

# **RESPONDING TO ALLEGATIONS AGAINST EMPLOYEES IN THE AREA OF CHILD PROTECTION**

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**Implementation document for the Child Protection: Allegations Against Employees policy**

**Policy document number:** PD-2005-0263-02-V01.1.0

**Implementation date:** 23 April 2004

**Applicable from:** 11 October 2021

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## Document history

Version	Date	Description	Approved by
1.1.0	11/10/2021	Updated to align with legislative changes, simplified the language and processes.	Executive Director, Professional and Ethical Standards

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## 1 Purpose

This document sets out the process for employees and workplace managers (including principals), to follow if allegations are made against employees of the Department of Education in the area of child protection ([section 5](#) and [section 6](#)). It also outlines how Professional and Ethical Standards handles reports, and what protections and support is available to those involved in investigations and options for employees to seek a review or make a complaint (sections 7 to 10).

The department complies with a range of child protection and employment legislation (see [Appendix 1](#)). These procedures reflect the department's legislative responsibilities and demonstrate its commitment to protect the safety, welfare and wellbeing of students and to support the work of employees working with children and young people in an educational setting.

## 2 Application

These procedures apply to all employees, including contractors, volunteer workers and student teachers on practicums.

## 3 Context

The department's overriding concern when responding to allegations against employees in relation to child protection, is the safety, welfare and wellbeing of children and young people. The [Teaching Service Act 1980](#) and the [Education \(School Administrative and Support Staff\) Act 1987](#) state that the protection of children is to be the paramount consideration in taking action against any officer or temporary employee and in dealing with any appeal against, or determining any claim arising from or in relation to, that action.

When responding to allegations against employees, the department is also responsible for ensuring its employees are treated fairly, and the rights of individuals are respected during an investigation and applicable disciplinary process.

These procedures:

- reflect the department's legislative requirements to report to the Department of Communities and Justice ([section 3.1](#)), the Office of the Children's Guardian ([section 3.2](#)) and the Independent Commission Against Corruption ([section 3.3](#))
- support the interagency work the Department of Communities and Justice coordinates.

### 3.1 Department of Communities and Justice

The Department of Communities and Justice has a broad range of responsibilities in NSW, including protecting children from risk of harm, abuse and neglect. The Child Protection Helpline receives, assesses and investigates reports where there is a risk of significant harm to children and young people and acts to maintain and monitor their safety. It also provides and arranges support for children, young people and their families.

A person who provides educational services must make a report to the Department of Communities and Justice if they suspect a child is at risk of significant harm, as mandated in the [Children and Young Persons \(Care and Protection\) Act 1998](#).

Where concerns about risk of significant harm relate to the actions of an employee, employees must follow the procedures for reporting to the Department of Communities and Justice as outlined in the [Child Protection Policy: Responding to and reporting student at risk of harm](#).

## 3.2 Office of the Children’s Guardian

The Office of the Children’s Guardian was established in 1998 to promote the interests and rights of children living in out of home care. The Child Protection (Working with Children) Act 2012 expanded the office’s role to include administration of the Working With Children Check in NSW.

The Children’s Guardian Act 2019 established the NSW reportable conduct scheme within the Office of the Children’s Guardian, transferring the scheme from the NSW Ombudsman on 1 March 2020.

The office has a range of child protection functions. It:

- oversees and monitors investigations of a child protection nature against employees of entities
- ensures that agencies are responding appropriately to allegations against employees, and that the process protects children, is effective, accountable and fair
- requires entities to provide information about their systems for reportable conduct. For the department, this includes the Code of Conduct, as well as policies and processes for preventing, detecting, responding to reportable conduct by an employee
- administers the Working with Children Check and encourages organisations to be safe for children
- accredits and monitors the designated agencies that arrange statutory out of home care in NSW.

## 3.3 Independent Commission Against Corruption

The principal functions of the Independent Commission Against Corruption (ICAC) are to investigate and expose corrupt conduct in the NSW public sector; to actively prevent corruption through advice and assistance, and to educate the NSW community and public sector about corruption and its effects.

Professional and Ethical Standards will notify ICAC of any matter that may concern corrupt conduct in accordance with the Independent Commission Against Corruption Act 1988 (section 11).

