

Model policies
on
working with young people
for
non-residential youth services in NSW

by Nick Manning

Youth Action & Policy Association (NSW)

2005

Part 6
Child protection

Model policies on working with young people for non-residential youth services in NSW

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How to get, view, print or copy this publication

The model policies are available from www.yapa.org.au/youthwork/modelpolicies, as:

- PDF files for easy printing and reading
- Word files for easy copying + pasting into your own policy documents.

Warning!

These are model policies for agencies to adapt to suit their circumstances. We have done the best we can within our resources, but it is not possible to write a single policy which meets the requirements of the wide range of youth services in NSW. You should not rely solely on the information here, but should refer to other publications and authorities and if necessary get qualified advice for your specific situation.

We have attempted to include all the relevant legal requirements as at 2004. However the law is sometimes complex and open to interpretation, and applies to different youth agencies in different ways. If necessary you should get legal advice about your own policies. The information here is not legal advice. If there is a real possibility of legal action, you should talk to a lawyer before you decide what to do.

These policies reflect law which applies in NSW, which may be quite different to law in other states and territories of Australia. Using these policies outside NSW without checking the law, may put your agency, staff and volunteers at risk of breaking the law.

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Contents

Part 6: Child protection

- 4 Child Protection Essentials
- 6 Child Protection: Managing Staff
- 8 Child Protection: Young Children at the Agency or on the Streets
- 10 Child Protection: Responding to the Victim or Child at Risk
- 12 Child Protection: Report to the Manager if you are not a Mandatory Reporter
- 14 Child Protection: Assess and Report to DoCS if you are a Mandatory Reporter
- 17 Child Protection: Allegations against Paid or Volunteer Staff.

**The other parts of this publication (below) are available from
www.yapa.org.au/youthwork/modelpolicies**

Part 1:

How to use these policies

Activities and services

- Drop-in & use of centre facilities
- Young people's use of computers
- Street work
- Holding mail for young people
- Excursions and camps

Part 2: Casework

Part 3: Rights and responsibilities

- Young people's rights to their personal information
- Keeping and destroying records
- Code of conduct for staff
- Complaints
- Rules and consequences

Part 4: Inclusiveness

- Developing an inclusive youth service
- Expression of religion, culture and lifestyle
- Eliminating harassment, vilification and excluding behaviour

Part 5: Privacy and confidentiality

- Privacy essentials
- Collecting personal information
- Privacy statement & privacy consent form
- Using personal information within the team
- Security of personal information
- Disclosing personal information with consent
- Disclosing personal information without consent

Part 7: Safety

- Duty of care statement
- Individual risk assessment about a young person
- Report risks and serious incidents to the Manager
- Medications and medical treatment
- Vehicles
- Home visits
- Smoking
- Alcohol and illegal drugs
- Crime and police
- Suicide
- Non-violence
- Critical incident response

Child protection essentials

This policy is the first of a set of policies on child protection:

- Child Protection Essentials
- Child Protection: Managing Staff
- Child Protection: Young Children at the Agency or on the Streets
- Child Protection: Responding to the Victim or Child at Risk
- Child Protection: Report to the Manager if you are not a Mandatory Reporter
- Child Protection: Assess and Report to DoCS if you are a Mandatory Reporter
- Child Protection: Allegations against Paid or Volunteer Staff.

Aims

The Child Protection policies assist the agency to:

- help keep children and young people safe
- comply with the law
- treat paid and volunteer staff fairly when allegations are made against them.

These policies aim to provide agency-specific details in relation to child protection. They do not replace or repeat the extensive legal and practical information available from government agencies (see below). They are not a substitute for staff training.

Age definitions

In these policies, in line with the NSW *Children and Young Persons (Care and Protection) Act 1998*:

- *child* means someone aged under 16 years old
- *young person* means someone aged 16 or 17

Note however that:

- the Ombudsman legislation and guidelines define *child* as someone under 18
- other policies (not related to child protection) and the youth sector generally use *young person* to mean anyone who uses the agency (eg. 11-24 year olds).

Non-discrimination

Apply the Child Protection policies in non-discriminatory ways. Base judgements on:

- facts and reasonable beliefs, not superficial assumptions, unsubstantiated allegations or rumours
- information about individuals, not generalisations about a "group" they belong to.

