



## PCYC NSW Child Protection Policy

|                |  |
|----------------|--|
| Purpose        | <p>This policy provides direction to ensure that PCYC NSW is a Child Safe Organisation.</p> <p>All adults involved with PCYC NSW have a duty of care to the children and young people linked to our facilities, activities and programs. The NSW community views PCYC as a safe place for their children and young people to become involved with.</p> <p>It is important that Frameworks are in place to ensure PCYC NSW continues to be this safe place for the children and young people in the community.</p>  |
| Overview       | <p>PCYC NSW is a community based, not for profit organisation which is committed to creating and maintaining an environment that ensures all involved in PCYC NSW activities, services and programs act in the best interests of children, young people and vulnerable adults.</p> <p>PCYC NSW is against all forms of abuse and neglect of children and young people and works with the community and appropriate Government Departments to ensure the safety of these important members of our society. Education in this area for our staff, community and the children and young people we come in contact with is important to PCYC NSW.</p> <p>It is essential that PCYC NSW creates a child and young person safe environment and has clear child protection procedures in place to prevent or minimise risk of harm to children and young people in our activities and clubs. We are also to be recognised as a safe environment for children and young people to disclose any concerns they may have in environments external to PCYC, or within PCYC.</p> <p>This policy concerns the prevention, identification and handling of allegations of child abuse and neglect. It outlines processes for clearing adults to work or volunteer in PCYC facilities, programs and activities, responsibilities within those facilities, programs and activities, and the processes to be followed should this policy be breached.</p> |
| Scope          | <p>This policy applies to all PCYC NSW Board Members, committee members, staff, volunteers, student placement, consultants, contractors, Activity Licence Users, and those involved in both Short and Long Term Licence Agreements. It is effective for all activities, fundraisers and events run both on site and off site.</p>  |
| Policy Content | <p>Page 2 - Policy<br/>Page 3 - Procedures<br/>    Police Check<br/>    Working with Children Check<br/>Page 4 - Induction</p>   |

|                   |  |
|-------------------|--|
|                   | <p>Page 5 - Responsibilities within PCYC NSW</p> <p>Page 6 - Mandatory Reporting</p> <p>Page 8 - Mandatory Reporting Guide<br/>Investigations</p> <p>Page 9 - Information Exchange<br/>Reportable Conduct</p> <p>Page 11 - Advice - NSW Ombudsman Child Protection Practice Update 2013<br/>Sexual Offence<br/>Sexual Misconduct</p> <p>Page 12 - Crossing Professional Boundaries<br/>Sexually Explicit Comments and Other Overtly Sexual Behaviour</p> <p>Page 13 - Grooming Behaviour</p> <p>Page 14 - Physical Assault</p> <p>Page 15 - Ill-treatment<br/>Neglect</p> <p>Page 16 - Psychologically Harmful Behaviour Towards a Child in Care<br/>Conduct not Reportable to the Ombudsman</p> <p>Page 17 - Procedures for Dealing with Allegations<br/>Reporting Alleged Reportable Conduct</p> <p>Page 18 - Determining if an Allegation is Reportable</p> <p>Page 20 - Definitions</p> <p>Page 21 – Web links</p> <p>Appendix<br/>PCYC NSW Mandatory Reporting Process<br/>A Guide to the Protection of Children and Young People in PCYC NSW</p>   |
| <p>1 - Policy</p> | <p>1.1 PCYC NSW has a multi layered approach to Child Protection, commencing with Police Checks for all adults who fall into the following categories:</p> <ul style="list-style-type: none"> <li>● PCYC NSW Board Member</li> <li>● PCYC NSW Committee Member</li> <li>● Managers and staff</li> <li>● Volunteers/student placements</li> <li>● Contractors/workshop providers (Service Agreement)</li> <li>● Activity Licence Users</li> <li>● Short Term Licence Agreement holders</li> <li>● Long Term Service Agreement holders</li> </ul> <p>This is followed up with Working with Children Check verification for all adults who fall into the following categories:</p> <ul style="list-style-type: none"> <li>● PCYC NSW Board Member</li> <li>● PCYC NSW Committee Member</li> <li>● Managers and staff</li> <li>● Volunteers/student placements</li> <li>● Activity Licence Users</li> <li>● Short Term Licence Agreement holders, including employees/volunteers who will be on site</li> <li>● Long Term Service Agreement holders, including employees/volunteers who will be on site</li> </ul> |

