

Child Protection

Policy

OBJECTIVE:

To ensure that Council provides a safe, caring and nurturing environment for children using Council's services and to comply with the requirements of the Legislative framework covering the protection of children, Council adopts procedures that:

- Ensure that staff working with children are not Prohibited Persons within the meaning of the relevant legislation,
- Ensure that staff recruited to work with children are suitable for that work,
- Ensure that Council's recruitment processes meet with the requirements of the legislation,
- Put in place systems for investigating any allegations of child abuse or neglect against staff in the course of their employment, and
- Ensure that relevant staff are aware of the requirements for mandatory reporting of reasonable grounds to suspect that a child is at risk of harm.

PRINCIPLES:

The community of Brewarrina Shire has a right to expect that when using any of the services of Brewarrina Shire Council, that Council will ensure a safe, caring and nurturing environment for their children. They expect that while using Council's services, their children and young people will be protected from all forms of abuse, including sexual, physical and emotional abuse and neglect. It also expects that Council will take all possible precautions to ensure that persons employed in any capacity associated with the care of children have undergone appropriate probity checks, are suitable to work with children and are not Prohibited Persons as described in the Child Protection (Prohibited Employment) Act 1998.

Section 3 of the *Children and Young Persons (Care and Protection) Act 1998* defines a Child, for the purposes of the act, to mean a person who is under 16 years of age and a Young Person as a person aged 16 or 17 years of age.

Legislative framework

- Ombudsman Amendment (Child Protection & Community Services) Act 1998
- Commission for Children and Young People Act 1998
- Child Protection (Prohibited Employment) Act 1998
- Children and Young Persons (Care and Protection) Act 1998
- Crimes Act 1900

To whom does this policy apply?

This policy applies to **staff members, contractors, or volunteers** employed by the Council in accordance with the procedures established for each relevant piece of legislation.

BREWARRINA SHIRE COUNCIL CHILD PROTECTION PROCEDURES

Procedures – Child protection (Prohibited Employment) Act 1998

The Child Protection (Prohibited Employment) Act 1998 requires Council to ensure that it does not employ a Prohibited Person in child related employment.

Under the terms of the act a Prohibited Person is a person convicted of a serious sex offence, other than where there is an order in force declaring that this act does not apply to the person in respect of the offence.

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Council will establish a list of all positions, paid, contracted or voluntary, that are identified as primarily involving direct contact with children where that contact is not supervised.

Personnel currently employed in these identified positions will be required, within one month of being requested by Council, to sign a declaration indicating that they are not a Prohibited Person. A person who is unwilling or unable to sign such a declaration will be required to cease child related employment.

People seeking to be employed in those positions identified by Council as child related employment in the future would be required to sign a declaration and will not be appointed to a position unless the declaration is signed.

It is an offence under the Act for Council to fail to ask if a person is a Prohibited Person. It is also an offence under the Act for an employee to fail to disclose his or her Prohibited Person status.

Procedures- The Commission for Children and Young People Act 1998

This act requires that all people commencing paid employment that involves direct contact with children where that contact is not directly supervised undergo a formal process of checks to help determine their suitability to work with children.

Council will establish a list of all positions, paid or contracted, that are identified as involving direct contact with children and where that contact is not supervised.

Persons seeking employment in positions identified by Council as being covered by this legislation will be required to undergo a screening process prior to their appointment. The screening will involve:

- A criminal record check
- A check of relevant apprehended violence orders
- A check relating to previous relevant completed disciplinary procedures

An Approved Screening Agency, appointed by Council to provide checking services, will undertake this check.

Further relevant material will be gathered during interview processes or reference checking processes to assess the suitability of applicants to these positions. Written evidence will be kept in relation to the material gathered.

Under the terms of the legislation Council

- will not inappropriately obtain or disclose information relating to these processes
- will ensure the confidentiality of information obtained through the checking process
- and will ensure that employment screening is appropriate and is carried out for the purposes of complying with the Act.

In accordance with the legislation Council will also notify the Commission of Children and Young people of any person whose application for child related employment is rejected because of a risk assessment undertaken based on material gathered in the screening process.

