

SECTION 1 – INTRODUCTION

1.1 BACKGROUND

Fairfield City Council supports the rights of all children and young people and is committed to their care and protection. Council believes the safety and wellbeing of children is paramount and shares the view it is everybody's business. In NSW, the safety and wellbeing of children and young people is the shared responsibility of parents and families supported by the community, government and non-government organisations. In accordance to the *Children and Young Persons (Care and Protection) Act 1998*, Council staff, volunteers, partners and contractors share the commitment to the awareness, prevention and response to the suspected risk of significant harm of a child or young person. Council maintains a rigorous and consistent recruitment, screening and selection process. Council takes seriously any allegations against staff involving children and young people and supports an internal investigation that is procedurally fair and through.

1.2 PURPOSE

The purpose of this policy is:

- To ensure Council is compliant with NSW child protection legislation including mandatory reporting , recruitment and selection and responding to allegations against staff involving children and young people
- To articulate the legal and professional obligations of Council staff in relation to child protection
- To promote the message that the health, safety and wellbeing of all children and young people is paramount
- To ensure Council implements procedures for the prompt and confidential response to all allegations against Council staff, volunteers, students and persons undertaking work experience and contractors/suppliers where a child or young person is involved.
- To ensure that Council provides a safe environment for children and young people whilst on Council premises and utilising Council services.

1.3 SCOPE AND STAKEHOLDERS

This policy applies to all Council staff, contractors, sub-contractors, work experience participants, volunteers, students on placement, Family Day Care Educators and any adults that live in their home, facility hirers and leases.

1.4 DEFINITIONS

Abuse: a term used to refer to different types of harm or maltreatment. In this document it refers to types of harm or maltreatment that children and young people experience, including; physical harm, sexual assault, exposure to domestic violence, psychological harm and prenatal risks.

Child: A person who is under the age of 16 years.

FaCS: Family and Community Services, the NSW Government agency responsible for the care and protection of children and young people.

Mandatory Reporters: People who deliver services, wholly or partly, to children as part of their paid or professional work. This is regulated by the Children and Young Persons (Care and Protection) Act 1998. This includes, but is not limited to, professionals working in: health care; welfare; education; children's services; residential services; and, law enforcement. Mandatory reporters can call the **Child Protection Helpline on 132 111**. It is open 24 hours a day, 7 days a week.

MRG: Mandatory Reporter Guide. The MRG is a decision making tool that all Mandatory Reporters should refer to when a case of suspected risk of significant harm of a child or young person to determine if reporting is required.

Neglect: a term used to refer to a pattern characterised when a parent or caregiver cannot regularly provide a child or young person the basic requirements for his or her growth and development such as food, clothing, shelter, medical and dental care, adequate supervision and adequate parenting and care.

Reasonable Grounds: Means that it is suspected a child may be at risk of significant harm based on observations of the child, young person or family, and/or what the child, young person, parent or another person has told you

Risk of Significant Harm (ROSH): Concern/s about a child or young person that are sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent. It is something that is not minor or trivial and that may be reasonably expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or wellbeing.

The NSW Children and Young Persons (Care and Protection) Act 1998 defines children at risk of significant harm if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
- the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
- in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990*—the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
- the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,

- a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,
- the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

In addition, it can result from a single act or omission or an accumulation of these. Risk of significant harm is the NSW threshold to report child protection concerns to FaCS via the Child Protection Helpline.

WWCC: Working with Children Check. The WWCC is a requirement for anyone who works or volunteers in child-related work in NSW. The check provides either clearance to work with children for five years, or a bar against working with children.

Young Person: A young person can be defined in a variety of ways depending on the context. For the purpose of this Policy a young person is a person who is over the age of 16 years but under the age of 18 years.