|                    |  |
|--------------------|--|
| <p>2.Procedure</p> | <p>Working with Children Checks may be requested for those in the following categories if they fall under the clauses mentioned in Working With Children Check 2.2 of this policy and procedure.</p> <ol style="list-style-type: none"> <li>I. Contractors/subcontractors (Service Agreement)</li> <li>II. Workshop providers (Service Agreement)</li> </ol> <p>All involved in PCYC NSW in the positions outlined above have a duty of care to protect children and young people from the risk of harm. This includes (but is not limited to) abuse, neglect, injury, allergy and health requirements.</p> <p>All those outlined in the positions above must have a PCYC NSW Police Check conducted and must provide a cleared Working With Children Check which will be verified by PCYC NSW.</p> <p>All those outlined in the positions above will receive a copy of this policy, a Guide to the Protection of Children and Young People in PCYC and an induction that includes the embedded child safe practices within the activity and premises they will be working in.</p> <p>All those outlined in the positions above have the responsibility to report any risk of harm; within their activity; by an employee or volunteer; suspected harm to a child or young person; or harm that has been disclosed to them by a child or young person.</p> <p><b>2.1 Police Check</b></p> <p>All applicants seeking any of the positions outlined in this policy, must complete a PCYC NSW Police Check. This Police Check must be cleared by the Police Youth Command before any further steps are taken.</p> <p><b><i>If this person is not cleared, they cannot be involved in PCYC NSW.</i></b> Police can issue a one month suspension notice on the spot, until an official banning notice is provided. This information will be added to Point of Sale (POS), by State Office staff.</p> <p><b>If cleared</b>, they must then also have their Working with Children Check verified.</p> <p>Copies of this Police Check must be kept on file within the club. Copies of employee Police Checks must be sent to the Human Resources Department at State Office.</p> <p>Police Checks on all employees and volunteers (or other positions outlined in this policy) are to be run annually and copies sent to HR@pcycnsw.org.au</p> <p><b>2.2 Working with Children Check</b></p> <p>This is a legal requirement for all child related employment or volunteering in NSW.</p> <p>All adults (18 years and older) seeking any paid or volunteer work in PCYC NSW must provide a NSW Working with Children Check.</p> |
|--------------------|--|

Volunteers can provide a Volunteer Working with Children Check, which can be applied for online at no charge. Volunteers must then visit Services NSW to provide proof of identity before the clearance is emailed or posted to them.

Those involved in paid work must provide an Employee Working with Children Check. This can be applied for online. Employees must then attend Services NSW, provide proof of identity and pay the administration fee before the clearance is emailed or posted to them.

Those applying for the positions outlined above must provide a copy of this clearance to PCYC NSW. PCYC Club Managers (or Human Resources for Manager and State Office positions) must verify the Working With Children Check online.

Only those verified with a clearance to work/volunteer can commence in the position.

***Where clearance is not received, this person cannot be involved with PCYC NSW.***

Copies of the cleared verification must be kept on file within the PCYC and a copy of employee clearances is to be provided to the Human Resources Department at State Office. (hr@pcycnsw.org.au)

Online verification is a support for PCYC NSW. If the employee/volunteer/licence holder comes under notice for child protection allegations, PCYC will receive notification and directive on future involvement in child related activities.

***PCYC NSW has a zero tolerance on breaches of this legal requirement.***

Club Managers **must** keep copies of Working with Children Checks and Police Checks together, and ensure that all office staff are aware of the obligation to have clearances/verifications as part of all Licences and Service Agreements.

- a) Contractors/sub-contractors/workshop providers under a Service Agreement who are used more than once within the PCYC must be asked to provide a Working with Children Check Verification.
- b) Contractors/subcontractors/workshop providers who will be required to work on a one off/one day job will not require a Working with Children Check for verification but must be supervised while they work when children are present.

## **2.3 Induction**

All PCYC NSW staff and volunteers will undergo Child Protection Induction online as part of their commencement process.

All those in positions as outlined in this policy, will receive a copy of this policy and the Guide to the Protection of Children and Young People in PCYC NSW, and be asked to sign that they have read and understood this as part of their position or contract.

## 2.4 Responsibilities within PCYC NSW

PCYC NSW Child Protection Practices are embedded into daily processes.

These include, but are not limited to, the following:

- a) **No Staff/volunteer/licence or agreement holder is to be on site without a cleared and verified Working with Children Check unless they fall into the categories outlined in Working With Children Check (2.2) or are a contractor or volunteer in the PCYC NSW Traffic Offenders Intervention Program.**
- b) **No Staff/volunteer/licence or agreement holder is to be on site without a cleared PCYC Police Check.**
- c) **All staff/volunteers/licence and agreement holders receive a copy of this policy and sign off that they have received and read it.**
- d) All staff and volunteers are to wear Identification tags at all times. Where their participation in an activity means this would be unsafe, the identity tag must be near at hand.
- e) Risk Assessments completed as required under policy.
- f) Supervision ratios and risk assessments take into account the age of all activity participants, the risks inherent in the activity, the ability levels of all participants, and the experience of the instructor/educator/staff member.
- g) Supervision levels to meet those required under policy for the activity or venue use.
- h) Where adults without verified Working with Children Checks are doing contract work, children will be removed from the area, or supervised by appropriate staff.
- i) No person who is a paid member of staff, volunteer, contractor or activity licensee/delegate is to establish or maintain a sexual relationship with any person within or associated with PCYC, who is aged under 18 years. This applies regardless of whether an established personal relationship exists with the person aged under 18 years, and regardless of whether the parties engage in sexual intercourse.
- j) PCYC NSW does not allow staff to babysit for families met through PCYC activities. Where pre-existing relationships occur, or babysitting is currently conducted, PCYC NSW Human Resources team should be notified.
- k) In cases where it is necessary for children to dress and undress for activities to the point of being naked, this should take place behind closed cubicle doors.
- l) Showering of adults in the same bathroom as children is prohibited where either party is undressed to the point of being naked, unless an individual shower cubicle with a lockable door is used by each person
- m) No photography or videoing is to be allowed in change rooms
- n) Where a person is observed to be photographing or videoing activities, that person is to be asked to confirm their relationship to a child or young person involved, or to the activity organiser. Where a satisfactory relationship cannot be confirmed, that person

is to be directed to cease and to leave the premises, and the incident is to be reported immediately to the PCYC YCM or the local Police station