Council will also notify the Commission of Children and Young People of the outcomes of any relevant disciplinary procedures it completes against staff where they are working in positions identified by Council as being covered by this legislation.

Procedures – Ombudsman Amendment (Child Protection and Community Services) Act 1998

This procedure applies to allegations that a **staff member, contractor, or volunteer** has engaged in child abuse or neglect against a child in the course of their employment with Council. In the case of “designated services” the procedure applies inside or outside the hours of care and regardless of the circumstances in which the abuse is alleged to have taken place. Council’s designated services are any of its children’s services required to be licensed under the Children and Young Persons (Care and Protection) Act 1998.

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This procedure establishes an internal reporting system for the reporting of allegations of child abuse or neglect by Brewarrina Shire Council, its staff, contractors or volunteers. The system enables such internal allegations to be made to the General Manager or General Manager's Delegate. The General Manager or General Manager's Delegate will be responsible for ensuring that the reporting requirements of the Ombudsman Amendment (Child Protection & Community Services) Act 1998 are met, and will ensure that all reports, investigations and documentation are available to comply with the Act.

What constitutes Child Abuse or Neglect?

Under section 25A of the Ombudsman Act, Child Abuse means:

- Assault (including sexual assault) of a child, or
- Ill treatment or neglect of a child, or
- Exposing or subjecting a child to behaviour that psychologically harms the child, whether or not, in any case, with the consent of the child.

What constitutes an allegation of Child Abuse or Neglect?

An allegation is an assertion or declaration that a child has been, or is in danger of being, abused. An allegation should have the following elements:

- The person subject to the allegation is clearly identifiable; and
- The allegation details specific conduct or a pattern of behaviour that indicates abuse.

How is an allegation made?

An allegation may be made orally or in writing by:

- the child involved; or
- any person on behalf of the child; or
- any person who has observed or is aware of the child abuse or neglect.

An allegation should be made to the programme co-ordinator, supervisor or manager of the programme concerned. Where an allegation is made to a staff member other than the co-ordinator, the staff member should immediately advise the co-ordinator of the allegation. Any allegation that a co-ordinator has engaged in child abuse or neglect is to be reported to the supervisor or manager who will follow the procedures outlined in this section.

If a staff member is reluctant for any reason to report the allegation to the programme co-ordinator, supervisor or manager, the staff member should report the allegation directly to a director or the General Manager or General Manager's Delegate.

Protection of staff making allegations

On receipt of an allegation the co-ordinator, supervisor or manager, whether substantive, acting or relieving, must respond immediately and in a sensitive manner.

They should seek to obtain from the person making the allegation a signed (if possible) written statement outlining full details of the alleged improper conduct, the time and place it occurred and the name of any people who witnessed the incident. Where this is not possible, the co-ordinator, supervisor or manager should record details of the allegation using, as far as possible, the person's words to describe the allegation.

The co-ordinator, supervisor or manager must not investigate the allegation at this stage.

The co-ordinator, supervisor or manager must advise the person making the allegation to maintain confidentiality.

The co-ordinator, supervisor or manager is to immediately advise the General Manager or General Manager's Delegate:

- the name and age of the child involved;
- the name of the staff member against whom the allegation has been made;

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- what counselling or other support need to be arranged; and
- whether the co-ordinator, supervisor or manager considers that due to the circumstances of the incident the families of children other than those directly involved, or any other members of the programme, need to be provided with some information.

Where a programme co-ordinator, supervisor or manager already has statutory obligation to report under the Children and Young Persons (Care and Protection) Act 1998 they will report any incident related to a staff member, contractor or volunteer as required under the interagency guidelines. However they must also provide information to and liaise with the General Manager or General Manager's Delegate to ensure that Council's obligations under the Ombudsman Amendment (Child Protection & Community Services) Act 1998 and the procedures outlined in this policy are met.

