



# Child Safe Policy and Procedure

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### ACKNOWLEDGEMENT:

This Policy has been formatted and created in line with the Office of the Children's Guardian Act 2019



# Policy

## PURPOSE AND SCOPE

This policy guides employees (paid and volunteer) on how to behave when interacting and engaging with children in our organisation. The policy focuses on how we can build and maintain a child safe environment which is inclusive, transparent and promotes children's participation.

The safety, welfare and wellbeing of children, including protecting children from child abuse, is the paramount consideration in decision -making at SPCC Snowy Mountains (The School). The School seeks to create a safe and caring environment where Christian values inspire and affirm the highest standards of ethical conduct in relation to the care, support, and welfare of the students entrusted to it.

Schools are a place where children have the right to feel safe, supported and protected. The School has a duty of care towards the students and employees and SPCC Snowy Mountains takes this responsibility very seriously. This includes the need to take adequate measures to prevent the likelihood that children are exposed to the risks of abuse; be they emotional, physical, or sexual abuse, domestic violence, or abuse caused by neglect.

## CHILDREN'S PARTICIPATION AND GUIDING PRINCIPLES

SPCC Snowy Mountains supports the active participation of children in programs and activities. There are a range of ways children can provide feedback and raise concerns. Student's views are listened to and respected and are included in decision making particularly when matters will directly affect them.

In all actions taken and decisions made that significantly affect a child, account is be taken of the culture, disability, language, religion, gender identity and sexuality of the child, and if relevant, the person with parental responsibility for the child.

SPCC Snowy Mountains actively seeks the partnership with parents, caregivers and volunteers to develop strong positive relationships to support their children through their education. This occurs through formal parent-student-teacher conferences, formal and informal communication, and the many events held throughout the Entity.

## RECRUITMENT

The Entity will maintain rigorous and consistent recruitment, screening and selection process.

The Entity is required to:

- Register online with the Office of the Children's Guardian
- Verify all employees have a valid NSW Working With Children Check (WWCC), including new paid employees before they are hired, and existing workers and volunteers (new and current)
- Keep records of employees who require a WWCC, employee's date of birth, WWCC number, verification details and employment status (paid or volunteer)
- Ensure no employee with a 'barred', 'interim barred', or 'not found' WWCC status is involved in child-related work



## PREVENTION

A lot of reportable conduct is situational and can be prevented, especially in organisations that have established Child Safe systems, policies and practices. This is the reason the goal of 'prevention' is a critical element of the Reportable Conduct Scheme, which sits within the extensive child safe organisations information, training and resources program operated by the NSW Office of the Children's Guardian.

The Entity has the following preventative strategies in place:

- A Staff Handbook, incorporating the Employee Code of Conduct, to set out clear guidelines for appropriate and inappropriate behaviour
- Clearly defined roles for employees within the Entity
- Pre-employment screening procedures in addition to the WWCC clearance such as checking references and background checks
- Information provided to families and the community about child protection strategies adopted by the Entity. This can be seen in the Policies and Procedures of the Entity, the Parent Handbook and on the SMCS website.
- Annual training (one week before Term 1 and one week before Term 3) and induction procedures for employees in best practices to ensure a safe and secure environment for student wellbeing
- Regular Executive Staff meetings to review any matters arising and to identify contributing factors to minimise the chance of reoccurrence with 'Child Safe' as a standing item
- Regular Staff meetings with 'Child Safe' as a standing agenda item are held and employees are encouraged to ask questions and contribute to the continuous improvement of child safe policies, procedures and practices in the workplace
- Parent-Student-Teacher conferences and school information events
- Formal and informal communication such as newsletters and class communication
- Precautions, restrictions and code of conduct when online learning platforms (Class Dojo, Office 365 and other social media applications) are utilised
- Parents and students have access to the Child Safe Policy and other relevant school policies, as well as the parent handbook
- Parents have access to and can receive the Office of the Children's Guardian's resources

## COMPLAINTS MANAGEMENT AND REPORTING

At Snowy Mountains Christian School, the Principal is the Child Safe Contact Person. A child or young person, or any employee can make a complaint or raise a concern by:

- Face to face meeting (with the Child Safe Contact Person)
- Phone call (with the Child Safe Contact Person)
- Email (Child Safe Contact Person email)
- Letter (to the Entity)



The Child Safe Contact Person will follow these steps when managing complaints:

1. Listen to the person making the complaint and document the complaint
2. Notify the Office of the Children's Guardian and follow steps for making a report
3. If the complaint involved inappropriate behaviour and a breach of the Code of Conduct, the head of the entity will make a decision and take action in accordance with the internal discipline procedure.

### **REPORTING REQUIREMENTS UNDER THE RELEVANT GOVERNMENT AGENCIES**

DEPARTMENT	REPORTING REQUIREMENTS
Service NSW	An application or renewal can be made through Service NSW.
NSW Police or Child Protection Hotline	If threat is immediate, notify relevant agency.
NSW Office of the Children's Guardian	<ul style="list-style-type: none"><li>• Administer a scheme to report and notify a reportable allegation or conviction considered to be a reportable conviction to the head of the relevant entity and the Children's Guardian</li><li>• Provide oversight and guidance on an investigation undertaken by the head of the entity</li><li>• Conduct investigations and inquiries into reports and the response to, handling of, reports by relevant entities</li><li>• Ensure appropriate actions are taken by a relevant entity</li><li>• Monitor a relevant entity's system for preventing, detecting and dealing with reportable conduct and reportable convictions</li><li>• Provide advice and education to relevant entities to assist relevant entities in detecting and dealing with reportable conduct and reportable convictions.</li></ul>

### **TRAINING, SUPPORT & SUPERVISION OF EMPLOYEES**

The entity promotes respect, fairness and consideration for all workers. It is expected that all employees to be caring and compassionate people who take an interest in the wellbeing of students, and who set appropriate boundaries for employee-student relations.