- o) Whenever possible, a mix of male and female staff and volunteer supervisors should be scheduled for activities and programs involving children and young people
- p) At least two adult supervisors are required to attend any camps or similar overnight activities. Camps involving male participants require at least one male supervisor. Camps involving female participants require at least one female supervisor
- q) Where it seems likely that an adult will be left alone with a child, efforts must be made to ensure that there are clear lines of sight to other adults. This may include moving to a more visible area of the PCYC (hall/foyer), or encouraging a parent/activity participant to remain until the child is collected.
- r) Staff to regularly walk through the facility, checking on classes, supervision and safety of participants and equipment.
- s) Doors to activity spaces should be left open during activities, unless they have clear glass panels or internal windows to allow observation from outside the room.
- t) Non-abrasive language should be used with the children and young people in our activities. Bullying and threats (both verbal and physical) are not considered appropriate coaching methods with PCYC NSW activities.
- u) Where it is necessary to demonstrate a technique with a participant, those coaching should demonstrate with the oldest or most experienced participant, ensuring that the participant has the knowledge required to assist in demonstrating the skill.
- v) Information relating to permission for collection from activities, photography, medication and information on allergies and medical concerns will be provided to those who are working with the child/young person. This will ensure the child/young person remains safe from harm within PCYC.
- w) Only appropriate physical contact is used within PCYC
  - i. Touch is non-intrusive to shake hands, pat on the back or upper arm for congratulations or encouragement
  - ii. Given to comfort a distressed child, in a non-intrusive way such as hand on the upper back or shoulder
  - iii. Required to give practical assistance if children are hurt and require first aid
  - iv. Demonstrating and assisting in practice of known/new moves to advance the progression of required technique.
  - v. After explanation that touch will be required to assist improve technique or demonstrate technique. Allowing time for child/young person to deny touch.
  - vi. The physical contact must be appropriate to the activity.

## **2.5 Mandatory Reporting**

Within PCYC NSW all employees and volunteers are Mandatory Reporters.

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>a) Employees and volunteers are mandated to report to Community Services if they have current concerns about the safety or welfare of a child relating to section 23 of the NSW Children and Young Persons (Care and Protection) Act 1998</li> <li>b) Section 23 (1): <ul style="list-style-type: none"> <li>a. Child is at significant risk of harm – Neglect <ul style="list-style-type: none"> <li>a2) Basic physical or psychological needs not being met or are at risk of not being met.</li> </ul> </li> </ul> </li> <li>c) Families unwilling or unable to provide necessary medical care <ul style="list-style-type: none"> <li>b1) Families unwilling or unable to arrange for the child or young person to receive an education</li> </ul> </li> <li>d) Child is at significant risk of harm – Physical / Sexual abuse</li> <li>e) Child is at significant risk of harm – Domestic violence</li> <li>f) Child is at significant risk of harm – Serious Psychological harm <ul style="list-style-type: none"> <li>a. Child is at significant risk of harm – Prenatal report</li> </ul> </li> <li>g) Employees will undergo training in relation to child protection and reporting as part of the training budget. This will be offered to volunteers.</li> <li>h) All employees and volunteers to undergo online Child Protection Induction on commencement with PCYC and on an annual basis as determined by PCYC NSW.</li> <li>i) Mandatory Reports should be treated with strict confidentiality in adherence to the PCYC NSW Confidentiality Policy and Procedures.</li> <li>j) Any employee/volunteer who forms a belief based on reasonable grounds that a child is at risk of harm should discuss their concerns with their supervisor as they may have information the employee/volunteer is not aware of. The incident/s that lead the employee/volunteer to form the belief should be recorded concisely, include as much detail as possible and be kept in a secure place to ensure confidentiality.</li> <li>k) If staff or volunteers are unsure how to respond to a child who has disclosed to them, they should suggest that the child might speak to their supervisor about this, if they are comfortable to do so. Staff and volunteers should be aware that disclosure is made to a trusted person, so</li> <li>l) Within PCYC NSW all Child Protection discussions should then be taken to PCYC’s Child Protection Officers at State Office. Child Protection Officers are Penny Beecham 0400 353 089 and Karen Hope 0409 154 310. Information on contact details for State Office Child Protection Officers will be kept up to date on the PCYC NSW Child protection Reporting Process poster and distributed a minimum of annually to clubs.</li> <li>m) The Child Protection Officer will then assist staff in completing the online Mandatory Reporters Guide (MRG) to determine whether the report meets the threshold for <b>significant</b> risk of harm (see point below for further information regarding the MRG).</li> <li>n) If directed by the MRG to report to Community Services, should report their concerns to the Child Protection Helpline</li> <li>o) Mandatory Reporters phone 132 111</li> <li>p) When reporting to the Child Protection Helpline, it is important to have as much information as possible available regarding the child/children</li> </ul> |
|--|---|

involved and any specific incident details. This might include child's information, family information, reporter details and outcomes of the MRG.

