

Managing Allegations of Reportable Conduct Against Authorised Carers 2014

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Overview

The Reportable Conduct Unit is an important part of the NSW child protection system which ensures that children who are in Out Of Home Care are safe by conducting fair, robust and relevant investigations when allegations are made against authorised FACS carers. The Reportable Conduct Unit offers expertise and guidance to those closest to the child about how best to manage risks and communication with the child; his/her parent/s; and the carer who is subject of the allegation.

The Reportable Conduct Unit operates within a legislative framework to conduct consistent investigations where children/young people who make allegations are empowered to participate in those investigations and where FACS authorised carers know their rights and are afforded procedural fairness. The Reportable Conduct Unit relies on an evidence base to demonstrate its contribution to a trustworthy child protection system.

The Policy and Procedures contained within this document set out:

- the principles, policies and procedures for the management of allegations of reportable conduct and reportable convictions; and
- key communication intersections with Districts, the NSW Ombudsman and the NSW Office of the Children's Guardian to ensure that information about risks posed by people who work in child related employment is appropriately shared.

FACS is committed to preventing incidents of reportable conduct and has the following preventative strategies in place:

- pre-employment screening for employees working with children and young people
- clearly defined roles for people engaged to provide services to children
- training employees in working with children and young people
- guidelines that define appropriate and inappropriate conduct when working with children and young people.

While we make every effort to protect children and young people in our care, from time to time allegations of abuse or neglect may be made against FACS' authorised carers and others who are engaged to provide services to children.

The Reportable Conduct Unit has responsibility for coordinating FACS' response to allegations of reportable conduct made about employees and for fulfilling its statutory reporting obligations. These procedures elaborate on the responsibilities held by the Reportable Conduct Unit, the Child Protection Helpline, Community Service Centres in Districts, and the Professional Conduct Ethics & Performance Units for responding to, and notifying allegations made against employees.

Employees for the purposes of the Reportable Conduct Unit are authorised Community Services' carers and adult household members.

Matters involving salaried staff need to be referred to the Professional Conduct, Ethics and Performance Unit.

The NSW Ombudsman must be notified of allegations against any FACS employee which involves the following conduct:

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material), or
- any assault, ill-treatment or neglect of a child, or any behaviour that causes psychological harm to a child whether or not, in any case, with the consent of the child.
- misconduct that may involve reportable conduct.

FACS has a responsibility to report findings of sexual misconduct and serious physical assault involving children by an employee to the NSW Office of the Children's Guardian.

Consultation

These procedures were developed by Reportable Conduct Unit staff in consultation with stakeholders, the Public Service Association (PSA) and the NSW Ombudsman.

1. Definitions

The following definitions apply for the purposes of these reportable conduct policy and procedures and are drawn from the relevant legislation.

Allegation means a statement or assertion that has yet to be substantiated or proven.

Child means a person under the age of 18 years (as defined by the *Ombudsman Act 1974*).¹

OCG means the NSW Office of the Children's Guardian.

Class or Kind Determination is an arrangement between a governing body and FACS that specifies what incidents of conduct may be exempt from reporting (as per s25CA *Ombudsman Act 1974*).

Employee for the purposes of these Policies and Procedures is someone who has been engaged by Community Services to provide a service to children. This includes:

- carers who have been authorised by FACS to care for a child or children;

¹<http://www.ombo.nsw.gov.au>. This definition is different from the definitions of child and young person contained in the Children and Young Persons (Care and Protection) Act 1998.

- adult household members of authorised carer households where they have been engaged by FACS to provide services to a child or children.

An 'employee' does not include:

- persons who have been authorised to care for a child or children by an agency other than FACS (e.g. non-government organisations)
- carers who have parental responsibility (PR) for the residence of all children placed in their care
- FACS salaried employees unless in certain circumstances they are also authorised carers.

Head of Agency means the chief executive officer or other principal officer of the agency. For FACS the head of agency is the Secretary. Responsibilities of the Head of Agency can be formally delegated.

