

Background

The purpose of this procedure is to provide guidance to Managers, employees, volunteers and contractors on the procedure to be followed for reporting and investigating an allegation of risk of significant harm to a child, which may arise in connection with the performance of their duties.

Child protection legislation is comprehensive, and this procedure is only intended to provide **General Guidance Only**. This procedure should be read in conjunction with the relevant legislation and policy.

In the event of suspected or evidenced misconduct relating to an employee engaged in child related employment, or other issues that are governed by child protection legislation, the appropriate legislation should be referred to or specialist advice sought from People and Performance before any action is commenced.

Councils Child Protection Policy, Procedure and Explanatory Notes reflects our commitment to:

The Office of the Children’s Guardian’s Principles for Child-Safe Organisations (2017):

- Principle 1: The organisation focuses on what is best for children.
- Principle 2: All children are respected and treated fairly.
- Principle 3: Children’s families and communities are welcome and encouraged to participate in the organisation.
- Principle 4: Children receive services from skilled and caring adults.

The Child Safe Standards identified by the Royal Commission (2017):

1. Child safety is embedded in institutional leadership, governance and culture.
2. Children participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved.
4. Equity is upheld, and diverse needs are taken into account.
5. People working with children are suitable and supported.
6. Processes to respond to complaints of child sexual abuse are child focused.
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
8. Physical and online environments minimise the opportunity for abuse to occur.
9. Implementation of the Child Safe Standards is continuously reviewed and improved.
10. Policies and procedures document how the institution is child safe.

1. Reportable Conduct

Section 20 of the Children’s Guardian Act 2019 defines ‘reportable conduct’ as:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse

Child Protection Procedure		
Owner: People and Performance	Accountability: People and Performance	Policy Number: CSH/009
Reference No.:	Date Approved: 25 November 2020	Endorsed By: Executive Team

- material), or
- b) any assault, ill-treatment or neglect of a child, or
- c) any behavior that causes significant emotional or psychological harm to a child, whether or not. In any case, with the consent of the child.

The Children’ Guardian Act defines ‘sexual offence’ as an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child. It can include:

- crossing professional boundaries
- sexually explicit comments and other overtly sexual behaviour and;
- grooming behaviour.

2. Allegations of Child Abuse Against an Employee

2.1 When to report an allegation

You are required to report any allegation of child abuse immediately to your Manager or the Manager People and Performance as it comes to your notice, regardless of how trivial it may seem. This includes disclosure and reporting of:

- Misconduct involving child abuse by another employee
- If you have been convicted of a child abuse offence
- Allegations of child abuse against an employee made by a child, parent or caregiver
- Advice received from any other agency or organisation that a City of Ryde employee is under investigation for an allegation of child abuse

In line with legislative requirements, these must be reported to the Office of the Children’s Guardian and the agency/ organisation advised that this is your course of action.

You are required by law as Council employees to report any allegations of child abuse arising in the course of your work, but Council policy requires you to report all allegations regardless of how or where the alleged abuse by an employee is said to have taken place, whether it be during the course of employment, or in other situations including the home, community or recreation centres at any time. Council takes the default position of, ‘If in doubt, report’ to the Manager People and Performance.

2.2 Making an allegation

Allegations of child abuse can be made verbally or in writing by:

- The child or young person involved
- Any person on behalf of the child or young person
- Any person who has observed or is aware of the child abuse or neglect

If you have reason to think that an employee of City of Ryde, or a child under that person’s care may be involved in or be a victim of child abuse, then you need to make a report to your immediate manager.

If for any reason you are reluctant to approach your manager, you can make a report to the

Child Protection Procedure		
Owner: People and Performance	Accountability: People and Performance	Policy Number: CSH/009
Reference No.:	Date Approved: 25 November 2020	Endorsed By: Executive Team

Manager People and Performance or in extreme cases, the General Manager.