- q) If your supervisor has been advised to, but has not reported to Community Services, you are legally responsible to do so.
- r) Once a report is made to the Child Protection Helpline PCYC NSW requires the completion of the Child Protection Incident Report, located on the PCYC Intranet. This report enables PCYC to pull up confidential information at a later point if subpoenaed, so information provided in this report must be as detailed as possible and include all contact information, reasons for the report and the details of the reporter.
- s) Information on this report will be provided to the Commander – Youth Command, by the Child Protection Officer. The Commander shares a duty of care to staff and young persons under PCYC's supervision.

#### **2.6 Mandatory Reporting Guide (MRG):**

- a) The MRG has been developed to help frontline mandatory reporters, determine whether the risk to a child or young person meets the new statutory threshold of 'risk of significant harm'. The MRG will guide the reporter on what action should be taken. The MRG is an interactive tool and is available online at <https://reporter.childstory.nsw.gov.au/s/>
- b) If still in doubt the Community Services Helpline will provide feedback about whether or not the report meets the new threshold for statutory intervention.
- c) If new information presents concerning the child or young person run the MRG tool again.
- d) Where concerns do not meet the significant harm threshold, the MRG tool may guide you to 'Document and continue the relationship'. This requires the service to continue to support, provide services, and coordinate assistance and referral for the child and their family. This documentation should be completed on the PCYC Intranet in the Child Protection Incident Report. This should be clearly labelled as "Documenting and Observation".
- e) Regardless of the outcome of using the MRG, the family and child will require support and referral where possible.
- f) Follow up with the Child Protection Officer on future steps and documenting of further concerns
- g) The report page from the MRG should be printed and placed in the child/family file for future reference regardless of whether or not further action is recommended.

#### **2.7 Investigation:**

- a) Where allegations of inappropriate sexualised behaviour are brought to staff by children at the time of the incident, the supervisor on shift should interview each child by simply asking each child involved what happened in the event. This should then be taken to the PCYC Child Protection Officer for advice and follow up.
- b) Where the allegation is brought by a parent at a later date and as described to them by their child, write down as much information as possible, consult with staff who were supervising children at the time



for further information and then contact the PCYC Child Protection Officer for advice and follow up.

### **2.8 Information Exchange:**

- a) In order to provide effective support and referral it may be necessary to exchange information with other prescribed bodies including government agencies or non-government organisations and services.
- b) The NSW Children and Young Persons (Care and Protection) Act 1998 has been amended (2009) to include chapter 16A Information Exchange
- c) Chapter 16A requires prescribed bodies to take reasonable steps to coordinate decision making and the delivery of services regarding children and young people
- d) Under Chapter 16A NSW Children and Young Persons (Care and Protection) Act 1998, educators will exchange information that relates to a child or young person's safety, welfare or wellbeing, whether or not the child or young person is known to Community Services and whether or not the child or young person consents to the information exchange.
- e) The information requested or provided **must** relate to the safety, welfare or wellbeing of the child. Information includes:
  - f) A child or young person's history or circumstances
  - g) A parent or other family member, significant or relevant relationship
  - h) The agency's work now and in the past
- i) Where information is provided in good faith and according to legal provisions, under section 29 & section 245G NSW Children and Young Persons (Care and Protection) Act 1998; reporters cannot be seen as breaching professional etiquette or ethics or as a breach of professional standards. There can be no liability for court action.

### **2.9 Reportable Conduct**

The safety, welfare and wellbeing of children and young people are vital and a key priority for PCYC NSW. It is essential that clubs create a child safe environment and have clear child protection procedures in place to prevent or minimise any related risks to children. This is also critical when responding to allegations against employees, should they arise. PCYC NSW also has a responsibility to ensure its employees are treated fairly and the rights of the employee are respected during an investigation and any disciplinary process as a result of the investigation.

Parents and other guardians of children attending PCYC NSW have a right to expect that their children will be safe and looked after during their time with the club, and that all protective measures will be considered for children should an allegation arise. To ensure confidence in PCYC NSW, parents and other guardians will be provided with advice about this policy, as well as an identified position whom they can report any concerns to in relation to the conduct of an employee. Within PCYC NSW this is the Child Protection Officers within the Human Resources team.

This policy section concerns the prevention, identification and handling of

allegations of child abuse and neglect made against employees. In relation to Family and Community Services, such allegations are referred to as reports of Risk of Significant Harm (ROSH). In relation to the NSW Ombudsman, such allegations are referred to as allegations of reportable conduct. If such allegations as they arise allege or indicate a criminal offence, they are to be forwarded to NSW police.

