The NSW Ombudsman and children and young people

This factsheet outlines the role of the NSW Ombudsman in relation to community services, employment-related child protection, young people, and juvenile justice. It also includes information about resources and training relevant to the child and family sector.

The NSW Ombudsman and community services

The NSW Ombudsman is the independent and impartial watchdog for government authorities and community and disability services in NSW.

The Ombudsman carries out his role under a range of legislation including the Ombudsman Act 1974 and the Community Services (Complaints, Review and Monitoring) Act 1993.

What community services does the Ombudsman cover?

Any services provided by:

- Community Services
- Ageing, Disability and Home Care (ADHC)
- organisations that are funded, licensed or authorised by the Minister for Community Services, the Minister for Ageing and the Minister for Disability Services
- any person or organisation who provides supports to a NSW NDIS trial participant, where the person or organisation is authorised or funded as part of a participant’s plan.

Community Services that are covered include licensed boarding houses; disability day support, respite and accommodation services; children’s services; early intervention; child protection and out of home care services (including foster care); refuges for young people, women, families and men; ageing and home and community care services; neighbourhood and family support services.

What can the Ombudsman do?

- Deal with oral and written complaints about the conduct of community service providers or employees of such services. The Ombudsman deals with each complaint objectively, with a strong emphasis on local resolution where possible.
- Review complaints handling systems within services or in program areas and make recommendations for improvements.
- Inquire into major issues affecting consumers and services. This can be about a single service or across a program.
- Review the situation of people in care. A review looks into the circumstances of a child or group of children in care; or a person or group of people with disabilities in care. The Ombudsman reports to the relevant Minister, service provider and other appropriate persons on the results of the review, and can also make recommendations to improve the welfare and interests of the person or group of people.
- Review the deaths of certain children and people with a disability in care (including residents of licensed boarding houses), looking at the causes and patterns of death and recommending ways to improve services to reduce early or preventable deaths.
- Coordinate Official Community Visitors in their visits to licensed boarding houses, residential services for children and young people and accommodation services for people with disability in full-time care. Visitors try to resolve residents’ concerns at the local level, observe the conduct of the services and report to the Ombudsman and Minister.
- Convene the Child Death Review Team and provide support in the exercise of its functions, which includes the maintenance of a register of child deaths in NSW; the identification of trends and patterns in relation to those deaths; undertaking research that aims to help prevent or reduce the likelihood of child deaths and making recommendations to prevent or reduce the likelihood of child deaths.
- Monitor, review and set standards for the delivery of community services.
- Educate and inform service providers, clients, carers and the community about making, handling and resolution of complaints and standards for the delivery of community services.
- Promote access to advocacy support for consumers of community services and ensure that services enable consumers to participate in decisions that affect them.
How does the Ombudsman assess standards of services and conduct?
The primary criteria are:
• compliance with the objectives, principles and provisions of the community welfare legislation, and
• what is reasonably in the best interests of the consumer, in the circumstances.

The Ombudsman is not an advocate for individual consumers, but promotes improvements in the delivery of community services and the rights and best interests of consumers through its recommendations.

The NSW Ombudsman and employment-related child protection

The Ombudsman has two child-protection-related functions:
• Functions arising from Part 3A of the Ombudsman Act 1974, overseeing the investigation of reportable allegations against employees in government and certain non-government agencies and scrutinising the systems for preventing and responding to child abuse in these workplaces; and
• Functions arising from Schedule 1, Clause 2A of the Child Protection (Working with Children) Act 2012.

Part 3A of the Ombudsman Act 1974 requires all government and certain non-government agencies in NSW to notify the Ombudsman of reportable allegations and convictions against their employees. This includes sexual offences, sexual misconduct, the assault, ill treatment or neglect of a child and any behaviour that causes psychological harm to a child.

Some examples of conduct that do not constitute reportable conduct include touching a child to attract their attention, guide them or comfort them, a school teacher raising their voice to attract attention or restore order in the classroom, or conduct that is established to be accidental.

