

Addressing child protection issues in codes of conduct

This fact sheet has been developed to assist agencies to review their code of conduct and to make changes where needed to address child protection issues.

Purpose of codes of conduct

Codes of conduct establish a common understanding of the standards of behaviour expected of all employees of an agency. In the child protection context, an agency's code of conduct should clarify the conduct that is reasonable for the purposes of the discipline, management or care of children. That is, what is acceptable and what is not acceptable behaviour by employees towards children. The code of conduct should also contain information about what will happen if an employee breaches it.

As codes of conduct cannot cover every possible situation that may arise in the workplace, it is important that they are reviewed regularly and amended as new situations arise.

Codes of conduct and child protection

It is important that an agency has a code of conduct that reflects its practices and the services it provides to children.

Heads of agencies need to ensure staff are made aware of the standards of professional conduct expected of them, and to take all reasonable steps so that clients are not exposed to abusive, neglectful or exploitative conduct by any staff.

The *Ombudsman Act 1974* requires the Ombudsman to keep under scrutiny the systems designated agencies or public authorities in NSW have in place for preventing reportable conduct by employees, and for handling and responding to reportable allegations or reportable convictions involving those employees.

To assist the Ombudsman in meeting these requirements, heads of agency or their delegates may be required to provide information about those systems and their operation. Codes of conduct establish fundamental professional standards of conduct towards children that impact on the prevention and the handling of child-related complaints against employees.

Agencies, depending on their size and service provision, may have a single code of conduct for its employees or multiple codes of conduct for specific services.

Reportable conduct is:

- a) any sexual offence or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- b) any assault, ill treatment, or neglect of a child, or
- c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

Reportable conviction means:

a conviction (including a finding of guilt without the court proceeding to a conviction), in this state or elsewhere of an offence involving reportable conduct.

Allegations which are exempt from notification to the Ombudsman are matters which relate to:

- conduct that is 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, or
- the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA of the Ombudsman Act.

Note: For the purposes of the Ombudsman Act, 'child' means a child or young person under the age of 18 years.

Relevant issues for codes of conduct

The following is a guide to assist agencies develop a code of conduct sensitive to the safety and well being of children. The listed issues are not prescriptive or exhaustive. The code of conduct should include information on the agency's position on the following issues:

Alcohol – clear advice should be given regarding not giving or providing children with alcohol and about the consumption of alcohol whilst an employee is on duty* and is responsible for children. This advice should address the agency's expectations regarding activities outside the usual workplace such as field trips or overnight camps. Being on duty while under the influence of alcohol could create safety and other risks and could be grounds for disciplinary action.

*This requirement may be different for foster carers. Agencies providing this service need to clarify their expectations.

Appropriate language – what are the agency's expectations about language used by employees in the workplace? This would include how children are described or characterised, and how they are spoken to. Employees should be reminded that they are in a position of authority over children, and that the way they speak to or refer to children can have a profound impact on a child's wellbeing and perception of safety.

Communication devices – how are an agency's communication devices (including such things as telephones, mobile phones, PCs, laptops, tablets, USBs and fax/printers), to be used by employees? What is the agency's position on employees using personal devices such as phones to communicate with children and/or clients? What is the agency's position with regard to employees accessing the Internet? Does the agency make clear prohibitions on employees accessing websites in the workplace which host adult pornography, child pornography or otherwise inappropriate images/representations of children in the workplace? What is the agency's position on employees using social networking sites or other social media to contact or communicate with children and clients in the course of work activities and outside of work?

Drugs – clear advice should be given regarding employees not giving or providing children with illegal drugs and not using or possessing illegal drugs whilst an employee is on duty and is responsible for children. This could include activities outside the usual workplace such as field trips or overnight camps. Being on duty whilst under the influence of illegal drugs could create safety and other risks and would be grounds for disciplinary action.

Gifts – sometimes during the course of their work employees may be given gifts or may want to give a gift to a child. Employees should know the rules about the

provision or receipt of gifts or benefits, particularly what is appropriate and inappropriate to give or receive as a gift. Any gift given to children, even when approved, should be considered for its appropriateness and whether it may adversely impact on that child or any other children.