Action by the General Manager or General Manager's Delegate

The General Manager or General Manager's Delegate will outline to the Co-ordinator, supervisor or manager the action to occur with regard to the:

- Advice to be provided to the person making the allegation
- Advice to be provided to parents or caregivers of the child involved
- Direction to be provided to the staff member against whom the allegation has been made, including the contact the staff member is to have with children and staff.
- Depending on the nature of the allegations and the staff member's circumstances, the staff member will be advised of the extent of the contact the staff member may have with children and staff within their place of work, within or outside its hours of operation; or
- The continued presence the staff member is to have at the place of work. This may involve a direction to undertake other duties at a different location or a direction to remain at home on pay;
- 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. In providing any advice the need to maintain, as far as possible, the confidentiality of those involved will be a prime consideration.

The General Manager or General Manager's Delegate will contact the local Department of Community Services Intake Officer to report the allegation. DOCS will assess the allegation to determine what response they will make or what action they will co-ordinate.

The General Manager or General Manager's Delegate will:

- register the allegation on the internal management system
- notify the Ombudsman's Office of the allegation on the appropriate reporting form within 30 days.

Investigation

According to the Interagency Guidelines for Child Protection Intervention, the Department of Community Services is the agency with lead responsibility in child protection and has the legal mandate to ensure a child's safety, care and welfare. Accordingly, DOCS has, among other duties, the role of:

- receiving allegations of child abuse and neglect,
- responding to allegations,
- to refer to Police any suspected criminal offences and
- to include, as appropriate, the notifying agency in any response they are undertaking in relation to the allegation.

As a part of the co-ordinating role of DOCS, they may request that Council participate in the response in accordance with the Interagency Guidelines for Child Protection Intervention. An assessment by DOCS not to carry out an investigation would not preclude Council from the requirement under the Ombudsman Amendment (Child Protection & Community Services) Act 1998 from undertaking an investigation. Should DOCS inform Council that it will not be undertaking further investigation the General Manager or General Manager's Delegate will outline to the Co-ordinator, supervisor or manager the action to occur with regard to an internal investigation of the allegation.

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Action following investigation where an allegation is not substantiated

The General Manager or General Manager's Delegate will:

- inform the staff member in writing that:
the allegation has not been substantiated, and
that no further action will be taken with regard to the allegation,
that the result of the investigation of the allegation has been registered on the internal management system,
that the Ombudsman's Office has been notified of the results of the investigation of the allegation,
the date the staff member is to resume normal duties if the staff member has been given alternative duties
that counselling support is available through the EAP.
- notify the Ombudsman's Office on the appropriate form that the allegation has not been substantiated. A copy of this letter will be provided to the staff member;
- inform in writing the person making the allegation that the allegation has not been substantiated. The staff member will not be named in this letter. A copy of this letter will be provided to the staff member without identifying the informant;
- inform in writing the parents or caregivers of the child involved that the allegation has not been substantiated. The staff member will not be named in this letter. A copy of this letter will be provided to the staff member.

Circumstances may arise where an allegation is not substantiated but the General Manager or General Manager's Delegate considers that the staff member has engaged in inappropriate work practices. In this case the matter can be dealt with as a performance issue which will be dealt with by the co-ordinator, supervisor or manager in the normal way. Where the staff person is working in a position identified by Council as being covered by the requirements of the Commission of Children and Young People Act 1998 or the Child Protection (Prohibited Employment) Act 1998 Council will also follow the procedures outlined in these Acts.

Action following investigation where an allegation is substantiated

The General Manager or General Manager's Delegate will:

- determine with the advice of the co-ordinator, supervisor or manager what disciplinary procedures will apply.
- notify the Ombudsman's Office on the appropriate form that the allegation has been substantiated and provide any other information that may be required by the Ombudsman's Office, including information about what disciplinary action will be taken. A copy of this letter will be provided to the staff member.
- inform in writing the person making the allegation that the allegation has been substantiated and provide information about what disciplinary action will be taken. The staff member will not be named in this letter. A copy of this letter will be provided to the staff member without identifying the informant.
- 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. The staff member will not be named in this letter. A copy of this letter will be provided to the staff member.
- Where the staff person is working in a position identified by Council as being covered by the requirements of the Commission of Children and Young People Act 1998 or the Child Protection (Prohibited Employment) Act 1998 Council will also follow the procedures outlined in these Acts.