Misconduct means misbehaviour or wrongdoing. It also refers to conduct that is against an agreement or code. For Community Services' authorised carers, this is the Code of Conduct for Authorised Carers.

Reportable allegation means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

Reportable conduct means:²

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

Reportable conduct does not extend 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
- the use of physical force that, in all 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 that is exempt from being reportable conduct by the Ombudsman under section 25CA of the *Ombudsman Act 1974*.

A copy of the Ombudsman's 'Defining Reportable Conduct' can be located at the NSW Ombudsman website.³

² Part 3A of the *Ombudsman Act 1974*.

³ <http://www.ombo.nsw.gov.au>

Reportable conviction means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.⁴

Significant harm ‘Significant physical harm or injury’ is harm or an injury to a child or young person that has occurred in the context of an employee’s actions, which are reasonably considered to be hostile and forceful, or reckless. In deciding whether a child has experienced - or there was the potential to experience - significant physical harm or injury, it will be relevant to consider factors such as the child’s age and developmental stage and any specific vulnerabilities of the child. Any physical assault allegation that has led to criminal action, including criminal charge or an apprehended violence order (personal or domestic) is required to be reported to the Ombudsman.

A Working With Children Check is a prerequisite for anyone in child-related work in NSW. It includes a national police check and review of findings of misconduct involving children as defined in Schedule 1 of the *Child Protection (Working with Children) Act 2012*.⁵ The result is either a clearance or a bar.

2. Legislation

As a child protection agency, FACS has responsibilities under the Children and Young Persons (Care and Protection) Act 1998 NSW.

As an employer, FACS has responsibilities regarding allegations of reportable conduct against employees under the following legislation:

The Children and Young Persons (Care and Protection) Act 1998

The Children and Young Persons (Care and Protection) Act provides for the care and protection of, and the provision of services to, children and young people in New South Wales. It makes provision for an allegation of abuse of a child or young person by a FACS employee to be investigated in accordance with the arrangements made between the NSW Ombudsman and Community Services.

Chapter 16A of the legislation allows FACS to provide and receive information relevant to the safety, welfare or well-being of children and young people from prescribed bodies where this will assist in making an assessment, providing a service or managing risk arising from prescribed bodies’ duties as an employer.

The Ombudsman Act 1974

The Ombudsman Act 1974 (the Act) was amended in 1998 and established the Ombudsman’s role in scrutinizing and monitoring the way that allegations of abuse by employees are managed and investigated by agencies designated under the Act.

⁴ Part 3A *Ombudsman Act 1974*.

⁵ http://www.austlii.edu.au/au/legis/nsw/consol_act/cpwca2012388/

The Ombudsman Act requires that allegations of reportable conduct are dealt with fairly and transparently. The Act gives the Ombudsman powers to monitor agency investigations of reportable conduct or to take on an active investigation role.

Under the Ombudsman Act 1974, Community Services must:

- make arrangements to require all employees to notify reportable allegations or convictions
- have in place systems for recording and investigating allegations against its employees and must:
- notify the NSW Ombudsman within 30 days of the Agency becoming aware of any reportable allegation or reportable conviction against an employee.

The NSW Ombudsman also has Class or Kind Determinations with FACS. This determination exempts certain categories of conduct from being reported to the NSW Ombudsman, but does not exempt FACS from conducting an investigation into the alleged conduct.

The Child Protection (Working With Children) Act 2012

This Act establishes the role and functions of the NSW Children's Guardian in employment screening for child protection (the Working With Children Check). It includes the authority to grant a clearance or place a bar on child related work for a person.

Under Part 2 of the Act there is the mandatory requirement for:

- persons engaged in child related employment to hold a Working With Children Check clearance (or a current application for a Working With Children Check clearance)
- employers to require a person to provide a Working With Children Check clearance (or a current application for a Working With Children Check clearance) before commencing to employ the person in child related work.