## 4 Definitions

**Table 1 Definitions relating to child protection allegations**

Term	Definition
Complainant	Any person who makes allegations about department employees in the area of child protection.
Young person	A person aged 16 or 17 years.
Working With Children Check	A Working With Children Check is authorisation to engage in child-related employment and includes both paid or voluntary child-related positions. Broadly, child-related employment includes a person engaged in paid or unpaid work for the department that wholly or partly provides (educational, early education and transport) services to children. It extends to school cleaners, assisted school travel drivers and special religious education teachers. The <u>Working with Children Check Procedure</u> provides a detailed list of employees in child-related roles that require a Working With Children Check Clearance.
Employee	An employee is defined as any person the department: <ul style="list-style-type: none"><li>• employs, who receives a payment summary for taxation purposes</li><li>• engages, directly or by a third party, to provide volunteer services to children</li><li>• engages, directly or by a third party, who is required to hold a Working With Children Check to be engaged as a contractor.</li></ul>
Notifier	The person who notifies Professional and Ethical Standards of an allegation against an employee. People should report the allegation to their workplace manager who is then responsible for reporting.

Term	Definition
Support person	A person over 18 years who accompanies a witness, complainant or respondent to a meeting or interview to provide support or advice. This may be a union representative.
Public interest disclosures (PID)	<p>A report of alleged corruption, serious and substantial waste, serious maladministration or a contravention of the <a href="#">Government Information Public Access Act 2009</a> that meets the following criteria:</p> <ul style="list-style-type: none"> <li>• the report is made by a public official about a public official</li> <li>• the report is made to a nominated disclosure officer</li> <li>• the report is not made in an attempt to avoid disciplinary action</li> <li>• the reporter has an honest belief on reasonable grounds that the information is correct</li> <li>• the reporter is not questioning the merits of government policy.</li> </ul> <p>A child protection allegation may be treated as a PID in certain circumstances. An employee who makes a PID report is protected from detrimental action or reprisal as a result of making the report. For more information see the <a href="#">Public Interest Disclosures Management Guidelines 2011</a>.</p>
Nominated disclosure officer	Professional and Ethical Standards investigators are nominated disclosure officers under the <a href="#">Public Interest Disclosures Act 1994</a> . One of the criteria for a report to be deemed a 'public interest disclosure' (see above) is that the report is made to a nominated disclosure officer.
Reportable allegation	<a href="#">Children's Guardian Act 2019</a> defines a reportable allegation as an allegation that an employee has engaged in conduct that may be reportable conduct and has occurred in the course of the employee's employment. If the person is required to hold a Working With Children Check, it extends to reportable conduct outside of their employment.
Reportable convictions	A reportable conviction is defined under the <a href="#">Children's Guardian Act 2019</a> , and includes a finding of guilt without the court proceeding to a conviction in NSW or elsewhere. It includes a range of offences against children, serious offences against a person, sexual offences and possession of child abuse material.
Workplace manager	<p>The person in charge of a work group. Examples include:</p> <ul style="list-style-type: none"> <li>• Director, Educational Leadership</li> <li>• Director School Services</li> <li>• principal</li> <li>• state office director.</li> </ul>

## 5 Framework – Responding to child protection allegations

The department's process for responding to child protection allegations against employees is outlined in the following sections. All employees have a responsibility to report such allegations:

- Section 5 will help employees understand what constitutes an allegation of a child protection nature and define reportable conduct.
- The department has responsibilities to report allegations against employees to external agencies ([section 6.1](#)).
- If an employee becomes aware of an allegation made against another employee, they must inform their workplace manager ([section 6.2](#)).
- Workplace managers need to inform Professional and Ethical Standards (PES) of the allegation ([section 6.3](#)).
- PES will assess the report ([section 7](#)) and decide whether to formally investigate (from [section 8](#)).

### 5.1 Defining allegations of a child protection nature

This is an allegation of misconduct by an employee that involves misconduct with, towards, about or in the presence of a child or a young person.

To help determine what matters should be reported to PES, workplace managers need to use the [PES Reporting Guide](#). It includes assistance in responding to allegations about:

- reportable conduct
- crossing professional boundaries
- unnecessary physical contact with students
- poor supervision and serious risk to the safety of students.

The department takes a protective approach to handling allegations of a child protection nature and accepts a wider range of child protection conduct for assessment and investigation than the NSW reportable conduct scheme. This ensures the department captures concerning conduct and acts early to protect students from more serious harm.

The department has robust child protection systems that uphold high standards of child safe practices. The Code of Conduct, policies and procedures underpin these standards.

### 5.2 Conduct that is considered a reportable allegation

The department is required to notify reportable allegations and reportable convictions to the Children's Guardian. The reporting threshold is based on the asserted allegation and does not require proof that the alleged conduct occurred.