Employees must:

- Be aware that their interactions with students are based on a trusting relationship, arising from the nature of their role in the Entity, and that those relationships are open to scrutiny.
- Treat students with respect and behave in ways that promotes student safety, welfare and well-being at all times.
- Conduct themselves in a professional manner towards students, consistent with their appointed role, the code of conduct and internal policies and procedures at all times.



Employees must not:

- Engage in inappropriate physical contact/force with a student including physical/corporal punishment of a child in the course of their role at the Entity;
- Act in ways which may cause a student to reasonably fear that force will be used against them, even if this is not their intention;
- Behave in a manner which may cause psychological harm to a student;
- Correct or discipline a student in excess of what is reasonable or appropriate for the situation; and/or
- Use any form of capital punishment.

All employees have a more senior employee assigned to support and supervise their work.

All new employees will receive a copy of all Child Safe policies and procedures and the Principal or delegated authority will set up a meeting to discuss the policies and allow the new employee to ask questions and clarify their understanding

## **DUTY OF CARE**

All employees have a duty to take reasonable care for the safety and welfare of students.

That duty is to ensure students are properly safeguarded from harm, and to consider and take all reasonable action to protect students from known hazards or risk of harm that can be reasonably predicted. The standard of care that is required of an employee must take into consideration various factors, such as a student's maturity and ability.

The risk associated with any activity needs to be assessed and managed by employees before the activity is undertaken. A single serious failure to exercise appropriate duty of care, or persistent repeated failures, may constitute neglect or negligence according to the law if actual harm is caused, or if there is the potential to cause significant harm to a student.

All employees also have a duty to not neglect the welfare of students. Neglect includes either an action or inaction by a person who has care responsibilities towards a student which may include:

- a) Supervisory neglect (failure to adequately supervise a student),
- b) Carer neglect (grossly inadequate care of a student),
- c) Failure to protect from abuse (unreasonable failure to respond to information that may result in harm to a Student), and/or
- d) Reckless acts or failure to act (including a gross breach of professional standards that may result in harm to a student).

In relation to this duty of care, all employees must participate in training opportunities as proposed to them by the Entity in order to maintain and update their understanding of child protection law and practice and the Entity's policies and procedures in relation to the care of students.



## OTHER LEGISLATION, INDUSTRY STANDARDS OR INTERNAL POLICIES

- The Child Protection (Working with Children) Act 2019
- The Child Protection (Working with Children) Act 2012
- The Children and Young Persons (Care and Protection) Act 2012 ("Care and Protection Act")
- The Community Services (Complaints, Reviews and Monitoring) Act 1993
- The Ombudsman Act 1974 (NSW) ("Ombudsman Act");
- The Crimes Act 1990 ("Crimes Act")
- SMCS Staff Handbook
- SMCS Vision, Value and Aims
- SMCS Student Nurture and Discipline Policy and Procedure
- SMCS Anti-Bullying Policy and Procedure
- SMCS Employee Code of Conduct

## COMMUNICATION

The entity will communicate and educate key messages within the Child Safe Policy in the following ways.

- Information sessions for staff, volunteers and students will be held
- The Child Safe Policy and Procedure will be discussed during the Annual training (one week before Term 1 and one week before Term 3) and induction procedures for employees in best practices to ensure a safe and secure environment for student wellbeing
- The Child Safe Policy and Procedure will be discussed during induction sessions for all volunteers and students
- Students and parents will have access to the Policy, Parent Handbook and Dealing with Complaints process.



## Procedures

### DEFINITIONS

Child	<ul style="list-style-type: none"><li>a) In relation to employment as a model – a person under the age of 16 years, or</li><li>b) Otherwise – a person under the age of 15 years</li><li>c) A person who is less than 18 years of age, or</li><li>d) A person who is 18 or more years of age in relation to who adoption is sought or has been made</li></ul>
Student	Child
Employee	<p>A range of individuals who work with children including:</p> <ul style="list-style-type: none"><li>• An individual employed by or in a relevant entity (organisation under the Act)</li><li>• An individual engaged by the relevant entity – whether directly or indirectly – to provide services to children</li><li>• As a volunteer, whether or not the individual requires a Working With Children Check clearance to do so (this includes parent volunteers engaged with relevant entities)</li><li>• As a contractor, if the contract requires a Working With Children Check clearance for the purpose of the engagement;</li><li>• Other listed in the Children's Guardian Act 2019 in section 16</li></ul>
Head of Relevant Entity	<p>The head of an entity is usually its most senior officer and the person who is primarily responsible for executive decision making in the organisation. This person may be the chief executive officer, a principal officer or someone in a similar position or fulfilling a similar role.</p> <p>At SPCC Snowy Mountains, the Principal is the head of the entity</p>
Non-Government School	A non-government school within the meaning of the Education Act 1990, being SPCC Snowy Mountains
Parents	Of a child, means a person having parental responsibility for the child
Relevant Entity of Entity	One that is listed in Schedule 1 of the Act, a public authority or religious body, being SPCC Snowy Mountains
Reportable Allegation	An allegation that an employee has engaged in conduct that may be reportable, whether or not the conduct is alleged to have occurred within the employee's employment with the relevant entity
Reportable Conduct Scheme	An alleged-based scheme. The threshold for making a notification to the Office of the Children's Guardian is that a reportable allegation has been made.