For example, respond to a situation involving homosexuality in the same way you would respond if it was a heterosexual situation.

6. Child protection: Child protection essentials

Privacy

All requirements of the Privacy policies apply in child protection matters except where these Child Protection policies or the law specifically overrides those requirements. (For example, mandatory reporters must breach privacy to make a mandatory report to DoCS, but must not breach privacy by also passing on that information, without the child's consent, to other people such as the child's doctor or friend). See the Privacy policies.

Openness to feedback and complaints

All staff should foster an atmosphere of openness at the agency, where feedback and complaints are welcomed. Staff must avoid giving an impression to young people that staff or management can ever ignore the law or the rules and policies of the agency, or that complaints are ever ignored, minimised or covered up. Staff must comply with the Complaints policy.

Openness to feedback and complaints
Promoting an open culture where complaints are valued and responded to is an essential feature of a "child safe" organisation.

Other related policies

- Young People's Use of Computers
- Excursions and Camps
- Inclusiveness: Eliminating Harassment, Vilification and Excluding Behaviour
- Code of Conduct for Staff
- Duty of Care Statement
- Individual Risk Assessment about a Young Person
- Reporting Risks and Serious Incidents to the Manager
- Vehicles
- Alcohol and Illegal Drugs
- Suicide
- Non-violence
- Critical Incident Response.

Child protection: Managing staff

This policy is part of a set of policies on child protection. See the Child Protection Essentials policy for background to this policy.

Procedure

Recruitment and selection

Staff involved in recruitment, screening and selection of paid staff and volunteers must comply with all requirements of child protection laws including, where applicable, the Prohibited Employment Declaration and the Working with Children Check.

Make use of the *childsafes* and *childfriendly resources* from the NSW Commission for Children and Young People at <http://www.kids.nsw.gov.au>.

Equal employment opportunity

When recruiting and selecting paid staff, contractors and volunteers, staff must not ask for, or make selections or judgements based on, an applicant's:

- age
- sex
- marital status
- sexual preference

(as well as the other grounds for unlawful discrimination), except in special circumstances allowed under NSW and Commonwealth anti-discrimination laws.

Trial period

The relevant Award may allow a trial period (probation), eg. 3 months, at the start of employment - an opportunity for the agency and the person to see if they are suited to each other.

You can also use a trial period with volunteers.

Make sure the person knows they are on probation, and when it ends.

Men behaving badly?

Child protection is never a justification for unlawful discrimination. For example, legally you cannot refuse to employ, or hire as volunteers:

- men
- single men
- older men
- gay men
- lesbians

because of supposed child protection concerns, or because you think that young people's parents may raise child protection or morality concerns.

Staff induction, training and supervision

The agency must appoint a more senior staff member or a management person to support and supervise the work of each staff member, volunteer and student. (This is regardless of whether the person also has external professional/clinical supervision).

6. Child protection: Child protection: Managing staff

The supervisor must ensure that the staff member/student understands this policy, and, if necessary for their role:

- understands the other policies listed above
- understands the *NSW Interagency Guidelines on Child Protection Intervention*
- participates in child protection training
- (if a mandatory reporter) knows how to make a report of a child at risk to the NSW Department of Community Services (DoCS).

Supervision & appraisal

- Supervision of all staff and volunteers should continue indefinitely, either by observation (for volunteers and youth work assistants) or through regular supervision meetings, or both.
- Use a process of annual performance appraisal to supplement supervision.

Code of conduct for staff

Paid and volunteer staff must:

- comply with the Code of Conduct for Staff policy
- report to the Manager all breaches of, and complaints and allegations relating to, the Code of Conduct for Staff, whether about themselves or other paid or volunteer staff.

The Manager must take appropriate action in response to all breaches, complaints and allegations.

See these policies:

- Code of Conduct for Staff
- Complaints
- Child Protection: Allegations against Paid or Volunteer Staff
- agency employment policies
- agency volunteer policies.

Child protection: Young children at the agency or on the streets

This policy is part of a set of policies on child protection. See the Child Protection Essentials policy for background to this policy.

What is a *young child*?

In this policy a *young child* is a child below the target age of the team's activities and services, and who may be too young for the circumstances you find them in.