Under the Children's Guardian Act 2019, reportable conduct is defined as:

- any [sexual offence](#)
- [sexual misconduct](#)
- [ill-treatment](#)
- [neglect](#)
- an [assault](#) against a child
- an offence under 43B or 316A of the [Crimes Act 1900](#)
- behaviour that causes significant emotional or [psychological harm](#) to a child.



Conduct on the part of a departmental employee required to hold a Working With Children Check extends to conduct outside the workplace.

In situations where it is not clear whether the conduct may be misconduct and reportable, the workplace manager should complete the [PES Reporter Guide](#) and where appropriate report the matter to PES.

PES will consider the following factors when deciding if a matter is reportable conduct, including:

- the child's age
- the child's maturity
- the child's health
- any disability or health issues the child may have
- other characteristics of the child
- context in which the alleged conduct occurred.

The Office of the Children's Guardian provides guidance to entities on identifying reportable conduct – see [Appendix 2](#). PES will use this information when assessing and investigating allegations of reportable conduct.

### **5.3 Conduct that is not reportable or exempt from reporting**

Reportable conduct does not include:

- conduct 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
- the use of physical force that, in all the circumstances, is trivial or negligible, and the circumstances in which it was used have been investigated and recorded in accordance with appropriate procedures
- allegations of misconduct by an employee against a student who is aged 18 years or older, however PES will assess these allegations for investigation
- conduct of a class or kind determined by the Children's Guardian to be exempt from reporting by a particular entity.

While conduct may not be reportable, principals and/or workplace managers may still need to report it to PES as an allegation of a child protection nature. Consult the [PES Reporting Guide](#) to determine whether reporting or further action is required.

The Children's Guardian and the department currently have a class or kind determination in place. PES assesses which conduct falls under the class or kind determination. The department is still required to investigate and take action in accordance with its procedures that the Children's Guardian can audit.

## **6 How to report allegations**

Employees (section 6.2) and workplace managers (section 6.3) need to report allegations to Professional and Ethical Standards (PES), using the [PES Reporting Guide](#) to report. [Appendix 2](#) provides an overview of the reporting process.

### **6.1 The department's reporting obligations**

Under the reportable conduct scheme, the department is required to report allegations to the Office of the Children's Guardian within 7 days.

PES handles the department's reporting responsibilities to the Office of the Children's Guardian. Criminal offences apply under the Children's Guardian Act for failing to report.

### **6.2 Employees' reporting obligations**

An employee who becomes aware of an allegation of a child protection nature about themselves or another employee must inform their workplace manager. If the allegation involves the workplace manager, the employee must inform another supervisor or suitable person.

Employees, including workplace managers, should not self-report allegations about their own conduct. A more senior officer, who is independent of the alleged conduct, should report any allegations to PES.

#### **6.2.1 Vulnerability related to health issues and disability**

Students with health issues and/or disability are more vulnerable to harm because of their greater dependence on supports and inherent barriers to expressing their views about their treatment.

Employees are required to be responsive and proactive about addressing concerns reported or observed for these students.

### **6.3 Workplace managers' reporting obligations**

The workplace manager or their supervisor must notify PES of the allegation as soon as possible, but within one working day of receiving the allegation.

Where the information indicates there is a risk of significant harm to a child or there has been conduct that may amount to a criminal offence, the workplace manager must immediately contact the Child Protection Helpline and/or the NSW Police. PES can provide advice on whether the manager needs to report to another agency.

#### **6.3.1 Handling a report of a child protection nature**

The workplace manager must not investigate the allegation or inform the employee but can clarify the details of the allegation with the complainant. They must respond immediately and in a sensitive manner when they become aware of a child protection allegation against an employee.

The workplace manager should record details of the allegation using the complainant's/witness's exact words to describe the allegation. In some matters, the complainant or witnesses may have provided written information such as critical incident reports.

The workplace manager must promptly and within one working day report the matter to PES. Should PES require further information, the workplace manager must promptly seek, obtain and produce the information.

All reasonable steps are to be taken to ensure the identities of the person(s) who made the allegations, or who are the subject of the allegations, are treated confidentially. However, workplace managers should not guarantee confidentiality because the manager may need to provide the identity of those people who are involved in, or witnessed the alleged conduct, to the employee who is the subject of the allegation. This may be required to effectively investigate the matter or provide procedural fairness during subsequent disciplinary or legal action.

### **6.3.2 Providing information about student support needs**

Workplace managers need to provide information about a child's support needs to PES at the earliest stage to assist in the investigation planning and data collection.

PES may also request supporting documentation, such as individual support plans and school-based behaviour policies. This will assist PES to assess risk, determine appropriate action and identify how best to engage and support the student in the investigation process.