Reportable Conduct	<p>The following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded -</p> <ul style="list-style-type: none"><li>• a sexual offence</li><li>• sexual misconduct</li><li>• ill-treatment of a child,</li><li>• neglect of a child,</li><li>• an assault against a child</li><li>• behaviour that causes significant emotional or psychological harm to a child</li><li>• any offence under section 43B or 316A of the Crimes Act 1900, whether or not, with the consent of a child</li></ul>
Reportable Conduct Does Not Extend To:	<p>a) conduct that is reasonable for the purposes of the discipline, management or care of a child, having regard to the age, maturity, health or other characteristics of the child and to any relevant codes of conduct or professional standards</p> <p>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 procedures</p> <p>conduct of a class or kind exempted from being reportable conduct by the Children's Guardian under section 30 of The Children's Guardian Act 2019 or was previously exempted by the Ombudsman and is subject to the transitional arrangements.</p>
Finding Reportable Conduct	A finding, by a relevant entity of the Children's Guardian, as a result of an investigation conducted under this Part, that a reportable allegation is sustained.
Reportable Conviction	A conviction, including a finding of guilt without the court proceeding to a conviction, in NSW or elsewhere, of an offence involving reportable conduct.
SPCC Snowy Mountains	SPCC Snowy Mountains
Child Safe Contact Person	The Principal of SPCC Snowy Mountains, or delegated authority
Procedural Fairness	<p>A decision-maker should:</p> <ul style="list-style-type: none"><li>• consider all relevant factors that the decision-maker has real or constructive knowledge of,</li><li>• give appropriate weight to factors that have probative value,</li><li>• not assign weight to irrelevant factors or give dis-appropriate weight to factors of little or no substance,</li></ul> <p>form and document a logical rationale for proposed findings, which logically flow from the evidence and which indicates that it is reasonably open – on the balance of probabilities – to make the proposed decision.</p>



## CHILD-RELATED WORK

Child-related work, whether in paid or voluntary capacity, involves direct contact by the worker with a child or young person and that contact is a usual part of and more than incidental to the work.

These requirements are to ensure that the safety of the children is not put at risk.

Child related work includes, but is not limited to work in the following sectors:

- child development
- child protection services
- children's health services
- clubs or other bodies providing services for children
- disability services
- early education and childcare
- education
- entertainment for children
- justice services
- religious services
- residential services
- transport services for children
- youth workers
- school cleaners

## WORKING WITH CHILDREN CHECK

### Application/Renewal

An application or renewal can be made through Service NSW. The process for applying for and renewing a Working With Children Check (WWCC) clearance with the Office of The Children's Guardian (OCG) involves a national police check and a review of findings of misconduct. If the OCG grants or renews a WWCC clearance the holder will be issued with a number which is to be provided to the entity to verify the status of a staff member's WWCC clearance.

### Refusal/Cancellation

The OCG can refuse to grant a WWCC or cancel a WWCC clearance. The person is then restricted from engaging in child-related work and not able to apply for another clearance for five years. Employers are notified by the OCG and instructed to remove such persons from child-related work.

### Interim Bar

The OCG may issue an interim bar, for up to 12 months, to high risk individuals to prevent them from engaging in child-related work while a risk assessment is conducted. If an interim bar remains in place for six months or longer, it may be appealed to the Administrative Decisions Tribunal. Not everyone who is subject to a risk assessment will receive an interim bar; only those representing a serious and immediate risk to children.

### Disqualified Person

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of Working With Children Act 2019, if the offence was committed as an adult. A disqualified person cannot be granted a WWCC clearance and is therefore restricted from engaging in child related work.



## Ongoing Monitoring

The OCG will continue to monitor criminal records and professional conduct findings of all WWCC clearance holders through a risk assessment process.

## REPORTABLE CONDUCT

*The Children's Guardian Act 2019* defines reportable conduct as:

- a sexual offence
- sexual misconduct
- ill-treatment of a child
- neglect of a child
- an assault against a child
- an offence under s 43B (Failure to protect) or s 316A (Failure to Report) of the Crimes Act 1900; and
- behaviour that causes significant emotional or psychological harm to a child.

For definitions of Reportable Conduct, refer to Appendix 1: Defining Reportable Conduct.

## REPORTS, COMPLAINTS AND NOTIFICATIONS

A work culture that encourages and supports the appropriate reporting of child safe concerns is a critical component of a child safe organisation.

*The Children's Guardian Act 2019* requires all employees who are captured by the Scheme to 'give a report' about any 'reportable allegation' they become aware of, and this report must be made as soon as practicable, to the head of the entity.

An 'employee' includes individuals who work with children such as:

- An individual employed by or in a relevant entity
- An individual engaged by the relevant entity, whether directly or indirectly, to provide services to children.  
Such as a volunteer or a contractor

'Giving a report' means informing the head of the entity about a reportable allegation or conviction against another employee of the organisation (or yourself).

Employees are required to report anything that may be a reportable conduct such as:

- Allegation
- Disclosure complaint
- Concern
- Incident or
- Observation

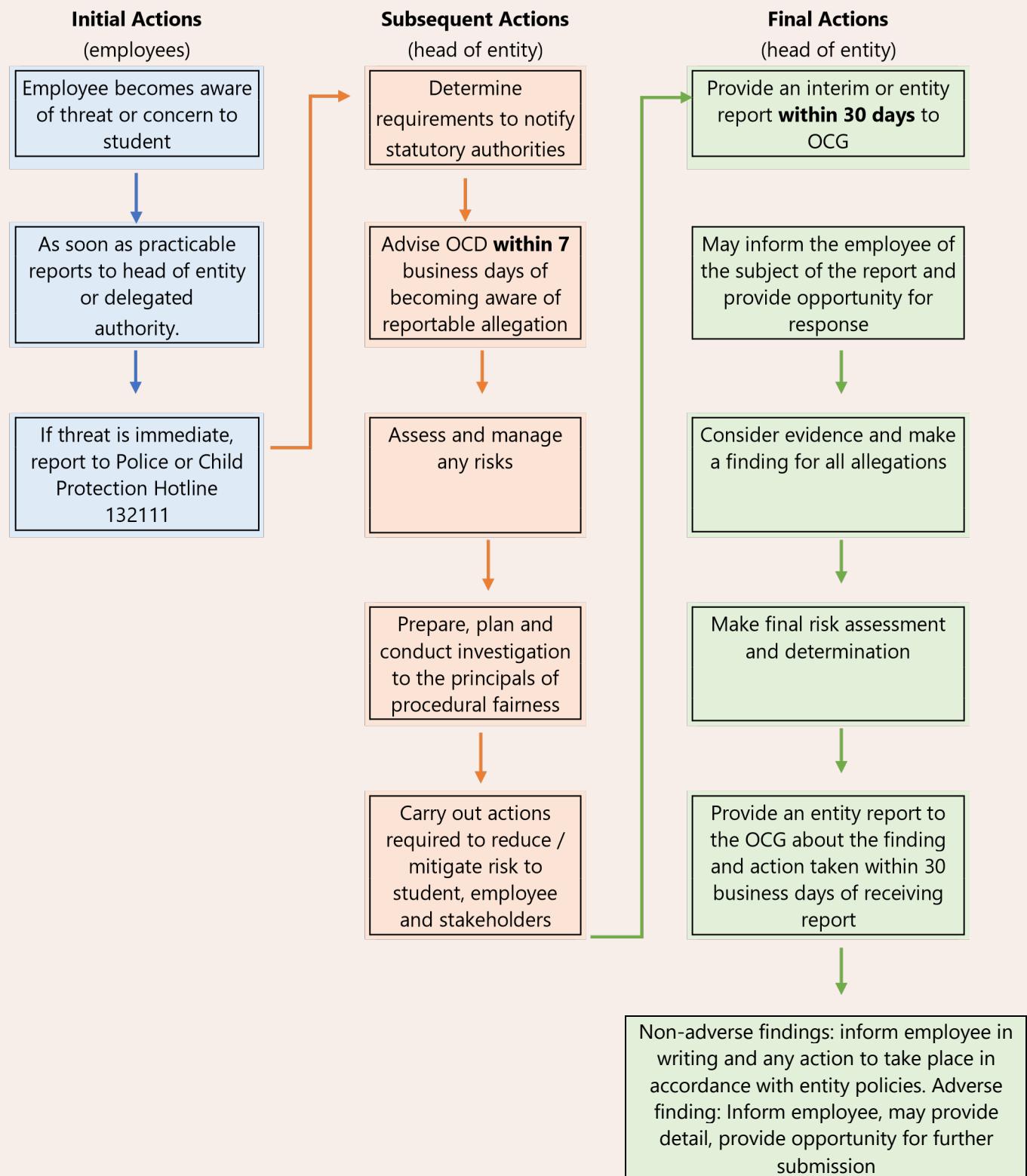
If the conduct to report is against the head of the entity, then the report must be made directly to the Children's Guardian to [reportableconduct@kidsguardian.nsw.gov.au](mailto:reportableconduct@kidsguardian.nsw.gov.au)



Protections apply for people who make reports to the Office of the Children's Guardian. In particular, Division 13 section 63 and section 64 of the *Children's Guardian Act 2019* contains protections against retribution in relation to reportable conduct allegations.

If a person who gives a report is dissatisfied with the head of the relevant entity to the report, the person may make a complaint to the Children's Guardian.

If another person or entity is dissatisfied with the head of the relevant entity to the report, they may make a complaint to the Children's Guardian.





## CHILDREN'S GUARDIAN TO BE GIVEN NOTIFICATION OF REPORTS HEAD OF THE RELEVANT ENTITY:

If the head of the entity receives a report in relation to an employee of the relevant entity or becomes aware of a reportable allegation in relation to an employee of the relevant entity, or a conviction that is considered to be a reportable conviction, the head of the entity must give the Children's Guardian a notification. The notification should state:

- That a report has been received in relation to an employee of the relevant entity, and
- The type of reportable conduct the subject of the report, and
- The name of the employee, and
- The name and contact details of the relevant entity and the head of the relevant entity, and
- For reportable allegation, whether Commissioner of Police has been notified of the allegation, and
- If a report has been made under section 24 of the *Child and Young Persons (Care And Protection Act 1998* – that the report has been made, and
- The nature of the relevant entity's initial risk assessment and management action, and
- Any other information prescribed by the regulations

The notice must also include the following, if known, to the head of the entity

- Details of the reportable allegation or conviction considered to be a reportable conviction,
- The date of birth and working with children number, if any, of the employee the subject of the report
- For a reportable allegation of which the Commissioner of police has been notified – the police report reference number
- If a report has been made under section 24 of the *Child and Young Persons (Care And Protection Act 1998* – the report reference
- The names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor

The head of the entity must give the Children's Guardian the notice within 7 business days after the head of the entity is made aware of the report, unless the head of the relevant entity has a reasonable excuse.

The head of the entity may give the employee the subject of the report written notice that a report about a reportable allegation or conviction considered to be a reportable conviction has been made.

The head of the entity may delegate any functions of the head of the entity to an employee of the entity.

## INVESTIGATION OR DETERMINATION BY RELEVANT ENTITY

As soon as practicable after receiving a report, the head of the entity must:

- Investigate, or arrange for an investigation to investigate, the reportable allegation, or determine whether the conviction considered to be a reportable conviction is a reportable conviction.
- During an investigation or determination, an employee - the subject of a reportable allegation or a conviction considered to be a reportable conviction - may give the head of the entity a written submission concerning the allegation or conviction for the purpose of determining what, if any, disciplinary or other action should be taken in relation to the employee.
- The investigation or determination must be completed within a reasonable time.



## RISK MANAGEMENT

Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence. The head of the entity will take appropriate action to mitigate risks including through early management and action.

The *Children's Guardian Act 2019* requires the head of the entity to have systems in place to prevent reportable conduct, that is, systems that manage the risk of reportable conduct from occurring.