Procedure

Young child comes to the agency

If a young child (below the target age of the team's activities and services) comes to the agency, either with an older person or alone, assess whether it is appropriate or not for that child to stay on that occasion. This will depend on things such as:

- why they are there
- whether they are alone or not
- their age and maturity, and the ages of the other people present
- the activities occurring and the level of supervision.

If a young person who is within the target age brings a young child with them because they have temporary or permanent responsibilities as a carer, allow them to stay if it is reasonable to do so, to avoid discriminating against the young person due to their carer's responsibilities. If necessary the agency should make reasonable adjustments to its arrangements in order to be able to provide activities and services to young carers.

If you judge that it is inappropriate for a young child to stay:

- explain to the child and the person with them why it is inappropriate
- make whatever arrangements are appropriate in the circumstances to hand them over to someone who can take responsibility for them.

If that young child comes to the agency a few times, take whatever steps you can to assist that child and their family to make more appropriate arrangements. You should also consider whether the child might be at risk (see the policy Child Protection: Assess and Report to DoCS if you are a Mandatory Reporter).

6. Child protection:

Child protection: Young children at the agency or on the streets

If various young children come to the agency on several occasions, report this to the Manager and discuss what to do, within the agency and with any children's services available in the area.

Unsupervised young child on the street at night

If, as part of your role at the agency, you become concerned about an unsupervised young child on the street at night, you should assess the circumstances, including:

- the child's age
- the location
- the time
- your assessment of the child's safety.

Depending on your assessment, and on your other (agency and personal) responsibilities at the time, you should:

- do nothing
- stay with them until transport arrives
- assist them to contact someone
- provide money for transport (if the agency policy allows this)
- contact a street worker or night bus type service
- contact a refuge
- contact the police if you believe there is a serious and imminent threat
- report the child to the child protection authorities as a child at risk, if justified (see the policy Child Protection: Assess and Report to DoCS if you are a Mandatory Reporter).

You can offer to drive the child home or to a safer place, if:

- you are authorised to do so by the agency, and
- this is appropriate given your other (agency and personal) responsibilities at the time.

See the policy Vehicles.

You can offer to take them to the agency while they wait for other assistance, if:

- you are authorised to do so by the agency, and
- this is appropriate given the situation at the agency and your other (agency and personal) responsibilities at the time.

You cannot force the child to go with you.

Child protection: Responding to the victim or child at risk

This policy is part of a set of policies on child protection. See the Child Protection Essentials policy for background to this policy.

When does this policy apply?

Comply with this policy when you are dealing with:

- a child or young person who may be at risk of harm, or who may have been assaulted
- someone else who tells you that a child or young person is at risk of harm or has been assaulted.

Procedure

Take it seriously

Regardless of your own opinions about the likely accuracy of the information or seriousness of the situation, take it seriously and let the person see that you are taking it seriously.

Don't probe or investigate

Avoid asking too many questions. Listen to the person's story and take notes. It's not your role to investigate the complaint. (Legal cases can be weakened due to inappropriate questioning). Do not investigate the matter yourself.

Report internally and/or externally

Comply with the applicable policy:

- Child protection: Report to the Manager if you are not a Mandatory Reporter
- Child protection: Assess and Report to DoCS if you are a Mandatory Reporter.

Support the person

Help the person to feel safe and comfortable. Explain what will happen next. Ensure that the agency and/or other agencies offer to address the welfare and legal needs of the person.

Recent sexual assault

If a sexual assault may have occurred less than 24 hours ago, advise the person not to shower or wash themselves or change clothes as a medical examination may be required. Make notes of what they tell you and of any visible injuries, and record the date and time.

6. Child protection:
Child protection: Responding to the victim or child at risk

Immediately discuss with DoCS/police and your nearest sexual assault service.

Privacy and communication

Explain to the person as soon as possible, preferably before they disclose to you, that the law requires paid staff to report to DoCS if a child under 16 (them or someone else) is at risk of harm.

Let the person know exactly who will be told about the matter:

- you will tell the Manager
- you will tell DoCS and/or police if appropriate
- DoCS will contact the person's family.