3. Responding to an allegation

If an allegation of child abuse is reported, the following guidelines must be adopted:

- (a) If possible, obtain a written statement from the person making the allegation, including details of the alleged improper conduct, including date, time, place and witnesses;
- (b) maintain detailed file notes of any conversations with the person reporting child abuse;
- (c) DO NOT, under any circumstances approach or question the child the subject of the allegation;
- (d) advise the person making the allegation to maintain confidentiality; and
- (e) immediately advise People and Performance of:
 - (i) the child’s name and age;
 - (ii) name and contact details of the person making the allegation;
 - (iii) name of staff member against whom the allegation is made; whether the circumstances of the incident warrant the families other than those directly involved to be informed of the allegation.
- (f) The Manager People and Performance will then report the matter and commence an investigation as per the Act.

3.1 Determining the Course of Action

It is the responsibility of the Manager People and Performance to ensure all allegations are dealt with in accordance with the Act and this procedure. Upon an allegation of child abuse, the Manager People and Performance must take the following action:

- (a) advise his or her reporting manager of the allegation;
- (b) advice to be provided to the person making the allegation of their responsibility;
- (c) advice to be given to the parents or caregiver of the Child involved;
- (d) timing and approach to be taken when advising an employee that an allegation has been made against them;
- (e) direction to be provided to the employee against whom the allegation has been made, including the contact they are to have with the children and other employees;
- (f) the continued presence the employee is to have at the place of work. This may involve a direction to undertake work related duties from a different location such as home or to take leave. A determination must take into account the following:
 - (i) nature of the allegation;
 - (ii) vulnerability of children;
 - (iii) nature of the position occupied by the employee;
 - (iv) level of supervision of the employee;
 - (v) disciplinary history;
 - (vi) safety of the employee;
 - (vii) risk to the investigation; and
 - (viii) advice if any, to be provided to families of children, other than those directly involved, or to any other members of the place of work. If such

Child Protection Procedure		
Owner: People and Performance	Accountability: People and Performance	Policy Number: CSH/009
Reference No.:	Date Approved: 25 November 2020	Endorsed By: Executive Team

advice is provided the confidentiality of those involved in the investigation must be a principle consideration.

The Manager People and Performance must advise the Office of the Children’s Guardian of the allegation as soon as practicable but within 7 business days of the allegation being made and commence an investigation into the allegations. The Manager People and Performance should then provide a report detailing the findings of the investigation to the Office of the Children’s Guardian within 30 days.

3.2 Internal Investigations

Internal Investigations are to be conducted or coordinated by People and Performance, with assistance (as determined by the General Manager depending on the nature of the allegation) taking into account the requirements under the Act.

3.3 Substantiated Allegations

When an allegation is substantiated, People and Performance will:

- (a) determine with the advice of the reporting manager, what disciplinary action will be taken;
- (b) notify the Ombudsman, using the relevant form, that the allegation has been substantiated, including the provision of information about what disciplinary action will be taken or other information as requested by the Ombudsman;
- (c) inform in writing the person who made the allegation that the it has been substantiated and provide information about what disciplinary action will be taken;
- (d) inform in writing the parents or caregivers of the Child involved that the allegation has been substantiated and provide information about what disciplinary action will be taken
- (e) notify the Office of the Children’s Guardian, if the finding is of sexual misconduct or any serious physical assault of a child.

3.4 Unsubstantiated Allegations

When an allegation is not substantiated, People and Performance must:

- (a) inform the employee who the allegation has been made against of the following:
 - (i) the allegation has not been substantiated;
 - (ii) no further action will be taken in relation to allegation;
 - (iii) that the result of the investigation of the allegation have been registered on Council’s Internal Management System;
 - (iv) where appropriate, that the Ombudsman has been notified of the results of the investigation of the allegation;
 - (v) the date the employee is to resume normal duties, if they have been relocated or assigned alternate duties; and
 - (vi) that counselling support is available through the Employee Assistance Program (“EAP”).
- (b) notify the Office of the Children’s Guardian;

Child Protection Procedure		
Owner: People and Performance	Accountability: People and Performance	Policy Number: CSH/009
Reference No.:	Date Approved: 25 November 2020	Endorsed By: Executive Team

- (c) inform the person making the allegation, in writing;
- (d) inform the parents or caregivers of the Child involved, in writing; and
- (e) determine any disciplinary action required, where it is considered that although the allegation was unsubstantiated, the employee has engaged in inappropriate work practices.