- The head of the entity is responsible for ensuring that any risk an employee may pose to a child(ren) is assessed and managed while responding to reportable allegations. This should be a dynamic process;
- An initial assessment on receipt of a reportable allegation should be based on all relevant information known at that time;
- The risk assessment should be revisited and – where appropriate – adjusted during the investigation, as new information becomes known;
- A final risk assessment should be undertaken at the end of the investigation.

At each stage, the assessment should inform any decision about risk management – that is, action that will be taken to address identified risks. It is important to record why the decision was made to take, or not take, any action following an initial, subsequent and final risk assessment.

All employees will ensure that they use Child Safe risk management practices in all their activities in accordance with the Entity's policies.

In this regard, all employees must ensure that they comply with all legislative and policy obligations to maintain and update their child safe screening.

## REPORT BY RELEVANT ENTITY ABOUT INVESTIGATION OR DETERMINATION

After an investigation or determination is completed, the head of the entity must prepare an entity report for the Children's Guardian, unless an exemption applies, the head of the entity has a reasonable excuse or the Children's Guardian consents to an extension of time for the head of the relevant entity to prepare the report.

The entity report must be provided to the Children's Guardian within 30 days after the head of the entity receives the report of the reportable allegation or conviction considered to be a reportable conviction, unless the head of the entity gives the Children's Guardian an interim report within 30 days after receiving the report of the reportable allegation or conviction considered to be a reportable conviction, and a reason for not providing the report within 30 days, and an estimated time frame for the completion of the entity report.

The entity report must include information as detailed in Division 5 part 37.

The interim report must include information as detailed in Division 5 part 38.



## MANDATORY MATTERS FOR CONSIDERATION FOR REPORTABLE ALLEGATIONS

### Assessing conduct

The head of the entity or the Children's Guardian must make a finding of reportable conduct if it is satisfied that the case against the employee, the subject of the reportable allegation, has been proved against the employee on the balance of probabilities.

Without limiting the matters, the head of the entity or the Children's Guardian may take into account in deciding whether it is satisfied the case has been proved on the balance of probabilities, the head of the entity or the Children's Guardian may take into account the nature of the reportable allegation and any defense and the gravity of the matters alleged.

The head of the entity or the Children's Guardian must consider whether the reportable allegation relates to the conduct that is in breach of established standards applying to the employee of the relevant entity, having regard to professional standards, codes of conduct, including profession or ethical codes, and accepted community standards.

### Conduct that is not reportable

- a) Conduct that is reasonable for the purposes of the discipline, management or care of a child, having regard to the age, maturity, health or other characteristics of the child 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 procedures
- c) Conduct of a class or kind exempted from being reportable conduct by the Children's Guardian under section 30 of the *Children's Guardian Act 2019* or was previously exempted by the Ombudsman and is subject to the transitional arrangements.

When considering a finding of reportable conduct, the head of the entity or Children's Guardian needs to assess the evidence against the thresholds outlined in the Act in connection with each category of reportable conduct.

### Procedural Fairness

The Act requires heads of relevant entities to have systems in place to ensure that the handling of and response to reportable allegations has regard to the principles of procedural fairness. What procedural fairness entails may differ according to the particular circumstances of the case and the overarching paramountcy of the safety, welfare and well-being of children. Generally, when making a finding after a reportable conduct investigation, a decision-maker should:

- Consider all relevant factors that the decision-maker has real or constructive knowledge of,
- Give appropriate weight to factors that have probative value,
- Not assign weight to irrelevant factors or give disproportionate weight to factors of little or no substance,
- Form and document a logical rationale for proposed findings, which logically flow from the evidence and which indicates that it is reasonably open – on the balance of probabilities – to make the proposed decision.

If the decision-maker requires more information to make a finding, they might refer the matter back to the investigator for further inquiries. The employee should be informed if this step is taken, and the likely timeframe for completing the further inquiries. If the decision-maker has reasons not to undertake these steps,



it is important to fully document these reasons and provide them to the Guardian, along with any supporting documentation.

### **CHILDREN'S GUARDIAN**

After receiving a notification, the Children's Guardian may require the relevant entity to provide further information in relation to the reportable allegation or conviction considered to be a reportable conviction or the relevant entity's response to the notification.

The Children's Guardian may, on the Children's Guardian's own initiative or because of a complaint, monitor the progress of an investigation or determination by the head of the entity into a report in the Children's Guardian considers the monitoring is in the public interest.

The Children's Guardian may make preliminary inquiries to decide whether to carry out an investigation or determination. The preliminary inquiries may be made whether or not the Children's Guardian has received a complaint or notification about a matter to which the complaint or notification relates.

The Children's Guardian may, by written notice given to the entity that made the complaint or notification, require the entity to give the Children's Guardian further information about the matter of the subject of the complaint or notification within the time stated in the notice.

### **FURTHER INFORMATION**

After receiving an entity report, the Children's Guardian may require the head of the entity to provide additional information the Children's Guardian considers necessary to enable the Children's Guardian to determine whether the reportable allegation was properly investigated or the conviction was considered to be a reportable conviction was properly determined and whether appropriate action was, or can be, taken as a result of the investigation or determination.

### **OUTCOME OF INVESTIGATION – CHILDREN'S GUARDIAN**

After receiving an investigation or determination the Children's Guardian must prepare a Children's Guardian report. This must include:

- In relation to a reportable allegation
  - Information about the facts and circumstances of the reportable allegation, and
  - The findings the Children's Guardian has made about the reportable allegation after completing the investigation, including whether the Children's Guardian has made a finding of reportable conduct, and
  - Analysis of the evidence and rationale for the findings
- In relation to a conviction considered to be a reportable conviction
  - Information about the conviction considered to be a reportable conviction, and
  - The determination the Children's Guardian has made about the conviction, including whether the Children's Guardian has determined the conviction is a reportable conviction
- A copy of any written submissions made by the employee under section 34(2)
- Recommendations for action to be taken in relation to the reportable allegation or conviction considered to be a reportable conviction.