### **6.3.3 Harmful or problematic sexualised behaviour**

The support, management and reporting of harmful or problematic sexualised behaviour between students must align with department guidelines [Sexualised behaviour between students](#).

Workplace managers need to advise PES of any failure by an employee to properly respond to these types of matters.

### **6.3.4 Former employees and historical allegations**

Workplace managers need to advise PES about allegations against former employees.

PES does not investigate allegations raised after an employee has left the department. However, PES will work with principals and/or workplace managers to ensure that appropriate reporting occurs and risk management action is taken. This may include advising other agencies where necessary, managing risk should the employee seek to re-engage in employment and providing support to victims where appropriate.

## **6.4 Failure to report is a serious matter**

Failing to report or respond to matters relating to employees, former employees and child protection concerns may place children at risk of further harm and the department treats this matter seriously.

An employee who fails to report allegations of a child protection nature may become the subject of an investigation for breaching the [Code of Conduct](#). It may also be reportable conduct and a criminal offence under the [Crimes Act 1900](#) (section 316A).

## 7 Handling, assessing and responding to allegations

Professional and Ethical Standards (PES) will assess any reports it receives and decide on the appropriate action (section 7), which may include referring the matter back to the workplace manager to resolve. Alternatively, PES may begin a formal investigation (from [section 8](#)).

### 7.1 Assessing notifications

The PES investigator will:

- assess the immediate risks associated with the allegation, in conjunction with the workplace manager, and consider
  - the risk to any children, young people, students, employees and to the department
  - the seriousness and nature of the allegation to determine the appropriate action
  - whether it is appropriate for the employee to remain on duty
  - the support needs of all those involved
- ensure the workplace manager has met risk of significant harm reporting obligations
- advise the person making the notification what immediate action will be taken to ensure the safety, welfare and wellbeing of all those involved, particularly emphasising the importance of confidentiality
- discuss the process that will occur as a result of the notification
- record all available information
- advise the workplace manager what information they can provide to the parties to the investigation, including the complainant, victim, witnesses and the employee subject to the allegations
- determine if a notification should be considered a public interest disclosure (PID)
- use all the information obtained to consider PES's response and whether the allegation is reportable.

### 7.2 Responding to notifications

PES will respond to a notification by either:

- referring the matter back to the workplace manager for direct management action
- investigating the matter under the relevant guidelines ([section 8.1](#)) and, where the allegations are reportable, notifying the Office of the Children's Guardian within 7 days.

#### 7.2.1 Taking direct management action

The workplace manager may be able to resolve some concerns about employee conduct in the workplace by using direct management action. Workplace managers need to consult the [PES Reporting Guide](#) to help them determine whether they should report a matter to PES, as well as for examples of direct management action strategies.

PES may also refer a reported matter to a workplace manager to take direct management action. It is important that the manager takes action to address the conduct and future risk.

At the conclusion of the direct management process, PES may request workplace managers to provide advice about the outcome. This may include the relevant records of meetings and any directions that were given to the employee.

## 8 Professional and Ethical Standards investigation

### 8.1 Guidelines and principles for investigations and disciplinary action

The department's [Guidelines for the Management of Conduct and Performance](#) outline the performance management and disciplinary process for:

- permanent officers employed under the [Teaching Service Act 1980](#)
- permanent officers employed under the [Education \(School Administrative and Support Staff\) Act 1987](#).

The disciplinary process for employees employed under the [Government Sector Employment Act 2013](#) must be consistent with the [Government Sector Employment Rules 2014](#). Further guidance can be found on the employment portal on the [Public Service Commission website](#).

The guidelines do **not** apply to those employed under other legislation and awards or to casual and non-permanent employees.

Regardless of employment conditions, Professional and Ethical Standards (PES) conducts all its investigations to ensure it:

- manages risk to all parties, with the protection of children the paramount consideration
- is procedurally fair and timely
- provides the opportunity to respond to matters raised about an employee where an adverse finding is contemplated.

### 8.2 Contractors, sub-contractors and volunteers

Although not subject to specific employment legislation and disciplinary schemes, contractors, volunteers or other persons associated with departmental sites may have contracts or services terminated, or access to departmental sites or involvement in the department's activities restricted or terminated during and/or following a PES investigation. This may include terminating assisted school transport contracts with an organisation where an employee or sub-contractor works.