3.5 Closing an Internal Investigation

- (a) the findings of all investigations, including the recommendations or proposed action, are to be referred to the General Manager for determination.
- (b) the investigation is to be formally closed once all the relevant procedures have been followed.
- (c) access to records and documentation must be restricted to protect the privacy of individuals and to ensure that confidentiality is maintained. Documentation must be kept indefinitely and stored securely and confidentially with People and Performance. People and Performance will be responsible for storage of records ensuring that access is restricted to the appropriate officers and agencies.
- (d) the documentation may need to be made available to the Office of the Children’s Guardian at a later stage as part of a review of Council’s internal investigation processes.

3.6 Rights of all Parties

- (a) The child or young person that is the subject of an allegation has the right to be in a secure and safe environment, therefore the accused employee will be removed from that environment until the investigation is complete.
- (b) All parties involved have the right to a confidential, fair and unbiased investigation.
- (c) Employees will be afforded procedural fairness in the event of an allegation being made against them.
- (d) The investigation team has the right to deny the accused employee access to records kept if they feel it would jeopardise the investigation.
- (e) The person who has made the allegation has the right not to be identified. If they wish to remain unidentified, any written documents they have provided to the investigation team cannot be accessed by the accused employee.
- (f) If the accused employee feels that they have been unreasonably denied access to records, they can apply through the Freedom of Information Act to have access to those records considered.
- (g) Employees the subject of an allegation and parents of the child or young person involved in the matter have the right to complain to the Ombudsman if they are unhappy with the conduct of the investigation.

3.7 Confidentiality

- (a) All employees involved in reporting or investigating an allegation will be mindful of the sensitive nature of the issue and take all reasonable steps to maintain

Child Protection Procedure		
Owner: People and Performance	Accountability: People and Performance	Policy Number: CSH/009
Reference No.:	Date Approved: 25 November 2020	Endorsed By: Executive Team

confidentiality and respect the privacy of those involved. Nothing in this statement is to be taken as mitigating against the obligation of employees to report incidents or allegations of reportable conduct.

- (b) All information relating to investigations will be secured in People and Performance separately from personnel files, unless the investigation results in disciplinary action.
- (c) Any person who makes an allegation is protected under Council's Public Interest Disclosures Policy

3.8 Grievances and Appeals

At any time during this process the employee can use the formal Grievance and Dispute Handling Procedure as established under the Local Government (State) Award, although resolving any difficulty informally in the first instance is encouraged. Employees are also able to lodge a grievance or complaint with the Ombudsman in terms of the way the City of Ryde has handled the investigation into the allegation.

4. Responding to concerns that a child is at risk of significant harm

4.1 Action in a life-threatening situation

If you believe a child is in immediate danger or is in a life-threatening situation, contact the Police or Ambulance Service immediately.

4.2 Identifying risk of significant harm

The Children and Young Persons (Care and Protection) Act 1998 states that a child is at risk of significant harm if:

- (a) the child's basic physical or psychological needs are not being met or are at risk of not being met;
- (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child to receive necessary medical care;
- (c) the child is required to attend school and the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child to attend school to receive an education;
- (d) the child has been, or is at risk of being, physically or sexually abused or ill-treated;
- (e) the child is living in a household where there have been incidents of domestic violence and may be at risk of serious physical or psychological harm;
- (f) a parent or other caregiver has behaved in such a way towards the child that the child as suffered or is at risk of suffering serious psychological harm.

4.3 Reporting concerns

If you have a current concern that a child is at risk of significant harm, which is not able to be addressed by any action taken by you or you are aware another person has taken, and or if this

Child Protection Procedure		
Owner: People and Performance	Accountability: People and Performance	Policy Number: CSH/009
Reference No.:	Date Approved: 25 November 2020	Endorsed By: Executive Team

concern arises from the course of your work;

Notify People and Performance as soon as practicable, to determine if a report to the Child Protection Helpline is required. The Mandatory Reporter Guide will be used to guide the decision in determining if a report to the Helpline is required. The Guide can be accessed at www.keepthemsafe.nsw.gov.au.

4.4 After a report is made to the Helpline

A copy of the information provided to the Child Protection Helpline will be retained by People and Performance.