## RECOMMENDATION

If the Children's Guardian proposes to recommend in the Children's Guardian report that the relevant entity take particular action, the Children's Guardian must consult with the relevant entity about the recommendation before finalising the report.

## NOTICE TO PARTICULAR PERSONS OF REPORTABLE CONDUCT OR REPORTABLE CONVICTION

The Children's Guardian must advise the following persons of the finding or determination, the recommendation and the reasons:

- The Minister
- The head of the relevant entity
- The employee, the subject of the finding or determination

## RECOMMENDATIONS AND PROVISIONS OF THE REPORT

At the conclusion of an investigation or determination by Children's Guardian, or on a recommendation by the Children's Guardian to refer a reportable allegation, reportable conduct or a reportable conviction back to the relevant entity, the Children's Guardian must give the relevant entity and the employee subject of the Children's Guardian report, the recommendations for action to be taken and necessary information relating to the recommendations.

The head of the relevant entity may, and on request by the Children's Guardian must, notify the Children's Guardian of any action taken or proposed as a result of the recommendations provided in the recommendations.

## OTHER MEASURES ABOUT REPORTABLE CONDUCT

The head of the relevant entity must ensure the entity has systems including a code of conduct, policies and procedures for the following:

- Preventing and detecting reportable conduct by an employee of the entity
- Requiring an employee of the relevant entity to give a report, as soon as possible, in relation to a reportable allegation or conviction considered to be a reportable conviction involving an employee of the entity
- Enabling a person, other than an employee of the relevant entity, to give a report to the head of the entity about a reportable allegation or conviction considered involving an employee of the entity
- Handling or responding to a reportable allegation or conviction, considered to be a reportable conviction involving an employee of the relevant entity, having regard to principles of procedural fairness
- Receiving, handling and disclosing information relating to reportable allegations, convictions considered to be reportable convictions and information relating to investigations and determinations
- Identifying and dealing with matters relating to the prevention of reportable conduct by employees of the relevant entity



## CHILDREN'S GUARDIAN MAY REQUIRE FURTHER INFO ABOUT SYSTEMS

The Children's Guardian may, at any time by written notice, require the head of the entity to give the Children's Guardian, within the reasonable time stated in the notice, information about the entity's systems.

### REPORTING WITHIN THE OFFICE OF THE CHILDREN'S GUARDIAN

If a finding of reportable conduct or determination has been made that a conviction is a reportable conviction, the Children's Guardian must provide, to the Working With Children Check Unit within the Office of the Children's Guardian, a report if the finding related to sexual misconduct, a sexual offense or a serious physical assault.

If the Children's Guardian is of the opinion that there is a real and appreciable risk to the safety of children during the course of an investigation, the Children's Guardian must refer information about the employee, the subject of an investigation, to the Working With Children Check Unit, for the purpose of considering an interim bar.

### INFORMATION SHARING

Section 57 of the *Children's Guardian Act 2019* states that the head of the entity who has received a report of a reportable allegation must – unless satisfied that the disclosure is not in the public interest – disclose the following information about the response to the report to the child who is the alleged victim and their parent or carer:

- Information about the progress of the information,
- Information about the findings of the investigation,
- Information about action taken in response to the findings.

Information disclosed under section 57 must be documented including any public interest reasons why information is not disclosed. This documentation should be provided to the Children's Guardian.

### EXPERT ASSISTANCE

The Children's Guardian may engage the services of a person for the purpose of getting expert assistance.

### OTHER

In any matter where an employee is in doubt as to the requirements of confidentiality, they should seek the advice of the head of relevant entity without discussing the matter with others. In any case where the serious concern involves actions or alleged neglect by the head of relevant entity an employee must take the matter of concern directly to a person in a higher position.

An employee must not take detrimental action against the complainant or person who reported the information. This includes any action that could reasonably be perceived to be detrimental action in reprisal. To do so may be regarded as serious misconduct and may result in disciplinary action.



## **CONSEQUENCES OF FAILURE TO COMPLY WITH THIS POLICY**

All employees are required to be aware of and comply with this policy. There may be consequences for a breach thereof.

An alleged breach of this policy may require:

- An internal report to be made,
- A referral to external authorities under relevant legislation, and/or
- An investigation to be conducted.

If a breach of this policy is established this may result in disciplinary action being taken against any employee.

In relation to an employee, such disciplinary action may result in termination of their employment or engagement.

## **DOCUMENTATION AND RECORD KEEPING**

The head of the entity is expected to keep adequate records that can demonstrate how their organisation has responded to a reportable allegation or conviction against an employee.

Systems for keeping records concerning the handling of allegations against employees must be set up. Records relating to the allegation should be kept on a file that is separate to the employee's personnel file.

Some information, in relation to the investigation, that may be pertinent to the care of the alleged victim or management of the employee, could be copied to their respective files. For example, a record of the critical incident and any ongoing action resulting from the investigation. All records should be kept confidentially and securely, with access granted only to those persons in the entity who have a need to know about that situation. Related files should be cross-linked to each other, for the purposes of future management.

In addition, many records kept by an entity regarding such proceedings are subject to the provisions of the Government Information (Public Access) Act 2009 (GIPA Act). These provisions apply to Government agencies and agencies in the private sector, whether the entity is ordinarily subject to the GIPA Act. However, correspondence from the Children's Guardian about reportable allegations is 'excluded information' under section 6 of the GIPA Act. These records cannot be released to any person under GIPA without first obtaining consent from the Children's Guardian.



## Appendix 1: Defining Reportable Conduct

### SEXUAL OFFENCE

A sexual offence is an offence of a sexual nature under a law of NSW, another state/territory, or the Commonwealth committed against, with or in the presence of a child, such as:

- sexual touching of a child;
- a child grooming offence;
- production, dissemination or possession of child abuse material.