Procedures – Children and Young Persons (Care and Protection) Act 1998

A person who has reasonable grounds to suspect that a child or young person is, or that a class of young persons are, at risk of harm may make a report to the Director-General of Community Services. In addition to the voluntary report, the Act places a duty of mandatory reporting on the following classes of persons:

- a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children, and

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- a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children.

Under the reporting requirements the Act applies to a person if:

- they have reasonable grounds to suspect that a child is at risk of harm, and
- these grounds arise during the course of or from the person's work;
- the person must, as soon as practicable, report to the Director-General;
- the report to provide the name, or a description, of the child, and
- the grounds for suspecting that a child is at risk of harm.

Failure to comply with the mandatory reporting requirements incurs a penalty of up to 200 penalty units (\$22,000)

Council will establish a list of all positions that are identified as having a duty of mandatory reporting, and ensure that they are fully aware of the implications of the Children and Young Persons (Care and Protection) Act 1998.

Council will undertake the training of all staff members working in child related employment on the relevant implications of the Act, including:

- children at risk of harm
- procedures for mandatory reporting
- reasonable grounds for reporting
- protection of persons who make reports
- interagency guidelines for child protection intervention.

DEFINITIONS

Child Protection (Prohibited Employment) Act 1998

- *Child* means a person who is under 18 years of age
- *Child-related employment* means any employment of the following kind that primarily involves direct contact with children where that contact is not directly supervised:

Employment involving the provision of child protection services,
 Employment in pre-schools, kindergartens and child care centres (including residential child care centres),
 Employment in schools or other educational institutions (not being universities),
 Employment in detention centres,
 Employment in refuges used by children,
 Employment in wards of public or private hospitals in which children are patients,
 Employment in clubs, associations or movements (including of a cultural, recreational or sporting nature) having a significant child membership or involvement,
 Employment in any religious organisation,
 Employment in entertainment venues where the clientele is primarily children,
 Employment as a babysitter or childminder that is arranged by a commercial agency,
 Employment involving fostering or other child care,
 Employment involving regular provision of taxi services for the transport of children with a disability,
 Employment involving the private tuition of children,
 Employment involving the direct provision of child health services,
 Employment involving the provision of counselling or other support services for children,
 Employment on school buses,
 Employment at overnight camps for children, and

includes any other employment of a kind described by the regulations.

- *Employer* includes

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- (a) a person who, in the course of business, arranges for the placement of a person in employment with others, or
 - (b) a person who engages a person under contract to perform work.
- *Employment* means
 - (a) performance of work under a contract of employment, or
 - (b) performance of work as a self-employed person or as a subcontractor, or
 - (c) performance of work as a volunteer for an organisation, or
 - (d) undertaking practical training as a part of an educational or vocational course, or
 - (e) performance of work as a minister of religion or other member of a religious organisation.

Commission for Children and Young People Act 1998

- *Children* means persons under the age of 18 years.

Ombudsman Amendment (Child Protection and Community Services) Act 1998

- *Child* means a person under the age of 18 years.
- *Child abuse* means
 - (a) assault (including sexual assault) of a child, or
 - (b) ill-treatment or neglect of a child, or
 - (c) exposing or subjecting a child to behaviour that psychologically harms the child, whether or not, in any case, with the consent of the child.
- *Child abuse allegation* means an allegation of child abuse against a person or an allegation of misconduct that may involve child abuse.
- *Child abuse conviction* means any conviction of a person, in this state or elsewhere, of an offence involving child abuse, and includes a finding by a court that a charge for such an offence is proven, or that the person is guilty of an offence, even though the court does not proceed to a conviction.