Under no circumstances try to contact the alleged perpetrator. This could endanger the person and complicate police investigations. If the alleged perpetrator comes to, or is at the agency, ask them to leave immediately.

Do not contact a non-offending parent or a supportive family member. (Leave this to DoCS).

Do not disclose to any person (including team members who don't need to know), the name of (or identifying information about):

- the child or young person
- the alleged perpetrator
- the person who reported the case to the agency.

6. Child protection:

Child protection: Report to the Manager if you are not a Mandatory Reporter

Child protection: Report to the Manager if you are not a Mandatory Reporter

This policy is part of a set of policies on child protection. See the Child Protection Essentials policy for background to this policy.

This policy ensures that all information relevant to child protection is:

- reported to the Manager, regardless of its apparent importance to the staff member who first becomes aware of it
- assessed by the Manager or another skilled staff member.

Who must comply with this policy?

This policy applies to all staff who are not mandatory reporters, eg:

- administrative staff
- volunteers
- students.

(Mandatory reporters should see the policy Child protection: Assess and Report to DoCS if you are a Mandatory Reporter).

Procedure

Report information relevant to child protection to the Manager

Paid and volunteer staff must report to the Manager all information relevant to child protection (see below).

If the Manager is not available, report to another paid staff member or management person as soon as possible. Do not give information to anyone else (except the police in an emergency).

Information relevant to child protection

You may get this information, for example:

- when a child or young person tells you something
- when an employee, volunteer or student tells you something
- when DoCS, police, or the Ombudsman tell you something
- when someone else tells you something
- when you observe something.

6. Child protection:

Child protection: Report to the Manager if you are not a Mandatory Reporter

This policy applies to all information relevant to child protection, including:

- disclosures, incidents, allegations, complaints and other information which relate to child protection or a child's, young person's or adult's safety, welfare or wellbeing
- information about incidents which may have already occurred and information which suggests the possibility of a future incident
- in some cases, information relating to an adult victim (which may indicate a possible risk to others including children).

You must report this information regardless of your views about its relevance, accuracy or seriousness.

6. Child protection:

Child protection: Assess and Report to DoCS if you are a Mandatory Reporter

Child protection: Assess and Report to DoCS if you are a Mandatory Reporter

This policy is part of a set of policies on child protection. See the Child Protection Essentials policy for background to this policy.

Who must comply with this policy

This policy applies to all those paid staff who are mandatory reporters (see box).

Administrative staff, students and volunteers should see the policy Child protection: Report to the Manager if you are not a Mandatory Reporter.

At risk of harm

All mandatory reporters must be able to apply the concept of *a child at risk of harm*.

A child is at risk of harm if current concerns exist for the safety, welfare or well-being of the child because of the presence of any one or more of the circumstances defined in the *NSW Children and Young Persons (Care and Protection) Act 1998*. See the *NSW Interagency Guidelines on Child Protection Intervention* at <http://www.kids.nsw.gov.au>

Reporting to DoCS

Any person who has reasonable grounds to believe that a **child (under 16)** or a **young person (aged 16 or 17)** is at risk of harm because of current concerns (as defined in the Act) may report to Department of Community Services (DoCS). Members of the public phone **132 111** (24 hour).

Mandatory reporting to DoCS

Some people **must** report if they have reasonable grounds to suspect a **child (under 16)** is at risk of harm. A mandatory reporter is a paid worker who provides one of these services:

- health care
- welfare
- education
- children's services
- residential services
- disability services
- law enforcement,

or someone in a management position (paid or unpaid) directly responsible for or supervising provision of one of these services.

Mandatory reporters should phone **133 627** (24 hour service). The DoCS website has tips about reporting at www.community.nsw.gov.au.

Who must report?

All mandatory reporters who are aware of the child at risk are legally obliged to report (max. penalty \$22,000). An internal agency policy requiring staff to report to the Manager, who then reports to DoCS, does not protect you if the Manager fails to report.

A report to DoCS is not a breach of privacy laws or agency privacy policies.

6. Child protection:

Child protection: Assess and Report to DoCS if you are a Mandatory Reporter

Procedure

Assess the situation

When you get information relevant to child protection, including:

- disclosures
- incidents
- allegations
- complaints
- other information

which relate to child protection or a child's, young person's or adult's safety, welfare or wellbeing, you must assess that information in order to judge whether a child is at risk of harm.