5. Identifying and Managing Child-Related Employment

5.1 Identification and Designation of Child-Related Positions

It is the responsibility of all managers to identify any position (permanent, part-time, contract, voluntary or work experience) that is to be designated as child-related employment (“CRE”). The respective Director is responsible for approving all CRE.

A position is designated as CRE, if it involves physical contact or face to face contact with children. The following are deemed to be CRE industry sectors:

- **child development and family welfare services;**
- **child protection;**
- **children’s health services;**
- **clubs or other bodies providing services for children;**
- **disability services; early education and childcare;**
- **education;**
- **entertainment for children;**
- **justice centres;**
- **religious services;**
- **residential services;**
- **transport services for children;**
- **youth workers; and**
- **school cleaners.**

Reference should be made to the NSW Office of Children’s Guardian website: <http://www.kidsguardian.nsw.gov.au/> for a comprehensive description of the above CRE industry sectors.

5.2 Recruiting for Designated Positions

Child Protection Procedure		
Owner: People and Performance	Accountability: People and Performance	Policy Number: CSH/009
Reference No.:	Date Approved: 25 November 2020	Endorsed By: Executive Team

Council must not employ a person (paid or voluntary) in a position which involves direct physical contact or face to face contact with children, unless the potential employee (“Employee”) obtains a Working with Children (“Clearance”). It is the responsibility of the Employee to obtain a Clearance from the Office of the Children’s Guardian (“Children’s Guardian”) at their own cost.

The Children’s Guardian will assess any convictions (spent or unspent), charges (whether heard, unheard or dismissed) and juvenile records to determine the Employees suitability for CRE. The Employee or applicant will be advised of the determination by letter or email, accompanied with a Working With Children Number (“WWCN”). The WWCN will provide an electronic record of the determination and allow Council to verify an Employee’s Clearance on-line.

As part of the recruitment process at the City of Ryde, People and Performance will check that applicants for a CRE position have a clearance from the NSW Office of Children’s Guardian before any offer of employment is made.

5.3 Disqualified Persons

Managers are to inform and follow the direction of People and Performance in all cases where an employee is identified or identifies themselves, as a Disqualified Person. Disqualified Persons must be removed from child-related employment. There is no requirement for City of Ryde to find alternative employment; however, this may occur at the discretion of the General Manager if suitable alternative employment is available.

Employees are required under the Child Protection (Working with Children) Act 2012 to advise the City of Ryde if they are convicted of an offence that would cause them to be regarded as a Disqualified Person.

6. National Redress Scheme

The following information is provided as a brief summary of the National Redress Scheme and its operation.

The National Redress Scheme for Institutional Child Sexual Abuse Act 2018 was established to provide redress to survivors of past institutional child sexual abuse. The Scheme was implemented following a recommendation of the Royal Commission and started on 1 July 2018. The Scheme runs for 10 years.

Applications for Redress are made through the Department of Human Services. The Department of Human Services administers the Scheme on behalf of the Secretary of the Department of Social Services, who is the National Redress Scheme Operator.

What constitutes redress under the scheme?

Redress for abuse of a person is within the scope of the scheme if:

Child Protection Procedure		
Owner: People and Performance	Accountability: People and Performance	Policy Number: CSH/009
Reference No.:	Date Approved: 25 November 2020	Endorsed By: Executive Team

- (a) it occurred when the person was a child; and
- (b) it occurred before the scheme start day; and
- (c) it occurred inside a participating State, inside a Territory, or outside Australia (that is, it did not occur inside a State that is not participating in the scheme).

Redress consists of 3 components:

- (d) a redress payment (of up to \$150,000); and
- (e) a counselling and psychological component which, depending on where the person lives, consists of access to counselling and psychological services or a counselling and psychological services payment (of up to \$5,000); and
- (f) a direct personal response from each participating institution responsible for the abuse.

Who will review any request received for redress

The Manager People and Performance in cooperation with the Manager Corporate Governance be responsible for liaising with the Office of Local Government regarding any claim received and the retrieval and submission of related records.

Child Protection Procedure		
Owner: People and Performance	Accountability: People and Performance	Policy Number: CSH/009
Reference No.:	Date Approved: 25 November 2020	Endorsed By: Executive Team