As an employer, PCYC NSW has a responsibility to:

- a) Ensure that all employees/volunteers are aware of their obligations to report suspected risk of significant harm and reportable allegations, and of the procedure for doing this.
- b) Provide support for employees to ensure they are given a copy of professional standards related to relationships with children, including a Code of Conduct.
- c) Make sure that all employees are aware of the indicators of child abuse and neglect of children and young people, and ensure access to relevant training to assist with this.
- d) Investigate allegations of a child protection nature specifically related to the actions of any employees, and ensure that appropriate action is taken in relation to the finding.
- e) Advise employees under investigation for an allegation of a child protection nature, of support services that are available from Human Resources (HR), the Employee Assistance Program (EAP) and the union.
- f) Ensure that procedural fairness, applies in situations where a decision is to be taken which could have a detrimental effect on an employee's professional circumstances.
- g) Assist employees in implementing relevant policy and procedures related to protecting children and young people from harm.
- h) Ensure that current employees and new applicants for child related work have undergone a Working with Children Check and are cleared to work with children.
- i) Ensure that parents or other caregivers are provided with reasonable advice in relation to any child protection concerns regarding their children, subject to confidentiality and 'need to know' considerations.
- j) Consider the support needs of children and their parents/caregivers where child protection allegations have arisen.

2.10 Allegations of reportable conduct (including related convictions) are defined in Section 25A of the *Ombudsman Act 1974* as:

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

This may take the form of an allegation or an identified conviction against an

employee.

It's important to note that reportable conduct only applies to:

- i. A current employee or one employed at the time the head of agency became aware of the allegation/s.
- ii. An alleged victim who was under the age of 18 years at the time the alleged conduct occurred.
- iii. An agency in the jurisdiction of the NSW Ombudsman.
- iv. Alleged conduct that falls within the following definitions, and is not otherwise exempted from reporting.

**2.11 The following advice is taken from the NSW Ombudsman *Child Protection Practice Update 2013*:**

**a) Sexual offence**

The term 'sexual offence' encompasses all criminal offences involving a sexual element 'committed against, with or in the presence of a child'.

These offences include (but are not limited to) the following:

- i. Indecent assault
- ii. Sexual assault
- iii. Aggravated sexual assault
- iv. Sexual intercourse and attempted sexual intercourse
- v. Possession/ dissemination/ production of child pornography or child abuse material
- vi. Using children to produce pornography
- vii. Grooming or procuring children under the age of 16 years for unlawful sexual activity
- viii. Deemed non-consensual sexual activity on the basis of special care relationships.

All cases involving a sexual offence would also involve sexual misconduct.

**b) Sexual misconduct**

The term 'sexual misconduct' includes conduct that does not necessarily equate to a criminal offence.

For sexual misconduct to constitute reportable conduct, the alleged conduct must have been committed against, with or in the presence of a child.

There are three categories of sexual misconduct in addition to sexual offences:

- a) Crossing professional boundaries
- b) Sexually explicit comments and other overtly sexual behaviour, and

- c) Grooming behaviour.

### **2.12 Crossing professional boundaries**

Sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or intimate:

- a) Relationship with;
- b) Conduct towards; or
- c) Focus on;

a child or young person, or a group of children or young persons.

In the area of 'crossing professional boundaries', particular care should be exercised before making a finding of sexual misconduct. For example, an employee who, on an isolated occasion, 'crosses professional boundaries' in a manner that involves little more than poor judgement could not be said to have engaged in sexual misconduct. Also, in cases where an employee has 'crossed boundaries' in terms of their relationship with a child, if there is evidence which clearly shows that the employee did not seek to establish an improper relationship with the involved child, then this does not constitute sexual misconduct.

However, persistent less serious breaches of professional conduct in this area, or a single serious 'crossing of the boundaries' by an employee, may constitute sexual misconduct, particularly if the employee either knew, or ought to have known, that their behaviour was unacceptable.

Codes of conduct that outline the nature of the professional boundaries which should exist between employees and children/young people can be particularly useful. For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be necessary to provide more detailed written advice about what constitutes appropriate behaviour.

### **2.13 Sexually explicit comments and other overtly sexual behaviour**

Sexual misconduct includes a broad range of sexualised behaviour with or towards children. While it is not possible to provide a complete and definitive list of unacceptable sexual conduct involving children, the following types of behaviour give strong guidance:

- a) sexualised behaviour with or towards a child (including sexual exhibitionism)
- b) inappropriate conversations of a sexual nature
- c) comments that express a desire to act in a sexual manner
- d) unwarranted and inappropriate touching involving a child

- e) personal correspondence and communications (including emails, social media and web forums) with a child or young person in relation to the adult's romantic, intimate or sexual feelings for a child or young person
- f) Exposure of children and young people to sexual behaviour of others including display of pornography
- g) Watching children undress in circumstances where supervision is not required and it is clearly inappropriate.

#### **2.14 Grooming behaviour**

This means patterns of behaviour aimed at engaging or 'grooming' a child as a precursor to sexual abuse. It is a separate offence from the actual sexual abuse.

Grooming or procuring a child under the age of 16 years for unlawful sexual activity is a sexual offence. However, Schedule 1(2) of the *Child Protection (Working with Children) Act* also recognises grooming as a form of sexual misconduct. As grooming is a sexual offence if the alleged victim is under 16 years old, caution should be exercised before reaching a grooming finding (particularly in cases where the behaviour is directed towards a child under 16 years). As an alternative to grooming, in many cases it will be more appropriate to consider whether there has been a 'crossing of professional boundaries' (see above) and/or other more overt sexual behaviour.

