shire Council

Every employee/worker at Sutherland Shire Council has a responsibility to be aware of the child protection policy. All workers must take reasonable care to ensure their own acts or omissions do not adversely affect the health and safety of others.

All employees should be aware of General Protective Behaviours (See Factsheet 7) when they are undertaking work / projects in the presence of children and young people.

The General Manager as the head of a designated agency

- Is required to set up internal systems to ensure all staff are made aware of their obligations, particularly their obligation to notify him/her of any reportable allegation(s) or conviction against employees;
- Is required to notify the Ombudsman of:
 - any reportable allegations or convictions as soon as practicable & within 30 days of becoming aware of a reportable allegation or conviction;
 - Whether or not Council proposes to take any disciplinary action or other action in relation to the employee and the reasons why it intends to take or not take any such action;
 - Any written submissions made to the General Manager 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 employee.
- Is required to instigate and ensure the proper documentation of an investigation into any reportable allegation, whether or not the allegation was proven. This responsibility applies regardless of any requirement for disposal of the record that may exist elsewhere.
- Is responsible for determining what disciplinary action, if any, will be taken against the employee after the initial investigation has been completed.

Unit Managers, Directors and Workplace Supervisors

- Will assist the employee or members of the general public making a reportable allegation to complete the Reportable Allegation Incident Form.
- Must notify the Manager of Personnel of any reportable allegation.

The Sutherland Shire Council's Management Team (SSCMT) will consist of a Senior Officer from Personnel Department – preferably the Manager of Personnel & the Manager from the unit from which the employee against whom the allegation has been made is employed. If the allegation is against the Manager of the Unit, the Director of the Division will form part of this team and the Manager will be excluded from the investigation process. The General Manager will have the authority to appoint who or whom he/she requires to be on the investigation team. ‘

The SSCMT are responsible for

- Provide advice and support in the conduct of an investigation in to a reportable allegation made by an employee or against an employee.
- Ensure that a thorough investigation is carried out in accordance with principles of procedural fairness (i.e. natural justice).
- Ensure that all parties are made aware of and encouraged to access counselling and support services that are available throughout the process of investigation.
- Decide if, when and how the parents are informed of the allegation (if the parents themselves did not make the allegation), and that they are offered appropriate support and informed of Council's Procedures.
- Ensure that all parties are interviewed and their statements are recorded.
- Ensure that the Child Protection Notification form is prepared and forwarded to the Ombudsman's Office within 30 days of the notification being made.
- Liaise with the Ombudsman Office during the investigation.
- Ensure that all relevant parties are advised of the findings of the investigation, where determined necessary.
- Where necessary, consult with relevant external parties (e.g. unions, solicitors etc).
- Ensure that all media inquiries are referred to Council's Marketing and Public Relations Coordinator
- In cases where Community Services or NSW Police are also investigating, the SSCMT is required to wait for those agencies to complete their investigation prior to commencing their own.
- If the matter does not constitute a child protection allegation against an employee the SSCMT will refer the matter back to the workplace manager for action with no further involvement from the team.

Personnel Services Manager

- Co-ordinate staff training and awareness raising programs in the area of Child Protection.

All Employees in identified positions

- Must immediately inform the Personnel Services Manager if they are a prohibited person (as defined by this policy). Failure to do so will result in immediate dismissal.
- It is the responsibility of all employees to notify their workplace supervisor, Unit Manager or the Manager of Personnel immediately if they witness reportable conduct by an employee or someone discloses a situation of reportable conduct by an employee to them. This includes written, verbal and anonymous allegations.

- The employee must keep the details of the allegation confidential. Any breach of confidentiality may result in disciplinary action in accordance with Council's disciplinary policy.
- Must ensure that their Child Protection knowledge and training is current and inform their Workplace Supervisor or Unit Manager if they require updated training.

Confidentiality

All staff involved in the reporting and handling of allegations of reportable conduct will be mindful of the sensitive nature of the issue and take all reasonable steps to maintain confidentiality and respect the privacy of those involved. Nothing in this statement is to be taken as mitigating against an employee's obligations to report allegations.

All information relating to any investigation/report will be secured by the relevant Department Manager and will only be accessed by members of the Child Protection Team or the General Manager.

Work Experience Placements

There are a number of positions within Council that are called upon from time to time to oversee work experience students that are under the age of 18. These positions do not fall within the definitions as set out in the legislation and therefore are not covered by this policy.

Vexatious Allegations

Any employee who is found to have made a vexatious allegation will be subject to discipline in line with Council's Disciplinary policy.

Policy and Procedure Review

The Child Protection Policy and supporting documentation will be reviewed annually from the date adopted by Council, notwithstanding if any major changes are require, amendments can be made at any time.