Medication – employees must know the procedures for providing prescribed or other medication to a child. The code of conduct could include information concerning the safe storage of medications to ensure that children do not have access to medications that are not prescribed or recommended for them, that up to date records of administration of medications must be kept by employees, and that prescribed dosages only are to be given, unless directed otherwise because of extraordinary medical circumstances. An agency's position on clients possessing and self administering certain medications (such as for asthma episodes) also needs to be stated.

Neglect – The code of conduct should define neglect and make a clear statement that the alleged neglect of a child is potentially reportable conduct. The types of neglect that can arise should also be stipulated.

Note: See fact sheet 11 *Child Protection: Notifying and identifying reportable conduct* for more information on the definition of reportable conduct.

Out of hours client contact – agencies should specify what is acceptable or unacceptable behaviour in relation to contact with clients or their families, whether it is through direct contact or via the telephone or the Internet. Proscribed out of hours contact between staff and client families should be clearly defined. For instance, should staff be allowed to visit client families at their homes or to socialise with them? Can staff 'friend' children or their families on social networking sites or share online activities with them? What if there are pre-existing connections between a staff member and a client? The nature of an employee's work may provide some guidance.

Out of hours work – a code of conduct should clearly explain what is acceptable, or alternately, unacceptable secondary employment for staff (particularly when it results from their primary employment). For instance, mentoring, tutoring, or caring for children who are existing clients or known because of association with existing clients, should be carefully considered.

Physical contact with children – agencies should specify situations where physical contact with children is either appropriate, not recommended or prohibited. Appropriate physical contact and prohibited physical contact should also be explained. This is particularly important because children may seek physical contact from staff in various circumstances, and staff need to effectively respond to a child's needs without breaching the agency's related policies. Staff require clear and comprehensive advice

that includes the most common as well as exceptional circumstances where the code of conduct must be upheld. This will assist agencies in their early detection of staff non-compliance with reasonable direction. It will also help to identify staff testing responses of children and other agency staff as a part of the 'testing of boundaries', which is a known characteristic of the sexual grooming of children.

Psychological harm of children – The code of conduct should define behaviour that causes psychological harm to a child and make a clear statement that any such allegation is potentially reportable conduct.

Restraint – It is crucial that agencies have clear instructions about restraint and how and when it can be applied to children. Clearly state what is acceptable and what is not acceptable in relation to the restraint of children. The code of conduct may refer to the need for individual behaviour/education plans to be negotiated in relation to particular children.

Sexual and other personal relations with children – The code of conduct should define sexual offences and sexual misconduct in relation to children, and make a clear statement that any such allegation or conviction is reportable conduct. The advice should be flexible enough to incorporate unusual circumstances, such as where there is a pre-existing relationship between an employee and young person of compatible ages.

Sometimes, employers may become aware of the possibility of a child having an unusual attachment to a staff member, or even a 'crush' on an employee. The code of conduct should clearly define what should occur in these situations, to ensure that such interactions are effectively and sensitively managed. Where an employee is showing unusual interest or preoccupation with a child, early intervention to clarify the reasons for this, as well as to identify any risks to the child, are important. Such conduct should never be minimised, rationalised or overlooked, but may have a reasonable explanation.

Tobacco – clear advice should be given regarding employees not giving or providing children with tobacco or tobacco products or exposing them to any harmful by-products, such as second-hand smoke.

Responsibilities of employees to report any child-related concerns

Employees should be made aware that any identified concerns about staff interactions with children, both in work-related activities and outside of work, are to be reported promptly to the relevant personnel in the agency. In such circumstances, and where it is safe to do so, employees should take steps to intervene to ensure the safety and wellbeing of children. This responsibility extends to reporting to their employer any concerns, complaints or convictions made against themselves.

Employees should be advised that a code of conduct is to be read and signed off as understood and that they will comply with its instructions. Serious breaches of a code of conduct, or less serious, persistent breaches, could be grounds for disciplinary action or dismissal. Employees should also be made aware of any policies, procedures and guidelines that support, inform or otherwise relate to the code of conduct.

If you have any queries or comments, we are here to assist you. Call the NSW Ombudsman's Employment Related Child Protection Division on 02 9286 1000.

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.

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