This applies to incidents which may have already occurred and to information which may suggest the possibility of a future incident.

In some cases information relating to an adult (eg. a parent of a young child, a staff member, a victim, a perpetrator) may indicate a possible risk to others including children.

You may get this information, for example:

- when a child or young person discloses something to you
- when an employee, volunteer or student tells you something
- when DoCS, police, or the Ombudsman tell you something
- when someone else tells you something
- when you observe something.

You may need to try to find out more about the situation, but do not continue doing this once there are grounds to report to DoCS or the police.

If it is not a mandatory report

If a report to DoCS is not mandatory because the young person is 16 or 17 or is an adult, you must still consider carefully how to respond:

- you may still be required to report to DoCS if another person under 16 is at risk
- the young person may have a range of needs which you should explore.

Report to the Manager

Report the information and your assessment to the Manager, who will liaise with you regarding any report to DoCS.

If the Manager is not available and you need to report to DoCS urgently, do not wait for the Manager. Ensure that as soon as possible the Manager is made aware of the information and how you have responded.

6. Child protection:

Child protection: Assess and Report to DoCS if you are a Mandatory Reporter

Report to DoCS

If you decide that a report to DoCS is required, then follow the current Department of Community Services (DoCS) procedures for making a report of a child or young person at risk.

Follow advice from DoCS including advice about any necessary steps to avoid jeopardising any investigation or prosecution.

Child protection: Allegations against paid or volunteer staff

This policy is part of a set of policies on child protection. See the Child Protection Essentials policy for background to this policy.

When does this policy apply

This policy applies when the Manager becomes aware of an allegation, complaint or other information relevant to child protection about a paid or volunteer staff member.

Procedure

Manager to assess the information

You must immediately assess the information in order to judge how to respond.

You may need to find out more about the situation or clarify the details (eg: what behaviour is alleged, the identity of people involved) but do not continue doing this once there are grounds to report to DoCS or the police.

External reporting and internal procedures

Depending on the circumstances, you may need to:

- Report to NSW Department of Community Services (DoCS) (see the policy Child Protection: Assess and Report to DoCS if you are a Mandatory Reporter)
- Report to NSW Ombudsman (designated agencies only - see below)
- Report to NSW Commission for Children & Young People at a later date
- Report to the police (see the policy Crime and Police)
- apply internal policies such as employment or volunteer policies (but the Child Protection policies take priority where other policies conflict with it).

Manager to handle communications

Handle all enquiries and communication about the case yourself, including with children and young people, families, and media.

Ensure that the privacy and reputation of both the child or young person and the alleged perpetrator are not damaged unnecessarily.

In order to maintain confidentiality, only tell people who need to know about the allegation. Report the case to management, but only identify paid and volunteer staff

6. Child protection:

Child protection: Allegations against paid or volunteer staff

members involved in the alleged incident (not young people or others), and only if it is appropriate to do so. For example it might not always be appropriate for all of management to know, eg. a management person might have a conflict of interest.

Keep clear records of information relating to the allegation. Ensure that only people 'who need to know' have access to these records. (The NSW Ombudsman has a useful fact sheet on **Keeping records** at www.ombo.nsw.gov.au).

Managing risk: temporary changes to employment/volunteering arrangements?

When an allegation of a child protection nature is made against a staff member or volunteer it is important that you assess any risks posed by the staff member to children and young people who come into contact with the agency. This includes taking any necessary interim action to ensure the safety and well being of the children and young people including whether the staff members' duties need to be changed during the investigation process.

In deciding whether to make temporary changes to employment/volunteering arrangements, a risk assessment of the situation needs to take into account the seriousness of the allegation, and balance:

- the ongoing safety of children and young people
- the needs of any investigations and proceedings (DoCS, police or internal investigation)
- the need to maintain privacy and confidentiality
- the need to not unfairly damage the reputation of the staff member
- (for paid staff) the need to comply with employment laws, Awards and agreements.

