

Section 1: Legislation, agencies and policies

E-learning readings



Child protection awareness training

Contents

Overview	1
NSW Child Protection Legislation	1
Child protection agencies	4
The NSW Ombudsman (the Ombudsman)	4
NSW Family and Community Services	5
The Department's Child Wellbeing Unit	5
NSW Office of the Children's Guardian.....	6
The role of the NSW Department of Education as an agency employing people in child related work	7
Policies	8

Overview

In this section each piece of legislation relating to child protection is identified, with an explanation of its application to respective agencies that have roles in protecting children and young people. It is vital that you understand how this legislation and the roles of these agencies relate directly to your responsibilities when working in NSW Department of Education workplaces.

This section will also identify the NSW Department of Education's policies and procedures that set out the responsibilities of employees to ensure compliance with NSW child protection and employment legislation.

NSW Child Protection Legislation

As an employer, the NSW Department of Education is governed by the following NSW child protection and employment legislation:

- *Ombudsman Act 1974*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Advocate for Children and Young People Act 2014*
- *Child Protection (Working with Children) Act 2012*

A number of changes to legislation came into effect in 1998, which were designed to strengthen the protective framework for children and to establish fair, transparent and thorough systems for responding to allegations against employees who work with children.

Legislation was also passed in 2009 as a result of the *Keep Them Safe: A shared approach to child wellbeing* reforms. The Keep Them Safe reforms stipulate that all NSW agencies which provide services to children, young people and their families, or whose staff come into contact with children and young people in the course of their work, are considered to have a particular role in protecting children and young people from harm. These agencies are required to coordinate their work together as part of a total community effort which is spelled out in the legislation.

Further information is available about all [NSW legislation](#), including child protection legislation.

Child protection agencies

There are a number of agencies with key responsibilities in ensuring the protection of children and young people in New South Wales. An understanding of the respective roles of the agencies will give you insight into your responsibilities when working with children and young people.

The NSW Ombudsman (the Ombudsman)

The [NSW Ombudsman](#) is required to oversee and monitor investigations into allegations of a child protection nature against employees of designated agencies, including the NSW Department of Education. The Ombudsman ensures that employers are responding appropriately to allegations against employees, and that the process is effective, accountable and fair.

As required by the *Ombudsman Act 1974*, the NSW Ombudsman must be informed of any reportable allegations involving employees of the NSW Department of Education, as well as subsequent actions of the Department and the outcomes of these actions.

School principals and workplace managers notify the Department's Employee Performance and Conduct Directorate about all allegations regarding the conduct of employees towards children and young people. The Employee Performance and Conduct Directorate determines which allegations are reportable conduct and forwards these to the NSW Ombudsman's Office. As a result of changes introduced under the *Ombudsman Amendment (Child Protection and Community Services) Act 1998*, these reports must be made to the Ombudsman within thirty days.

Definition – Reportable allegation:

A reportable allegation is an allegation of misconduct that may involve reportable conduct (reportable conduct will be explained in detail later in the module). A reportable allegation must be reported to the NSW Ombudsman by the Employee Performance and Conduct Directorate (the employer) and may result in an employee's name being forwarded to the Commission for Children and Young People following a completed employment proceeding. Information about individual notifications made to the NSW Ombudsman is not available to prospective employers or the general public.

NSW Family and Community Services

[NSW Family and Community Services](#) has the responsibility to receive and assess child protection reports where there is a likely risk of significant harm to a child or young person and act to maintain and monitor their safety. Family and Community Services also provides and arranges support services for children, young people and their families.

The *Children and Young Persons (Care and Protection) Act 1998* covers reporting requirements to Family and Community Services when there are concerns that a child or young person is at risk of significant harm.

Definitions – Child and young person

A child is a person under the age of sixteen years. A young person is aged sixteen or seventeen years.