If the matter involves:

- an Assisted School Travel driver, PES will advise the Assisted School Travel unit and the main contract owner about the actions to be taken to manage risk and undertake the investigation
- a contract cleaner, PES will contact the cleaning contractor about the actions to be taken to manage risk and undertake the investigation
- a volunteer, and there is a need to limit the volunteer's access to school students, PES will determine what action will be taken and will advise the volunteer, workplace manager and volunteer organisation they work for if applicable.

### **8.3 Notifying affected employees**

PES will, as soon as practical:

- inform the employee about the decision to commence an investigation and whether the allegation has been reported to the Office of the Children's Guardian
- advise the employee of the content of allegations that may result in action being taken against them and give the opportunity to provide a submission or nominate witnesses. This should occur as soon as it is clear what the issues are.

When PES is the only investigating agency, the investigator will provide regular updates about the investigation's progress to the person whose conduct is under investigation. The Children's Guardian Act 2019 also requires PES to provide progress updates to the student who was allegedly the subject of the conduct and their parent/authorised carers.

### **8.4 Involving external agencies or courts**

PES will report matters to other agencies where it has a legal responsibility to do so. This includes sharing information about children's safety, welfare and wellbeing.

These agencies include NSW Police Force, the Department of Communities and Justice, Office of the Children's Guardian, NSW Ombudsman, Afework NSW or the Independent Commission Against Corruption (ICAC).

If an external investigating body requests that the department defer its process while it carries out an investigation, this may limit the PES investigation's progress.

When a court is considering the matters under investigation, PES will wait for its decision.

### **8.5 Employee leave applications and promotion**

During a PES investigation, a senior PES officer will consider employee applications on a case-by-case basis for:

- long service leave
- leave without pay
- separation from the department
- participation in teacher exchange
- issuing a record of employment
- promotion
- transfer
- permanent, temporary or casual employment.

PES will inform the employee if it has recommended holding any such application pending an investigation's outcome.

### **8.6 If an employee resigns**

If an employee resigns or leaves their role during an investigation into a reportable allegation, the department is still required to complete the investigation.

## 8.7 Employees response to allegations and proposed action

PES will provide employees with the opportunity to respond to the complete allegation/s of misconduct and any proposed disciplinary action before a final decision is reached.

Employees are not required to make a submission during an investigation.

Employees can participate in an interview to respond to allegations and PES will ensure:

- the interview arrangements consider the confidentiality, convenience and safety of all parties
- the employee can have a support person present
- the interview is recorded, with the consent of the employee
- any documents shown to the employee during the interview will be identified and preserved
- the employee will be offered a copy of the record of interview.

PES will always respect an employee's decision not to provide a response. However, employees should note that PES will reach a decision based on the available information.

Employees should seek early independent advice on the most appropriate course of action their particular circumstance. This may include a union, professional organisation or legal advisor.

PES will consider a request for an extension to provide a response on its merits. PES will look at the overall circumstances and balance the need to ensure fairness against the need to progress the matter.

## 8.8 The investigation process

Matters that proceed to a PES investigation are allocated to an investigator. The investigator gathers evidence, considers employee and witness submissions and provides an investigation report. They may terminate an investigation at any point where there is insufficient evidence to warrant it being progressed. Table 2 outlines the processes involved in an investigation.

**Table 2 Professional and Ethical Standards investigation process**

Step	Process
Preliminary assessment	Professional and Ethical Standards (PES): <ul style="list-style-type: none"> <li>• receives and assesses allegations</li> <li>• assesses and manages risk to all parties involved in the allegation including the employee, any children, young people or students</li> <li>• notifies the Children's Guardian of reportable allegations.</li> </ul>
Information gathering	PES notifies the employee about the investigation. The employee can provide information or nominate witnesses for the investigator to consider. The investigator: <ul style="list-style-type: none"> <li>• develops an investigation plan</li> <li>• gathers evidence including documents, interviewing witnesses and photos</li> <li>• seeks information from other agencies including the Department of Communities and Justice, NSW Police and the courts.</li> </ul>
Putting allegations to the employee	The investigator: <ul style="list-style-type: none"> <li>• analyses the evidence</li> <li>• provides allegations in writing to the employee</li> <li>• invites the employee to an interview and/or to make a written submission.</li> </ul>
Report writing	The investigator: <ul style="list-style-type: none"> <li>• analyses the submission and may undertake further investigation</li> <li>• drafts an investigation report, which a PES team director endorses.</li> </ul>