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of a sexual offence.

### SEXUAL MISCONDUCT

The Children's Guardian Act 2019 (the Act), defines sexual misconduct to mean any conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence) and provides the following (non-exhaustive) examples:

- descriptions of sexual acts without a legitimate reason to provide the descriptions;
- sexual comments, conversations or communications;
- comments to a child that express a desire to act in a sexual manner towards the child, or another child.

Note - crossing professional boundaries comes within the scope of the scheme to the extent that the alleged conduct meets the definition of sexual misconduct. That is, conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence).

### ASSAULT

Technically, any form of unwarranted touching can, depending on the context in which it occurs, constitute an assault.

However, the Act explicitly exempts from notification assaults that are, in all the circumstances, trivial or negligible – as long as they are investigated under workplace procedures.

Generally, physical force that does not result in more than transient injury and which had no potential to result in serious injury – with consideration to the context and circumstances in which the alleged assault took place – would be considered 'trivial or negligible'.

Under the Act, an assault can occur when a person intentionally or recklessly (that is, knows the assault is possible but ignores the risk):

- Applies physical force against a child without lawful justification or excuse - such as hitting, striking, kicking, punching or dragging a child (actual physical force); or
- Causes a child to apprehend the immediate and unlawful use of physical force against them- such as threatening to physically harm a child through words and/or gestures and regardless of whether the person intends to apply any force (apprehension of physical force).
- Allegations of 'serious physical assault', if proven, must be reported to the Office of the Children's Guardian for the purpose of the Working With Children Check. Therefore, it is important to obtain the information necessary to determine whether the alleged assault, if proven, will constitute a serious physical assault



A physical assault is not serious where:

- it only involves minor force; and
- it did not, and was not ever likely to, result in serious injury.

A physical assault is serious where:

- it results in the child being injured, beyond a type of injury like a minor scratch, bruise or graze; or
- it had the potential to result in a serious injury; or
- the injury suffered may be minor, but the assault is associated with aggravating circumstances (in this regard, aggravating circumstances might include associated inhumane or demeaning behaviour by the employee, for example kicking a child, pulling a child by grabbing the child around the neck).

## **ILL-TREATMENT**

The Act defines ill treatment as conduct towards a child that is:

- unreasonable; and
- seriously inappropriate, improper, inhumane or cruel.

Ill-treatment can include a range of conduct such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and using inappropriate forms of behaviour management towards a child.

## **NEGLECT**

The Act defines neglect to mean a significant failure – by a person with parental responsibility for the child, or an authorised carer or an employee if the child is in the employee's care – to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child that causes or is likely to cause harm to the child.

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfil a duty or obligation, resulting in actual harm to a child or where there is the potential for significant harm to a child. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

## **EMOTIONAL OR PSYCHOLOGICAL HARM**

Behaviour that causes significant psychological or emotional harm is conduct that is intentional or reckless (without reasonable excuse), obviously or very clearly unreasonable and which results in significant emotional harm or trauma to a child.

- For a reportable allegation involving psychological harm, the following elements must be present:
- An obviously, or very clearly, unreasonable or serious act or series of acts that the employee knew or ought to have known was unacceptable, and
- Evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, and
- An alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.



## Appendix 2: Decision Tree Mandatory reporting for students at risk of significant harm

<https://reporter.childstory.nsw.gov.au/s/mrg>

### DECISION TREE

Use this when you suspect or have concerns that a child/young person has been, or may be abused or neglected due to any of the following examples below:

#### Physical Abuse

- You suspect a non-accidental injury to a child/young person that may have been caused by a parent/carer or other adult household member.
- You know of treatment of a child/young person by a parent/carer or other adult household member that may have caused or is likely to cause an injury.
- Child/young person was injured, or nearly injured, during a domestic violence incident involving adults.
- NOTE: If any of the above are true, but the person causing harm is a child living in the home, the decision to report should be guided by whether the incident was due to neglect: supervision. Please refer to that decision tree. If a child was injured by a non-household member, the issue may be a police matter. Female genital mutilation is an injury likely to be caused by a nonhousehold member and should be reported to both the Child Protection Helpline and NSW Police.

#### Neglect

- You suspect that a parent/carer is not adequately meeting child/young person needs.
- A child/young person appears neglected.
- A child/young/person is a danger to self or others and parents/carers are not supervising or providing care. For example: not adequately meeting child/young person's needs, such as: supervision, shelter, medical care, hygiene/clothing, mental health care, schooling/education or other basic needs.
- NOTE: For concerns related to shelter, use this tree for a young person who is able to make an informed decision around placement. Use 'Relinquishing Care' if young person is unable to make an informed decision and for children whose parent/carer is refusing to provide shelter.

#### Sexual Abuse

- Sexual abuse is sexual activity or behaviour that is imposed, or is likely to be imposed, on a child/young person by another person:
- You learn about sexual abuse or have concerns about sexual contact involving a child/young person.
- A child/young person has medical findings suspicious for sexual abuse.
- A child/young person's behaviour, including sexualised behaviour, makes you worry that he/she may be a victim of sexual abuse.
- You are concerned that a child/young person is at risk of sexual abuse.
- You are concerned about a child/young person's sexually abusive behaviour toward others.



## **Psychological Harm**

- A child/young person appears to be experiencing psychological/emotional distress that is a result of parent/carer behaviour such as domestic violence, carers mental health, carers substance abuse
- A child/young person is a danger to self or others as a consequence of parent/carer behaviour.
- You are aware of parent/carer behaviours, including domestic violence that are likely to result in significant psychological harm.
- You are aware of an underage marriage or similar union that has occurred or is being planned. An underage marriage is where one or both partners is under the age of 18. It is generally the result of coercion by adults but is illegal in Australia even if the child/young person does consent (apart from exceptional circumstances).
- NOTE: When a child/young person exhibits emotional or psychological distress, including being a danger to self or others, but the reporter lacks information on whether parent/carer behaviour had contributed to this behaviour, the Child/Young Person is a Danger to Self or Others, the Neglect: Supervision or Neglect: Mental Health Care decision trees may be more appropriate.