The Department's Child Wellbeing Unit

The role of the [NSW Department of Education's Child Wellbeing Unit](#) is to:

- advise, support and educate principals, workplace managers, TAFE and AMES counsellors about whether their concerns about the safety, welfare or wellbeing of children and young people reach the threshold for making a mandatory report to the Child Protection Helpline (Family and Community Services). The threshold is risk of significant harm
- assist principals, workplace managers, TAFE and AMES counsellors to identify and implement appropriate local responses to support the child, young person and their family where the risk of significant harm threshold is not met, but there are concerns for the safety, welfare or wellbeing of the child or young person
- work within and across agencies to better coordinate and align service systems to improve responses to child wellbeing issues.

NSW Office of the Children's Guardian

The [NSW Office of the Children's Guardian](#) (OCG) was established under the *Children and Young Persons (Care & Protection) Act 1998* to promote the interests and rights of young people living in out of home care.

Under the *Child Protection (Working with Children) Act 2012*, the OCG administers the Working with Children Check (WWCC) in NSW and encourages organisations to be safe for children. The WWCC is a requirement for people who are employed or volunteer in child related work in NSW and includes a national criminal history check and a review of findings relating to past workplace misconduct.

The result of a successful WWCC gives the person clearance for five years to work with children, subject to ongoing monitoring and relevant new records may lead to the clearance being revoked. A valid WWCC is fully portable across NSW so it can be used for any paid or unpaid child-related work.

If a person does not receive clearance under a WWCC, they are not permitted to be employed or volunteer in child related work.

It is important to remember that the Working With Children Check is only one part of keeping children safe. Further information about the operation of the WWCC and developing child safe organisations can be found at the OCG website: www.kidsguardian.nsw.gov.au

Definition – Employment proceedings

Employment proceedings include completed investigations of reportable allegations for the purposes of reporting to the NSW Advocate for Children and Young People. The NSW Advocate for Children and Young People keeps a database of employment proceedings that has two categories. Category one is used in child related employment screening processes. Category two is not used in screening processes unless the conduct reported appears to be part of a pattern of relevant conduct by the employee.

The role of the NSW Department of Education as an agency employing people in child related work

As an employer of people involved in child related work, including volunteers and contractors, the [NSW Department of Education](#) has a responsibility to:

- initiate pre-employment screening of its employees
- respond to allegations of a child protection nature specifically related to the actions of its employees and ensure appropriate action is taken in relation to the findings including disciplinary actions
- report to the Ombudsman certain allegations or convictions of a child protection nature made against an employee
- report to the NSW Office of the Children's Guardian the names of employees for whom it has completed relevant employment proceedings.

Policies

The NSW Department of Education's child protection policies and procedures set out the responsibilities of employees to ensure compliance with NSW child protection and employment legislation.

As an employee of the NSW Department of Education you have responsibilities under the Children and Young Persons (Care and Protection) Act 1998 and the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 relating to the reporting of concerns about suspected risk of harm to children and young people to their principal, TAFE or AMES counsellor, or workplace manager.

The [Protecting and Supporting Children and Young People Policy](#) sets out the responsibilities of NSW Department of Education employees under the legislation. All staff have a duty to recognise safety, welfare or wellbeing concerns for children and young people that arise from or during the course of their work. It is the responsibility of principals, workplace managers and TAFE and AMES counsellors to report suspected risk of significant harm to Family and Community Services and help ensure early support and assistance are offered and implemented for children and young people and their families.

[Responding to Allegations against Employees in the Area of Child Protection](#) sets out the requirements of all employees to notify (usually through the workplace manager/school principal/TAFE or AMES counsellors) the Employee Performance and Conduct Directorate of allegations or concerns about the conduct of employees as it relates to their conduct with children and young people and the system in place for fair and thorough responses to these allegations. It also sets out the procedures to be followed in response to allegations being made against employees about their conduct with children and young people. It makes it clear that the safety, welfare and wellbeing of children and young people are paramount and that employees are to be provided with support and treated fairly when reports or investigations affect them directly or indirectly.

[The Code of Conduct](#) sets out the expectations for all employees regarding their professional conduct, including their conduct at all times towards children and young people. For example it makes it clear that departmental employees must report possible 'risk of harm' to children or young people to their principal, TAFE or AMES counsellor, or workplace manager. They must in turn determine whether a report to Family and Community Services is required.