Step	Process
Making findings	The decision-maker: <ul style="list-style-type: none"> <li>• reads the evidence and report to make findings to sustain or not sustain each allegation</li> <li>• may request additional information relevant to any proposed action from the investigator</li> <li>• advises the employee if misconduct is not found and closes the investigation.</li> </ul>
Proposing action	The decision-maker: <ul style="list-style-type: none"> <li>• advises the employee in writing of the proposed action (if any) that the department will take</li> <li>• gives the employee an opportunity to make a submission on an adverse finding.</li> </ul>
Finalising action	The decision-maker advises: <ul style="list-style-type: none"> <li>• the employee of the action that the department will take</li> <li>• relevant parties of the outcome</li> <li>• the Children’s Guardian, for reportable conduct matters, of the outcome and provides copies of the investigation material.</li> </ul>

## 9 Managing confidentiality and protections for witnesses/reporters

Professional and Ethical Standards (PES) manages confidentiality with care, but this is balanced with the risks to others and the fair management of the investigation. There are protections against employees subject to allegation approaching witnesses or reporters.

### 9.1 Managing confidentiality for all parties

PES takes care to maintain confidentiality. This protects the integrity of the investigation process and preserves the privacy of the concerned parties. However, there are limits to confidentiality and in some circumstances, PES may need to disclose information to:

- ensure the safety of parties and to manage risk
- progress an investigation
- meet legal obligations to share or report information
- ensure fairness for an employee subject to allegations, including providing
  - the names of victims and witnesses so that an employee can respond to the allegations
  - the evidence collected and relied on to make findings where disciplinary action is proposed so the employee can respond to the proposed action.

PES will advise all witnesses, including employees subject to investigation and their support person, that they should maintain confidentiality and not discuss the matter except for the purposes of the investigation, to obtain legal advice/union support or in relation to their personal health or support needs.

PES records the outcome of the matter in a case management system. All documents relating to the investigation remain confidential and are held separately from the employee’s personnel file under restricted access and in accordance with the State Records Act 1998.



## 9.2 Approaching witnesses during the investigation

Employees who are the subject of investigation must not seek to discuss or mention a person's report, evidence or complaint, where formal investigation has commenced, without the investigator's approval. This may contaminate the investigation process and would breach the Code of Conduct.

Employees who are the subject of an allegation should nominate any potential witnesses for the investigator to approach.

## 9.3 Protection against reprisal

The department expects people to report concerns and to raise complaints about employee conduct, including in the area of child protection.

Department employees must not take detrimental action against a person in reprisal for making a report, providing evidence or raising a complaint about any topic, including child protection. In matters allocated for a PES investigation, employees must not seek to directly discuss a person's report or evidence without the investigator's approval. These requirements are set out in the Code of Conduct (section 11.5). Breaches of this section could amount to misconduct.

It is a criminal offence under the Children's Guardian Act 2019 (section 64) to take, or threaten to take, detrimental action against a person who reports or proposes to report, in good faith, a reportable allegation.

### 9.3.1 Public interest disclosures

It is also a criminal offence under the Public Interest Disclosures Act (section 20(1)) to take detrimental action substantially in reprisal against the person making a public interest disclosure (PID).

PES investigators are nominated disclosure officers (NDOs) and can receive a public interest disclosure (PID). The Public Interest Disclosures Act encourages and facilitates disclosures, made in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.

The department must keep the PID reporter's identity confidential and limited to only those people who need to know. The reporter's identity may be revealed in limited circumstances including with the reporter's consent and/or where there is a need to disclose the information for the matter to be effectively investigated or for disciplinary action to occur.

## 9.4 Reporting findings to the Office of the Children's Guardian

The Office of the Children's Guardian oversees investigations into reportable allegations. Under the Children's Guardian Act 2019, entities must report to the Guardian on the facts and circumstances of the reportable allegations, and analysis of the evidence and findings. The report must include copies of relevant documents.

In line with the Child Protection (Working with Children) Act 2012, the following findings are a trigger for assessment of an employee's Working With Children Check:

- sexual offence
- sexual misconduct
- a serious physical assault of a child.

The Office of the Children's Guardian separately determines whether to maintain a clearance or to place a bar on an employee's employment. An employee may be entitled to provide relevant information to the assessment process and has avenues to review the Children's Guardian's decision.

## **10 Support for employees during the investigation process**

### **10.1 Role of a support person**

A support person provides support and assistance to the child, young person or employee at an interview or meeting.

The support person must be over 18 years. The support person can be a representative of a union or a legal practitioner.

A person who is a witness or may be required to provide relevant information for the purposes of the investigation should not perform the function of support person.

The person conducting the meeting or interview will ensure the support person is advised that their role is one of support, and that they must maintain strict confidentiality.