## **Child/Young Person is a Danger to Self and/or Others**

- A child/young person is demonstrating suicidal or self-injurious behaviours
- A child/young person is a danger to self or others and the reporter does not know whether the parent/carer behaviours contributed now or in the past. For example, parent/carer allows the child/young person to consume/use or has provided the child/young person with alcohol or drugs.
- NOTE: If you are aware that parent/carer actions or inactions contributed to this behaviour consider the Psychological Harm decision tree or the Neglect: Supervision or Neglect: Mental Health Care decision trees.

## **Relinquishing Care**

- Parent/carer states he/she will not or cannot continue to provide care for child under the age of 16 or a young person over age 16 when he/she is currently unable to make an informed decision (temporarily or permanently). If the young person is 16 years old or over and able to make informed decisions, please refer to the 'Physical Shelter' tree.
- Child/young person is in voluntary care for longer than legislation allows.
- Exclude appropriate care arrangements with other parents, relatives or kin.
- NOTE: See Glossary for further information of Informal Care Arrangements.

## **Carer Concern**

- You have information that the child/young person is significantly affected by carer concerns.
- NOTE: If child/young person has already experienced abuse or neglect, use the relevant abuse/neglect decision tree first. If a report to FACS is not indicated using those decision trees, you may consider a Carer Concern decision tree.

## **Unborn Child**

- Use this when you are concerned for the welfare of an unborn child upon his/her birth.
- NOTE: Reports related to an unborn child are not mandatory. Whilst reports relating to an unborn child are not mandatory, those with mandatory reporting responsibility should consider the benefits for the parent/s and unborn child of making a report to: Enable FACS and other Agencies to work collaboratively with the expectant parent/s to mobilise services for the potential benefit of the mother and unborn child; or Enable FACS to prepare appropriate statutory/protective intervention following the birth of the child.



**If none of the above Decision Trees apply but you are concerned about a child/young person who is in the care of the Director-General or under the parental responsibility of the Minister:**

Advise the Child Protection Helpline. Examples include but are not limited to:

- Being pregnant
- Running away, missing or homeless
- Self-harming or engaging in risk taking behaviour
- Being seriously injured or involved in a critical incident
- NOTE: It is the responsibility of the Director-General and the Minister to ensure that children/young people in temporary or statutory care are safe, adequately supported and cared for.

These descriptions will be displayed if Mandatory Reporting Guide (MRG) selects 'CARER CONCERN'.

Use this when you **do not** have information that a child/young person has been injured, neglected or psychologically harmed, however you have concerns for the actions and behaviours of the parent/carer due to the following examples:

### **Supervision**

- A child/young person has been or is going to be alone.
- A parent/carer is persistently inattentive or leaving child/young person alone or in dangerous company, resulting in or likely to result in significant adverse effects or harm.
- A child/young person is a danger to self or others and parent/carer is not providing adequate supervision.

### **Shelter/Environment**

- A child/young person or family is homeless.
- A child/young person is living in a dangerous environment.
- A child/young person is refusing to stay in an available safe place.

### **Food**

- A child/young person is not receiving appropriate nutrition, or is underweight or morbidly obese.

### **Hygiene/Clothing**

- A child/young person appears extremely dirty.
- A child/young person is wearing clothing that is not at all appropriate for conditions.
- A parent/carer is not attending to the child/young person's need for personal hygiene.

### **Medical Care**

- A child/young person has an untreated/inappropriately treated medical condition.

### **Mental Health Care**

- A child/young person has an untreated/inappropriately treated mental health condition.
- A child/young person is a danger to self or others and parent/carer is not providing intervention.

### **Education - Not Enrolled / Habitual Absence**

- A child/young person of compulsory school age is not enrolled.
- A child/young person of compulsory school age is habitually absent.



These descriptions will be displayed if MRG selects 'CARER CONCERN'.

Use this when you **do not** have information that a child/young person has been injured, neglected or psychologically harmed, however you have concerns for the actions and behaviours of the parent/carer due to the following examples:

### **Substance Abuse**

- Use this when a child/young person discloses significant substance use by a parent/carer.
- You observe a parent/carer to be significantly impaired by substance use.
- Inappropriate parent/carer substance use is reported to you by a third party.
- A child is born and there is evidence that the child was exposed to alcohol or drugs during pregnancy.

### **Mental Health**

- A child/young person discloses significant parent/carer mental health concerns.
- You observe a parent/carer to be significantly impaired by mental health concerns.
- Parent/carer mental health concerns are reported to you by a third party.

### **Domestic Violence**

- You are aware of an incident of domestic violence (observed by you or reported to you) that did not result in injury to a child/young person or psychological harm to a child/young person.
- You suspect domestic violence based on observations of extreme power/control dynamics (e.g., extreme isolation) or threats of harm to adults in household.

These descriptions will be displayed if MRG selects 'SEXUAL ABUSE'.

Use this when:

### **Child**

- The reported victim or potential victim is under age 16.

### **Young Person**

- The reported victim or potential victim is age 16 or 17.

### **Problematic Sexual Behaviour Toward Others**

- You are concerned/worried that a child/young person may be sexually harming another child or young person.



## Child Safe Policy and Procedure Acknowledgement

I \_\_\_\_\_ (name) have read, understood and agree to comply with the terms of this Child Safe Policy and Procedure.

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Signed

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Date

### REFERENCES

The Children's Guardian: <https://www.kidsguardian.nsw.gov.au>