Furthermore, behaviour should only be seen as 'grooming' where there is evidence of a pattern of conduct that is consistent with grooming the alleged victim for sexual activity, and that there is no other reasonable explanation for it. The types of behaviours that may lead to such a conclusion include (but are not limited to) the following:

- a) Persuading a child or group of children that they have a 'special' relationship, for example by:
  - i. Spending inappropriate special time with a child
  - ii. Inappropriately giving gifts
  - iii. Inappropriately showing special favours to them but not other children
  - iv. Inappropriately allowing the child to overstep rules
  - v. Asking the child to keep this relationship to itself.
- b) Testing boundaries, for example by:
  - i. Undressing in front of a child
  - ii. Encouraging inappropriate physical contact (even where it is not overtly sexual)
  - iii. Talking about sex
  - iv. 'Accidental' intimate touching.
- c) Inappropriately extending a relationship outside of work (except where it may be appropriate - for example where there was a pre-existing

friendship with the child's family or as part of normal social interactions in the community).

- d) Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.

An adult requesting that a child keep any aspect of their relationship secret or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

### **2.15 Physical Assault**

An assault of a child includes any act by which a person intentionally inflicts unjustified use of physical force against a child. An assault can also occur if a person causes a child to reasonably fear that unjustified force will be used against them. Even if a person who inflicts, or causes the fear of, physical harm does not intend to inflict the harm or cause the fear, they may still have committed an assault if they acted recklessly (i.e. the person ought to have known that their actions would cause physical harm or the fear of such harm).

Assaults can include hitting, pushing, shoving, throwing objects, or making threats to physically harm a child.

It is important to consider the context in which physical force is used against a child to determine whether it constitutes an assault. For example, an assault has not taken place where there is use of reasonable force in the following examples:

- a) Exercising appropriate control over a child
- b) Disarming a child or young person seeking to harm themselves or others
- c) Separating children or young people who are fighting
- d) Moving a child or young person out of harm's way
- e) Restraining a child or young person from causing intentional damage to property
- f) Self defence or the defence of others.

When considering whether the physical force used was reasonable, a range of variables should be taken into account, having regard to the circumstances of the case. Variables that may be relevant include matters such as the age, maturity, health or other characteristics of the child or children involved, and professional codes of conduct or standards that the worker is required to follow.

### **2.16 Ill-treatment**

Ill-treatment captures those circumstances where a person treats a child or young person in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner.

The focus is on the alleged conduct rather than the actual effect of the conduct on the child or young person.

Ill-treatment can include disciplining or correcting a child in an unreasonable and seriously inappropriate or improper manner; making excessive and/or degrading demands of a child; hostile use of force towards a child; and/or a pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

In making a determination regarding ill-treatment it may be important to consider relevant codes of conduct that outline the nature of professional conduct and practice by employees/workers which should occur when working with children/young people.

### **2.17 Neglect**

Neglect includes either an action or inaction by a person who has care responsibilities towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

#### ***a) Supervisory neglect:***

- i. An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
- ii. An intentional or reckless failure to adequately supervise a child, or a significantly careless act or failure to act, that:
  - involves a gross breach of professional standards, and
  - has the potential to result in the death of, or significant harm to, a child.

#### ***b) Carer neglect:***

- i. Grossly inadequate care that involves depriving a child of the basic necessities of life: such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.

#### ***c) Failure to protect from abuse:***

- i. An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.

#### ***d) Reckless acts (or failure to act):***

- i. A reckless act, or failure to act, that:
  - involves a gross breach of professional standards, and
  - has the potential to result in the death of, or significant harm to, a child.

An incident can constitute neglect if it contains any element within this definition.

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.

### **2.18 Psychologically harmful behaviour towards a child in care**

Behaviour that causes psychological harm is conduct that is obviously or very clearly unreasonable and results in significant emotional harm or trauma to a child. There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.

For reportable conduct involving psychological harm, the following elements must be present:

- a) 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
- b) 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
- c) an alleged causal link between the employee's conduct and the psychological harm to the child.

Psychological harm can include the exacerbation or aggravation of an existing psychological condition, such as anxiety or depression.

When it is alleged that an adult's behaviour has caused psychological harm to a child, it will often be necessary to obtain a psychological or medical assessment of the child to determine whether psychological harm can be established. However, a clinical diagnosis will not be required in every circumstance – particularly if the assessment itself may cause harm. In addition, in certain serious and/or ongoing domestic violence cases, it may be open to infer that a child has been psychologically harmed, in the absence of a clinical diagnosis of such harm.

Finally, it is important to stress that, when a report has established a child has a psychological condition, it is still necessary to show the condition was caused by the employee's conduct.

### **2.19 Conduct not reportable to the Ombudsman**

It is important to consider the context in which physical force is used against a child to determine whether it constitutes an assault. For example, an assault has not taken place where there is use of reasonable force in the following examples:

- a) exercising appropriate control over a child
- b) disarming a child or young person seeking to harm themselves or others
- c) separating children or young people who are fighting
- d) moving a child or young person out of harm's way
- e) restraining a child or young person from causing intentional damage to property



f) self defence or the defence of others.