Children And Young Persons (Care and Protection) Act 1998

- *Child* means a person under the age of 16 years.
- *Young person* means a person who is aged 16 years or above but who is under the age of 18 years
- *Risk of harm* refers to the likelihood that a child or young person may suffer physical, psychological or emotional harm as a result of acts of commission (physical, sexual or emotional abuse) or acts of omission (neglect) by another person, often an adult responsible for their care. Risk of harm can also refer to vulnerable young people who may suffer physical, psychological, sexual or emotional harm as a result of environmental factors (eg homelessness) or self-harming behaviours.
- *Neglect* occurs where there is a risk of harm or actual harm to a child or young person caused by the failure to provide the basic physical and emotional necessities of life.
- *Physical abuse* refers to non-accidental injury and/or harm to a child or young person by a parent, caregiver or another person responsible for the child or young person. It includes harm or injuries which are caused by excessive discipline, severe beating or shaking, bruising, lacerations or welts, burns, fractures or dislocation, attempted suffocation or strangulation, and death.
- *Sexual abuse* – child sexual abuse is any sexual act or sexual threat imposed on a child or young person.

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- *Emotional abuse* is behaviour by a parent, caregiver or older child that can destroy the confidence of a child or young person resulting in emotional deprivation or trauma. Emotional abuse involves impairment of a child's or a young person's social, emotional, cognitive or intellectual development and/or disturbance of a child's or a young person's behaviour.

ACTION PLAN TO IMPLEMENT THE CHILD PROTECTION POLICY

CHILD PROTECTION (PROHIBITED EMPLOYMENT) ACT 1998

ACTION 1

Establish a list of all positions, paid, contracted or voluntary, that are identified as primarily involving direct contact with children where that contact is not directly supervised.

RESPONSIBILITY: Director Corporate Services

TO BE COMPLETED BY (DATE) End of January 2006

ACTION 2

Personnel currently employed in these positions are to be identified and requested to sign, within one month of such request, a declaration indicating that they are not a Prohibited Person.

RESPONSIBILITY: Director Corporate Services

TO BE COMPLETED BY: End of February 2006

ACTION 3

Recruitment procedures to be detailed for the future employment of persons to fill above positions.

- Advertising of positions.
- Signing of declaration by potential employee.
- Record keeping.
- Induction procedures

RESPONSIBILITY: Director Corporate Services

TO BE COMPLETED BY (DATE): End of January 2006

THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 1998

ACTION 4

Establish a list of all positions, paid or contracted that are identified as involving direct contact with children and where that contact is not supervised.

RESPONSIBILITY: Director Corporate Services

TO BE COMPLETED BY (DATE): End of January 2006

ACTION 5

Register with approved screening agency

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RESPONSIBILITY: *Director Corporate Services*

TO BE COMPLETED BY (DATE): *End of February 2006*

ACTION 6

Recruitment procedures to be detailed for the future employment of staff to fill the above positions:

- Advertising positions
- Screening process
- Reference checking
- Notification of rejected applicants
- Notification of disciplinary procedures

RESPONSIBILITY: *Director Corporate Services*

TO BE COMPLETED BY (DATE): *End of April 2006*

OMBUDSMAN'S AMENDMENT (CHILD PROTECTION AND COMMUNITY SERVICES) ACT 1998

ACTION 7

Training of all co-ordinators, supervisors and managers on the procedures for dealing with allegations of child abuse or neglect against a staff member, contractor or volunteer.

RESPONSIBILITY: *Director Corporate Services*

TO BE COMPLETED BY (DATE): *June 2006*

ACTION 8

Collection and provision of relevant reporting forms (Ombudsman's Office):

- reporting allegations of abuse by staff
- insubstantiated investigations
- substantiated investigations

RESPONSIBILITY: *Director Corporate Services*

TO BE COMPLETED BY (DATE): *End of June 2006*

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998

ACTION 9

Identify persons within Council staff who have a duty for mandatory reporting.

RESPONSIBILITY: *Director Corporate Services*

TO BE COMPLETED BY (DATE): *End of June 2006*

ACTION 10

Conduct training sessions for above staff and other staff in child related employment on the relevant implications of the Act, including:

- children at risk of harm

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- procedures for mandatory reporting
- reasonable grounds for reporting
- protection of persons who make reports
- interagency guidelines for child protection intervention.

RESPONSIBILITY: GENERAL MANAGER OR GENERAL MANAGER'S DELEGATE

TO BE COMPLETED BY (DATE): *End of July 2006*

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