6. Child protection: Child protection: Allegations against paid or volunteer staff

Allegations against paid and volunteer staff

How you manage the situation depends on the nature and seriousness of the allegations. Take into account any relevant provisions of employment law and your job contract. You should seek advice from DoCS and your employer association (eg. Jobs Australia). See the guidelines provided by the NSW Ombudsman in *Child Protection in the Workplace* at <http://www.ombo.nsw.gov.au> (regardless of whether the agency is a Designated Agency under the relevant legislation - see below).

Some steps to consider in more serious situations:

Remove the staff member from any contact with young people if the case justifies it. In some situations it is not appropriate to put the allegation to the staff member until sufficient information regarding the allegation has been gathered. If DoCS or police are involved, check with them to see if any action taken by the agency will interfere with their investigations. It might also be appropriate to discuss with them any proposed changes to the staff member's duties. Staff members need to be aware that any change in their duties is part of a risk management strategy.

Explain their absence from normal duties to other staff and young people without revealing that they are alleged to have behaved improperly.

Inform the staff member that while on leave or suspended they should only communicate with you and not others at the agency. Inform them of options for support including their union and counselling.

Also consider the impact of the case on other staff who are aware of it. In serious cases you should offer affected staff counselling by an independent person, or follow the Critical Incident Response policy.

For more information on risk management following an allegation against an employee, see **5.14 Risk assessment** in *Child Protection in the Workplace: responding to allegations against employees*, at <http://www.ombo.nsw.gov.au>

If you have any inquiries or concerns phone the NSW Ombudsman's office on 02 9286 1000 or toll free 1800 451 524.

6. Child protection:
Child protection: Allegations against paid or volunteer staff

Report to NSW Ombudsman

If the agency is a Designated Agency under the NSW *Ombudsman Act 1974*, the Manager must be aware of and comply with all requirements of the NSW Ombudsman and the relevant legislation, and report certain cases to the NSW Ombudsman within 30 days. This may apply regardless of whether the case needs to be reported to DoCS or not.

Report to NSW Ombudsman?

The NSW Ombudsman is responsible for overseeing the handling of "reportable allegations and convictions" against employees in all government departments, public authorities and certain non-government agencies in NSW.

These non-government agencies are called "designated non-government agencies". *Child Protection in the Workplace: responding to allegations against employees* (pages 15 –16) lists the designated government agencies, designated non-government agencies and other public authorities that are required to notify reportable allegations and convictions, at <http://www.ombo.nsw.gov.au> .

For non-residential youth services, this role of the Ombudsman applies to those services run by local councils. **(It does not apply to non-residential youth services run by non-government organisations).**

Heads of agencies are required to notify the Ombudsman of any reportable allegations and convictions (within 30 days of finding out about the matter) and to submit a report at the end of the investigation into the allegation or conviction. The Ombudsman's role is to assess the report to ensure that the agency's investigation was carried out properly and fairly with consideration given to the protection of the child and upholding the rights of employees. The Ombudsman may ask for more information either from the head of agency or the person who carried out the investigation.

It is important to distinguish between the criteria for reporting to DoCS and the criteria for reporting to the Ombudsman:

- Report to the Ombudsman any "reportable allegations and convictions"
- Report to DoCS if you have reasonable grounds to suspect risk of harm to a child under 16.

See:

- NSW *Ombudsman Act 1974*
- *Child Protection in the Workplace: responding to allegations against employees*, at <http://www.ombo.nsw.gov.au>
- *NSW Interagency Guidelines for Child Protection Intervention* at <http://www.kids.nsw.gov.au> .

6. Child protection:

Child protection: Allegations against paid or volunteer staff

Report to Commission for Children and Young People

Report the case to the NSW Commission for Children and Young People if required.

Report *relevant employment proceedings* to the NSW Commission for Children and Young People

All employers must notify the NSW Commission for Children and Young People of the name of any person against whom relevant employment proceedings have been completed.

Relevant employment proceedings are disciplinary proceedings completed in NSW, or elsewhere, where an employer or professional body that supervises the conduct of the employee has found that 'reportable conduct' or an act of violence occurred, or there is some evidence that it occurred.

An act of violence will be relevant only if it was committed by an employee in the course of employment and in the presence of a child.

For more information see:

- *NSW Interagency Guidelines for Child Protection Intervention* at <http://www.kids.nsw.gov.au>
- http://www.kids.nsw.gov.au/check/relevant_emp.html .