When considering whether the physical force used was reasonable, a range of variables should be taken into account, having regard to the circumstances of the case. Variables that may be relevant include matters such as the age, maturity, health or other characteristics of the child or children involved, and professional codes of conduct or standards that the worker is required to follow.

In addition the Ombudsman Act specifically outlines certain conduct which does **not** need to be reported:

- i. 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
- ii. 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.

#### **2.20 Procedures for dealing with allegations – what actions must be taken when there is an allegation of child abuse made against an employee?**

If there is an allegation against an employee including an anonymous report involving a child the following must happen:

- a) The PCYC NSW Child Protection Officer must be informed.
- b) If the allegation is against a KidzCare educator the Nominated Supervisor will be notified by the Child Protection Officer.
- c) If not reportable conduct, often issues can be resolved between PCYC and the employee using the PCYC NSW grievance procedure/complaints policy.

#### **2.21 Reporting alleged Reportable Conduct by an employee – whose responsibility?**

Within PCYC NSW this responsibility falls to the Child Protection Officer/s. The Child Protection officer must respond promptly, in accordance with legislative responsibilities, and in a sensitive manner when they become aware of an allegation of a child protection nature against an employee.

In situations where an allegation has been made the Child Protection Officer and Human Resources will determine what further information, if any, should be sought.

The Child Protection Officer will record details of the allegation using the person's exact words to describe the allegation. In some matters written information such as incident reports may have been provided by the

complainant or witnesses.

All necessary and reasonable steps are to be taken to ensure the identities of the persons who made the allegations, or who are the subject of the allegations, are treated confidentially. The identity of the reporter of Risk of Significant Harm to a child is protected under the *Children and Young Persons (Care and Protection) Act 1998* and disclosure of their identity constitutes a breach of that Act.

However, no guarantees of confidentiality should be given because the identity of those people who are involved in, or witnessed, the alleged conduct may need to be revealed to the Employee who is the subject of the allegation, to enable the effective investigation of the matter. Identifying information may also need to be provided to Community Services or NSW Police if either agency is involved in an allegation.

Information to collect:

- a) The details of the allegation
- b) Names of Employee/child/ren involved
- c) What is alleged to have occurred
- d) Date and times of the alleged incident
- e) Any identified or alleged further risks/concerns to children
- f) The contact details of the person reporting the allegation
- g) The name and contact details of the initial complainant
- h) Names and addresses of the parents or caregivers of the children involved
- i) Names of witnesses and how they may be contacted
- j) Whether the employee/s already knows about the allegation.

#### **2.22 Determining if an allegation is a reportable allegation**

- a) Clarify exactly what the allegation is – collect the facts
- b) When and where?
- c) Who was involved?
- d) Compare against definitions for reportable conduct
- e) Record details
- f) Record any conclusion and any further action that is required.

#### **2.23 Consider if the alleged conduct:**

- a) Was reasonable for the purpose of caring for children
- b) In line with the organisation's policies and procedures

c) In agreement with the Code of Professional Conduct for Educators

Does the allegation relate to any reportable conduct detailed in this policy? If yes, the Child Protection Officer is required to report the matter to the Ombudsman within 30 days. This is done by attaching a copy of the initial complaint and any other relevant information to a completed Part A Notification form, which can be found on the NSW Ombudsman website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au). Download the form, complete the required sections, print a copy (the original stays with your investigation file), sign it and forward it by registered mail to the NSW Ombudsman.

**If No:**

Follow the organisation's usual policy and procedures and conduct your own analysis of the situation to hand and record findings. If the organisation finds that the alleged conduct is more serious than initially assessed and is reportable, then the Ombudsman must be notified as soon as possible.

If unsure about whether the allegation constitutes reportable conduct, or should you wish to clarify any aspect of your management of an investigation, contact the office of the Ombudsman for advice on (02) 9286 1000. Ask to be put through to the Enquiries section for the Employment Related Child Protection Division.

**2.24 How will PCYC NSW deal with the initial notification against an Employee?**

Assess the immediate (known or potential) risks associated with the allegation in relation to the alleged victim; to other children/witnesses; to the employee; to other staff; to confidentiality; to the conduct of the investigation, and to the service.

Assess the initial support needs for all the relevant parties to the allegation. This includes the alleged victim/s; the employee/s subject to the allegation/s; other children accessing the service; the parents and other caregivers of the alleged victim and other children involved; other staff. This can range from enquiring about a person's wellbeing; ensuring a person has family support, someone to talk to; or requires more formal support. Medical or counselling requirements may be identified at this point.

Children or young people who are victims or witnesses in a matter that relates to an employee need sensitive, ongoing support. Every effort must be made to ensure that all children or young people in this situation are treated fairly and with respect.

Child Protection Officers must ensure that children and young people are informed of:

- a) their right to be treated fairly and without discrimination or intimidation
- b) their right to choose not to be interviewed or give a statement
- c) their entitlement to support

- d) the support services available to them
- e) the reporting responsibilities of agencies where reportable allegations and/or risk of significant harm concerns, or criminal complaints, are identified.

An employee who is the subject of the allegation is able to seek support from their employer – this may be in the form of a specialist counsellor. The employee can take a support person to an interview or meeting. Support is also available from relevant trade union representatives or other support groups.