‘Designated agencies’ must notify us of all reportable allegations and convictions that arise inside or outside the employee’s work. Designated agencies for this purpose include:
• Government agencies such as Family and Community Services, Department of Education and Communities, Ministry of Health (including area health services), Juvenile Justice NSW, Corrective Services NSW, Sport and Recreation NSW.
• Non-government agencies such as non-government schools, child care centres, agencies providing substitute residential care to children. ‘Other public authorities’ are only required to notify reportable allegations or convictions that arise in the course of the employee’s work.

Our role is to oversee an agency’s response to reportable allegations against employees and to handle complaints about the investigation process. We may investigate an allegation, or an agency’s handling of an allegation, if we hold significant concerns about a situation. We also have an agency audit and training program to ensure that agencies are provided with assistance so that the systems for handling and prevent allegations continue to improve. We also respond to complaints relating to the office’s functions under Part 3A. In carrying out these functions we aim to balance children’s rights to a safe environment with employees’ rights to a proper and fair investigation.

Schedule 1, Clause 2A of the Child Protection (Working with Children) Act 2012 (WWCC Act) enables the Ombudsman to make a Notification of Concern to the Office of the Children’s Guardian as a result of concerns arising from the receipt of information by the Ombudsman in the course of exercising the Ombudsman’s functions. A Notification of Concern acts as an ‘Assessment requirement trigger’ under the WWCC Act. The Ombudsman can also provide information to the Guardian under Chapter 16A of the Children and Young People (Care and Protection) Act 1998 to inform the Guardian’s assessment of the suitability of applicants for a WWCC to engage in child-related work.

The NSW Ombudsman and young people

An important part of our role is to handle complaints from young people when they feel that they have been treated unfairly by an agency funded by government like a school, an accommodation service or similar agencies that provide services to young people. If a young person is unhappy about the way they have been treated, they can complain to us.

Youth Liaison Officer

We have a Youth Liaison Officer (YLO) who is responsible for developing strategies and providing advice to assist young people access our services. The YLO also provides support, advice and assistance to young people about making a complaint.

The YLO regularly liaises with youth agencies and peak bodies about issues affecting young people. This helps to inform the work that we do and improve outcomes for young people.

The YLO is also available to conduct presentation and information sessions to young people and agencies working with young people about the NSW Ombudsman and making a complaint.

Juvenile Justice

Young people who are in custody, or who are supervised in the community, can complain to the Ombudsman about any NSW government agency. Some examples of the types of complaints we receive include:
• not being treated properly or fairly
• unreasonable decisions being made
• delays in receiving information or a service

Apart from Juvenile Justice and Justice Health, some of the agencies which detainees might come in contact with include the Department of Education and Communities, State Debt Recovery Office, local councils and transport bodies. The Ombudsman may be able to assist with complaints about any of these or other NSW government agencies.

Although detainees can always contact us by telephone or in writing, we regularly visit juvenile justice centres. During visits detainees can raise concerns with us about any government agency or community service. We speak with senior managers, look at facilities and check paperwork. Many matters are handled informally through contact with senior staff at centres.

Our work with Aboriginal communities

The Ombudsman helps Aboriginal and Torres Strait Islander people to resolve complaints about community services and child protection; policing; out-of-home care; education; disability services; local councils; Aboriginal land councils; housing; juvenile justice and corrections; and a range of other matters.

We also work with agencies and service providers to improve their relationships with Aboriginal communities and deliver better services to them. We regularly travel across the state to talk to communities about the quality of service provision and help them address their concerns.

A major focus of our work with Aboriginal communities in recent years has been our audit of the NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011. Our final report made 93 recommendations aimed at improving systems and services to respond to Aboriginal child sexual abuse, and to address disadvantage in Aboriginal communities more broadly.

We have a strong record of working to improve service delivery for vulnerable Aboriginal children and young people in out of home care (OOHC). We work with Aboriginal OOHC agencies to strengthen their systems and practices for handling complaints and fulfilling their child protection responsibilities, including responding to child protection allegations about employees. We have also worked to improve the support that is provided to carers of Aboriginal children.

Education and training

We provide a range of affordable, practical training workshops for community service providers and government agencies.