Providing support to a person is voluntary and an employee requested to undertake this role has a right to decline. A person should not accept the role of support person if they are aware of any conflict of interest concerning the allegations, or if they have information relevant to the investigation.

The support person is not an advocate and cannot answer for the employee.

The form of support and assistance may vary according to the circumstances of the interview. This support and assistance could include any or all of the following:

- taking notes
- providing advice on rights/entitlements
- suggesting a temporary pause of the interview to assist the person
- seeking further advice.

Where the support person is assisting a child, young person or employee at an investigation interview, what takes place at the interview becomes part of the investigation and must remain confidential, unless otherwise required by law. Employees and others who attend interviews as a support person may, at their discretion, make a written record of the interview. The support person should be aware that they, and/or their notes, may be required in court or disciplinary proceedings.

### **10.2 Support for employees who are the subject of an allegation**

Supports are available to help employees during the investigation process. This includes:

- the Employee Assistance Program (EAP) for permanent/ongoing employees and employees with a temporary employment agreement
- a relevant union if the employee is a member
- other health services, including general practitioners or local community health services.

In a crisis any person can contact NSW Mental Health Line on 1800 011 511 or Lifeline on 13 11 44.

## 10.3 Support for alleged child victims and witnesses

### 10.3.1 General support

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

Workplace managers must ensure that children and young people are informed of:

- their right to be treated fairly and without discrimination or intimidation
- their right to choose not to be interviewed or give a statement
- their entitlement to support
- the support services available to them, both from the department and other agencies.

Generalised support is required for students, and principals should accommodate this at a school level. It can include additional welfare checks on students, accessing the school counselling services or arranging an open leave class to seek executive staff assistance.

An appropriate external provider can be used including [Headspace](#) or [Child and Adolescent Mental Health Services](#). Where more specific support is required, the Professional and Ethical Standards (PES) investigator will work with the workplace manager to find an appropriate solution for a family. In some instances, the department can meet the costs of therapeutic services as part of a liability claim.

People can also be referred to [Lifeline](#) 13 11 14 for crisis support, a general practitioner or local community health service where other support services are not available.

### 10.3.2 Support during interviews

Support for children will be arranged in close consultation with them and wherever possible, their parent/s or caregivers.

When interviews are to be conducted with children, PES will:

- obtain parental consent unless there are exceptional circumstances that negatively impact on the student, and taking into consideration the student's age, maturity and wellbeing
- advise the child or young person that they may choose not to be interviewed at school or another departmental site
- advise the child or young person they can have a support person in the interview
- where the interview is to go ahead at school, plan a satisfactory neutral location and arrangements in consultation with the school.

Children or young people may not be comfortable about members of staff being present at interviews as they are persons in positions of authority. As far as possible, workplace managers and PES investigators should ensure that children and young people feel comfortable with their support person.

### **10.3.3 Support during formal proceedings**

If children or young people attend formal proceedings to provide evidence, an employee may provide support, which may include:

- meeting with the children or young people and their parents or caregivers
- attending formal meetings that the children or young people, parents or caregivers are required to attend
- attending the inquiry with the children or young people, parents or caregivers
- liaising with the children or young person's school to ensure pre-inquiry or post-inquiry support.

If PES requires witnesses to participate in the disciplinary process, PES will ensure that appropriate supports are arranged and provided.

Police, the Department of Communities and Justice and/or the Office of the Director of Public Prosecutions provide support for a child that is required to attend court in criminal proceedings.

### **10.4 Information for victims and families**

Under the Children's Guardian Act 2019, PES is required to communicate relevant information about investigations to students and their families where an employee is alleged to have committed reportable conduct against them. The information includes the investigation's progress, its findings and any department actions taken as a result of the investigation.

### **10.5 Victims services**

Victims Services and Support provides support services, including free counselling and financial assistance to victims of crime. Victims have rights, which are set out in the [Charter of Victims' Rights](#). For more information, please see [Communities and Justice – Victims Services](#).

### **10.6 Support for adult witnesses**

Employees who provide evidence in an investigation may require support. They can seek support from their workplace managers or directly from the [Employee Assistance Program](#), unions, professional associations and, community health providers.

## **11 Review options and complaints by employees**

### **11.1 Reviews**

Employees do not have the right to an internal review or appeal of a disciplinary decision made by a delegated decision maker. However, an employee may be able to explore external review options.

The Industrial Relations Commission deals with disciplinary appeals in line with the Industrial Relations Act 1996 for public sector employees. Section 97 of the Act sets out the type of disciplinary decisions that employees can appeal. There may be other legal avenues an employee can consider, and employees are encouraged to seek their own legal advice.