Consider which individuals and other agencies/services will be party to the investigation. This would likely include the employee subject of the allegation; the alleged victim and their parents/caregivers; potential witnesses; your agency, the Department of Education and Communities Directorate; professional support groups and other industrial representatives, and the NSW Ombudsman. It could possibly include Family and Community Services, NSW Police, health services or other contracted services.

By considering stakeholder involvement and what expectations they may have in a matter, investigations can be better planned and likely complaints avoided.

#### **2.25 Further considerations**

- a) Unless advised not to do so by Police or Community Services, when practicable inform the employee subject of an allegation of the general allegations and the immediate actions that need to be taken. Do not disclose the details of the allegations to the employee at this stage. Rather, advise them that they will be provided with a formal letter of allegation and offered an opportunity to respond.
- b) PCYC NSW Child Protection Officer must also:
- c) Maintain confidentiality – only disclose to those who need to know
- d) Remind the employee and other staff affected by the allegations to respect expectations of privacy and requirements of confidentiality.
- e) Keep a record of all allegations and actions.
- f) Keep notes of relevant conversations.

|             |   |
|-------------|---|
| Definitions | <p><b>Child or Young Person</b></p> <ul style="list-style-type: none"> <li>From the Children and Young Persons (Care and Protection) Act in relation to Child Protection a Child is anyone under the age of 16. Young Person is aged 16 to 18 years.</li> </ul> <p><b>Duty of Care</b></p> <ul style="list-style-type: none"> <li>Look out for the safety of those in our activities. Protect from dangers from equipment, the activities inherent risks, other participants and our staff/volunteers.</li> </ul> <p><b>Mandatory Reporter</b></p> <ul style="list-style-type: none"> <li>A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children; and</li> <li>A person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children</li> </ul> <p><b>Risk of Significant Harm</b></p> <ul style="list-style-type: none"> <li>A child or young person “is at risk of significant harm if current concerns exist for the safety, welfare or wellbeing of the child or young person because of the presence, to a significant extent, of ... basic physical or psychological needs are not being met or at risk of not being met ... not receiving necessary medical care ... not receiving an education in accordance with the <i>Education Act 1990</i> ... physical or sexual abuse or ill-treatment ... serious physical or psychological harm as a consequence of living in a household where there have been incidents of domestic violence ... serious psychological harm ... the child was the subject of a prenatal report under section 25 and the birth mother did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical the risk factors that gave rise to that report”</li> </ul> |
| Web Links   | <p>Working with Children Check Application<br/> <a href="http://www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check/apply/apply">http://www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check/apply/apply</a></p> <p>Verifying the Working with Children Check Clearance<br/> <a href="https://wwccheck.cyp.nsw.gov.au/Employers/Login">https://wwccheck.cyp.nsw.gov.au/Employers/Login</a></p> <p>Mandatory Reporters Guide<br/> <a href="https://reporter.childstory.nsw.gov.au/s/">https://reporter.childstory.nsw.gov.au/s/</a></p>   |

|  |   |
|--|---|
| Created By                               | Penny Beecham, Mark Johnson, Ian Kirk, Karen Hope and Justin Hayes  |
| Date Approved                            | March 2 <sup>nd</sup> , 2017  |
| Date of Commencement                     | March 2 <sup>nd</sup> , 2017  |
| Amendment History                        | Version II – March 2 <sup>nd</sup> , 2017 – Added clause numbering for simplification. Changed reference to page 5, on page 5, to reference 2.2. Page 4 “Club managers are encouraged” changed to “club managers <b>must</b> ”. 2.4 k) change to wording where children are required to change for activities on page 5. Removal of definition of Parent Volunteer as these are not referenced in this document.  |
| Date For Next Review                     | 1 December 2017   |
| Related Documents                        | Children and Young Persons (Care and Protection) Act 1998 (NSW)<br>Children and Young Persons (Care and Protection) Amendment (Parental Responsibility Contracts) Act 2006 (NSW)<br>Children and Young Persons (Care and Protection) Amendment Bill 2009 (NSW)<br>Child Protection (Offenders Registration) Act 2000 (NSW)<br>Child Protection (Working with Children) Act 2012 (NSW)<br>Crimes Act 1900 (NSW)<br>Commission for Children and Young People Act 1998 (NSW)<br>The Ombudsman Act 1974 (NSW)<br>Family Law Act 1975 (Commonwealth)<br>Education and Care Services National Law 2010<br>Education and Care Services National Regulations 2010 and 2014 Update<br>Reportable Conduct – Identifying and Responding to Allegations against an Employee. (Sample Policy for OOSH – Network of Community Activities)<br><br>A Guide to the Protection of Children and Young People in PCYC NSW<br>Appropriate Physical Contact in OOSH – Network of Community Activities<br>PCYC Child Protection Process (November 2016)<br>PCYC Code of Conduct<br>Providing a Child Safe Environment Policy (PCYC KidzCare) |
| Policies/Rules Superseded by this Policy | PCYC NSW Child Protection Policy February 2017  |
| Search Key Words                         | Child, Protection, Mandatory Report, Reportable Conduct, Abuse  |