1.5 LEGISLATIVE CONTEXT

Child Protection (Working with Children) Act 2012
Child Protection (Working with Children) Regulation 2013
Children and Young Persons (Care and Protection) Act 1998
Children and Young Persons (Care and Protection) Regulation 2012
Commission for Children and Young People Act 1998
Crimes (Domestic and Personal Violence) Act 2007
Education and Care Services National Law Act 2010
Education and Care Services National Regulations 2012
Government Information (Public Access) Act 2009
Ombudsman Act 1974

SECTION 2 – POLICY

2.1 OBJECTIVES

- To ensure that all children who attend Council premises and utilise Council services feel safe and secure and are under the protection of responsible, caring, trustworthy, adults at all times
- Council staff are confident in recognising indicators of abuse and neglect in children and young persons
- To ensure Council staff identified as Mandatory Reporters are aware of their legal responsibilities and are supported to understand their mandatory reporting obligations to report children and young persons to the Child Protection Helpline if they have reasonable grounds to suspect risk of significant harm in the course of their work.

- To ensure the safety of children and young people who attend Council premises and utilise Council services by following legislative requirements for addressing reportable allegations made against Council staff and stakeholders identified in this policy
- To ensure Council complies with all legislative requirements relating to the investigation and management of workplace allegations of reportable conduct against employees

2.2 APPLICATION AND IMPLEMENTATION

2.2.1 Identifying concerns about the wellbeing of a child

All Council staff who work with children and families can expect that in the course of their work they will come in contact with children and families where they will identify concerns such as instances of neglect, verbal abuse or family violence. Staff are required by law to make mandatory reports to the Community Services Child Protection Helpline where there are reasonable grounds to suspect a child is at risk of 'significant harm.'

Child maltreatment is a complex and highly sensitive issue. It is important for staff to understand the systems that are in place for managing these concerns and to be able to draw upon advice and assistance from other professionals to determine whether a case meets the threshold of risk of significant harm, and to discuss options to assist the child and family.

Staff need to be alert to signs of abuse or neglect. Children who have been, or may be, experiencing abuse may show behavioural, emotional or physical signs of harm. However, not all situations involving concerns about children will require statutory intervention. If the concerns do not meet the threshold for risk of significant harm, consideration needs to be given to what more can be done to address child wellbeing concerns. This may include:

- Documenting and monitoring the situation
- Assisting the family to address the concerns through referral to services
- Exchanging information with other agencies to facilitate a referral or provide a service

Risk of significant harm can relate to harm circumstances of neglect, physical abuse, sexual abuse, serious psychological harm (eg harm caused by exposure to family and domestic violence), relinquishing care (unlawfully giving up parental responsibility of a child or young person), carer concern (eg parent/carer substance abuse, mental health, domestic violence) and prenatal reports (where there is high risk after the birth of a baby).

Reasonable grounds may include receiving a disclosure from a child or making an observation directly, or being told about a disclosure or observation by someone else. Once a view is formed that there are reasonable grounds to suspect risk of

significant harm, staff are not required and should not attempt to confirm information they have received or explore the situation further. To do so may compromise the work of statutory agencies such as police and community services, and may interfere with evidence or put pressure on others in relation to disclosures. It is important for staff to understand their role is not to investigate further but to simply make a notification of any current concerns about a child or young person.

2.1.2 Mandatory Reporting of risk of significant harm

Mandatory reporting is an individual responsibility. All Council staff that has direct contact with children is required by law to report to the Community Services Child Protection Helpline when they have reasonable grounds to suspect that a child is at risk of significant harm from abuse or neglect and those grounds arise during the course of their work.

FaCS receive these reports either by telephone or e-Reporter on the [Child Story](#) website. The Mandatory Reporter Guide (MRG) should be used to help assess whether or not a child is at risk of significant harm and if a report to the Child Protection Helpline is necessary. The guide can be accessed via the following link: <https://reporter.childstory.nsw.gov.au/s/mrg>. Managers, including both paid employees and volunteers, who supervise those providing direct services to children are also mandated to report. Staff who are not mandatory reporters can also report suspected risk if significant harm to the FaCS Child Protection Helpline.

Mandatory reporters are not legally obliged to report risk of significant harm where those grounds arise outside their workplace. However, the ethical responsibility to ensure the protection of any child in the community should be considered.

2.1.3 Selection and Recruitment

Council will meet its legal requirement to ensure that only people with valid Working with Children Checks (WWCC) are engaged in child-related employment. The WWCC is a crucial part in Council's recruitment process that prevents any person that poses a risk to the safety and well-being of children and young persons, are not employed or engaged in child-related work. Council's Human Resources oversees the WWCC verification of all staff engaged in child-related employment, in accordance with *Child Protection (Working with Children) Act*.