Workshops specifically tailored to meet the needs of community service providers include:

• Frontline complaint handling in the community services sector
• Effective complaint management in the community services sector
• Responding to child protection allegations against employees
• Handling serious child protection allegations against employees
• Handling serious incidents in the disability sector
• Aboriginal cultural appreciation

Our training workshops provide participants with up-to-date and accurate information about relevant legislation, policies and procedures, and their rights and responsibilities. They are designed to provide clear guidance and strategies aimed at improving knowledge, skills and confidence. Our trainers have extensive practical experience in the community services sector and the ability to tailor workshops to suit the needs of particular organisations participants.

Workshops are held regularly in Sydney and regional NSW. Training is also available in-house.

We also offer free workshops that provide practical information and tips for solving problems and making complaints for groups of young people and their families, carers and advocates.

Resources

Our website (www.ombo.nsw.gov.au) has a range of resources available to community service providers and government agencies including:

Guidelines and factsheets

Complaint handling kit for community services (CS-CRAMA)

This toolkit provides guidance to community service providers in developing and improving their systems for handling complaints from service users. The information provided in this guide outlines the requirements of the Community Services (Complaints, Review and Monitoring) Act 1993 (CS-CRAMA) and aligns with the Australian Standard for customer satisfaction – Guidelines for complaints handling in organisations.

Guidelines for dealing with youth complaints

These guidelines are designed to assist agencies to more effectively engage with young people and handle complaints.

Employment-related child protection factsheets

The following child protection factsheets and practice updates provide up-to-date information for employers on their employment-related child protection responsibilities:

• Keeping records
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- How we assess an investigation
- Legislation: what employers and employees need to know
- Planning and conducting an investigation
- Responsibilities of heads of agencies
- Addressing child protection issues in codes of conduct
- Recognising and managing conflict of interests
- Reviewing child protection policies: an agency self-assessment checklist
- Risk management following an allegation against an employee
- How the Ombudsman audits agencies that provide services to children
- Child protection – Notifying and identifying reportable conduct
- Defining assault for the purpose of the reportable conduct scheme
- Making a finding of reportable conduct
- Providing advice about reportable conduct investigations to children, parents and carers

Recent reports


This report outlines the findings from research undertaken by the NSW Child Death Review Team into the causes of death of children with a child protection history of the 10-year period 2002-2011. The research has identified that children with a child protection history have a higher rate of death from certain causes, including sudden unexpected death in infancy, and unnatural causes, such as fire and assault.

Review of the NSW child protection system – Are things improving Special Report to Parliament (April 2014)

This report is a follow-up to our 2011 special report to Parliament, Keep Them Safe?, which discussed a number of critical challenges that needed to be met as part of reforming the child protection system. Two and a half years on, we re-examine a number of the significant issues canvassed in that report. It outlines our analysis of recent data provided by Community Services on risk of significant harm reports response rates and caseworker numbers. We also discuss a number of issues relating to the quality of intra and inter agency child protection practice.

Responding to child sexual assault in Aboriginal communities report (January 2013)

This report is the fourth in a series our office has completed over the past three years in connection with our audit of the implementation of the Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities. Each report has focused on the need to significantly improve the quality and efficiency of services delivered to Aboriginal communities.

The continuing need to better support young people leaving care report (August 2013)

This report details the observations, findings and recommendations arising from our review of a group of young people who left statutory care in 2011.

Recent submissions

Our recent submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse include:

- Submission on Addressing the risk of child sexual abuse in primary and secondary schools Issues Paper (9 September 2015)
- Submission to Royal Commission OOHIC Consultation Paper (April 2016)
- Submission on Advocacy and support and therapeutic treatment services Issues Paper 10 (April 2016)
- Submission on Experiences of police and prosecution responses Issues Paper (June 2015).
- Letter to Royal Commission re NDIS and safeguards (July 2016).

Annual reports

Information about the work of our office is published each year in our Annual report.

Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (inquiries section closes at 4pm)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street
Sydney NSW 2000

General inquiries 02 9286 1000
Facsimile 02 9283 2911
Toll free (outside Sydney metro) 1800 451 524
National Relay Service 133 677

Telephone Interpreter Service (TIS): 131 450

We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

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This fact sheet is one of a series produced by the NSW Ombudsman. Feedback is welcome.