### **11.2 Complaints**

Employees can make a complaint about the way a matter is being investigated. In the first instance, an employee or their representative should seek to resolve the issue directly with the Professional and Ethical Standards (PES) investigator. The matter can be escalated to the investigator's team director where the issue cannot be quickly resolved.

Where informal approaches have not resolved the matter, a person can complain to PES's Executive Director at: [PES@det.nsw.edu.au](mailto:PES@det.nsw.edu.au).

A complaint will not lead to a review of final action taken against an employee including disciplinary actions.

A person dissatisfied with the response of the department in responding to a reportable allegation can make a complaint to the Children's Guardian.

## **Appendix 1 – Legislation and policy**

### **Child protection**

- Children’s Guardian Act 2019
- Children and Young Persons (Care and Protection) Act 1998
- Child Protection (Working with Children) Act 2012
- Child Protection (Offenders Registration) Act 2000
- Public Interest Disclosures Act 1994
- Independent Commission Against Corruption Act 1988
- Privacy and Personal Information Protection Act 1998
- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011

### **Employment**

- Teaching Service Act 1980
- Teaching Service Regulation 2012
- Education (School Administrative and Support Staff) Act 1987
- Education (School Administrative and Support Staff) Regulation 2013
- Government Sector Employment Act 2013
- Government Sector Employment Rules 2014

### **Policy**

- Guidelines for the Management of Conduct and Performance
- Code of Conduct
- Leading and Managing a School
- Policy for Protecting and Supporting Children and Young People
- Public Interest Disclosures Internal Reporting Policy
- Complaint Handling Policy and School and Community and Staff Complaints Procedures

### **Other NSW Government agencies and related policies and legislation**

- New South Wales Interagency Guidelines
- Reportable Conduct – Information and fact sheets
- Working with Children Check – information and fact sheets
- NSW Justice Victim Services and Support
- NSW Public Service Commission
- State Records Act 1988

## Appendix 2 – Reporting allegations of a child protection nature

Steps for reporting allegations of a child protection nature – workplace manager to:

- record details about an allegation of a child protection nature against an employee, on receipt of the advice. Treat this information confidentially
- report to [NSW Police](#) and/or [Child Protection Helpline](#) if the child is at risk of significant harm
- use the PES reporting guide to determine what action is required

If the [PES Reporting Guide](#) directs you to notify PES, telephone (02) 7814 3722 within **one working day**, providing all available information including contact details for students, parents, employees and any witnesses.

- advise parents or carers of children directly affected by the allegation(s) of the matters and how they will be handled
- where PES is assessing or investigating allegations, follow PES's advice and direction
- where PES is not investigating, take direct management action to address the.

### Information required when reporting to Professional and Ethical Standards

When notifying PES, you will need to provide information about:

- the nature and details known about the allegation
- risks to any children, young people, students, employees or the department
- details of any injuries sustained
- the details of the person who has contacted PES
- the name and contact details of the person who first made the allegation
- the names, ages and contact details of the children or young people affected by the alleged conduct
- the names, addresses and contact details for parents or caregivers of the children or young people involved
- the name, position and contact details of the employee against who the allegation has been made
- whether the employee already knows about the allegation and the circumstances under which they learned of the allegation (**do not inform the employee of the allegation without the advice of PES**)
- whether you have reported the matter to the Child Protection Helpline and/or Police, the outcome of their assessments of the matter and, if known, the reference numbers provided
- whether any children or young persons involved have a disability (as identified in the National Collection of Disability Data in Schools)
- whether any person involved requires special assistance in relation to language, culture or disability
- any written accounts about the alleged incident, including copies of your notes
- relevant family circumstances and parental risk factors impacting upon a student
- what counselling or other support you have arranged or that needs to be arranged for those involved, including for students and employees.

## **Additional Information that may be requested**

After contacting PES, you may be asked to obtain:

- written witness accounts
- a written account from the employee
- student plans including individual education plans, behaviour management plans
- location photographs
- relevant school policies
- CCTV footage
- documentary evidence
- attendance records.

Provide all information to PES within **2 working days** of your first contact with PES.

## **Identifying reportable allegations**

The Office of the Children's Guardian provides guidance to entities on identifying reportable conduct – see [Fact sheet 1: Identifying reportable allegations](#).

Professional and Ethical Standards uses this information when assessing and investigating allegations of reportable conduct.

Other information is available on the [reportable conduct fact sheets](#) section of the Office of the Children's Guardian.