2.1.4 Reportable allegations against staff

A child protection related complaint is any complaint received or issue or concern identified regarding alleged inappropriate behaviour of a Council employee (including a contracted worker or volunteer) toward any child or young person under the age of 18 years. The complaint may be raised by any person and may be received verbally or in writing.

Some concerns of a child protection nature against employees are referred to as allegations of reportable conduct, and are handled in accordance with the *NSW Ombudsman Act* and the *NSW Commission for Children and Young People Act*.

However, not all complaints and concerns involving the conduct of staff toward a child will constitute an allegation of reportable conduct. It should be recognised that concerns of a child protection nature should be handled differently to other types of complaints to ensure that Council's legislative obligations are met, appropriate risk

management strategies are implemented and the rights of the employee are upheld.

When a Council staff member receives a complaint from another person, or observes an incident of concern, the staff member receiving the information will:

- Remain calm and respectfully listen carefully to the concerns. Advise the person raising the concerns that it may constitute as a child protection complaint and will be referred to management.
- Document details of complaint or incident on an incident form, or provide contemporaneous notes of the conversation and provide to management to undertake an initial assessment of whether it meets the threshold for an allegation of reportable conduct

Under no circumstances should the complaint or issue be discussed with the employee involved, nor should they make any attempt to investigate or verify the claims made.

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

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

Section 25A(1) of the Act also states that reportable conduct does not extend to:

- a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards
- b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures
- c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

If the initial assessment finds a notification of reportable conduct needs to be made to the NSW Ombudsman, Council's Head of Agency must submit a Part A of the Notification Form within 30 days, to the Employment Related Child Protection Division of the NSW Ombudsman's Office.

In response to allegations of reportable conduct, Council will:

- undertake a risk management process to determine if there is any immediate threat to the child or children and what actions may be required to reduce or mitigate the risks, as well as assessing other risks that may be present (eg risks to the employee subject to the allegations)
- notify the appropriate statutory authorities
- plan the scope of the investigation

- inform the employee that the complaint has been made and a subsequent notification to the Ombudsman and relevant statutory authorities

Council is legally obligated to conduct an investigation into the allegation of reportable conduct. An investigation of this nature has potential serious consequences for an employee if allegations are found to be sustained. Therefore a procedurally fair investigation process will be undertaken that applies the principles of natural justice.

Any finding made in relation to allegations must be supported by evidence. In making a finding, the civil standard of proof applies, that is *on the balance of probabilities*.

Following the conclusion of the investigation process, findings that can be made are as follows:

- Sustained
- Not sustained – insufficient evidence
- Not sustained – lack of evidence of weight
- False
- Not reportable conduct

Once the investigation has concluded and findings have been determined, Part B of the Notification Form should be sent to the Ombudsman with a copy of Council's investigation report.

2.1.5 Training and professional development of staff

To support staff in their understanding of child protection and of their obligations and responsibilities, Fairfield City Council will ensure this policy forms part of Council' employee induction process, and regular training is provided

SECTION 3 – GOVERNANCE

3.1 RELATED POLICIES/PROCEDURES/GUIDELINES

Internal

QM-HR037 Pre-Employment Screening Requirements for Child-Related Roles
HR083 Recruitment and Selection Policy
HR026 Appropriate Workplace Behaviour Policy
Fairfield City Council

External

United Nations Convention on the Rights of the Child (1990)

NSW Mandatory Reporter Guide
Office of the Ombudsman - Employment-related Child Protection Resources
National Framework for Protecting Australia’s Children

3.2 RESPONSIBILITY

Policy Owner	Children and Family Services
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3.3 VERSION CONTROL AND CHANGE HISTORY

Version Number	Approval Date	Approved by	Amendment
1	January 2012	CFS Manager	New policy
2	July 2015	CFS Manager	Revised content, updated legislative references
3	August 2016	CFS Manager	Revised content
4	January 2019	CFS Manager	Scope broadened, revised content and new format