Part 5 (Section 35) of the Act requires FACS to notify to the Children's Guardian the name and other identifying particulars of any employee against whom FACS has made a finding that the employee has engaged in misconduct as defined in Clause 2 of Schedule 1 of the Act.

Child Protection (Prohibited Employment) Act 1998

The Child Protection (Prohibited Employment) Act 1998 makes it illegal for any person convicted of a serious sex offence to apply for employment with or continue to work with children and young people in NSW. Under the provisions of this Act, a declaration of Prohibited Person Status must be made before a candidate is interviewed for child-related employment.

Further information can be obtained from:

- Office of the Children's Guardian⁶
- NSW Ombudsman

⁶ <http://www.newcheck.kids.nsw.gov.au/>

- FACS Code of Ethical Conduct⁷
- NSW Ombudsman - Child Protection in the Workplace Responding to Allegations Against Employees⁸
- Children and Young Persons (Care and Protection) Act 1998 (NSW)⁹
- Ombudsman Act 1974 (NSW) Part 3A¹⁰
- Child Protection (Working with Children) Act 2012

3. Principles, Responsibilities and Roles

3.1 Principles

The overarching principle in responding to any allegation made against an employee is to ensure the safety, welfare and wellbeing of any child who may have been involved in the alleged conduct or who may be at risk of harm if they have contact with that employee.

FACS investigates all allegations against an employee according to the following principles:

Procedural fairness

FACS adheres to sound administrative investigation practice which is underpinned by procedural fairness to ensure fair and reasonable decision making.

Procedural fairness requires a decision-maker to:

- inform people of the allegations against them,
- give them a right to be heard,
- not have a personal interest in the outcome,
- act only on the basis of well reasoned probative evidence,
- make good decisions in good faith and without bias,
- consider any person whose interests will be affected by the decision.¹¹

Privacy and confidentiality

It is imperative to maintain the privacy of any person involved in an investigation and maintain the confidentiality of all matters arising from an investigation unless there is a legitimate purpose for sharing that information with other parties. Any breach of confidentiality should be documented and disclosed to the involved person.

⁷ http://www.facs.nsw.gov.au/__data/assets/file/0009/276750/FACS_Code_of_Ethical_Conduct_V1.1_-_October_2013.pdf

⁸ <http://www.nswombudsman.nsw.gov.au>

⁹ <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+157+1998+cd+0+N>

¹⁰ <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+68+1974+cd+0+N>

¹¹ http://docsonline.dcs.gov.au/docsintwr/_assets/main/policies/governance/allegations_against_employees_policy.pdf

Integrity

For processes to be accepted as appropriate and fair, it is imperative that they are applied consistently and with integrity and treat all people involved in investigations with respect. This includes recognising and managing actual, potential or perceived conflicts of interest.

Collaboration

The responsibility for responding to allegations of reportable conduct goes beyond the role of the Reportable Conduct Unit. The efficacy of the FACS response to allegations against employees relies on collaboration with internal and external stakeholders including:

- Child Protection Helpline, CSC and JIRT staff
- Police
- NSW Ombudsman
- Carer support groups

Timeliness

It is well understood that investigations can cause stress, anxiety and worry for the subject of the investigation and all witnesses. It is therefore critically important that all work conducted by the Reportable Conduct Unit is allocated and completed in a timely manner and adheres where possible, to the timeframes detailed later in this document.

3.2 Responsibilities

FACS salaried staff are required to:

- understand who is considered an 'employee' for the purposes of these procedures
- understand that a child under the Ombudsman Act and Child Protection (Working with Children) Act includes young persons up to the age of 18 years
- identify the types of conduct that may amount to a reportable allegation or constitute a reportable conviction
- report all allegations of reportable conduct against employees within 24 hours or the next working day
- inform other employers where a risk of significant harm report includes an allegation of reportable conduct against one of their employees, or where staff become aware of an allegation in the course of casework
- liaise with the Reportable Conduct Unit in relation to advising the employee that an allegation of reportable conduct has been made
- where the conduct may amount to risk of significant harm, make a report to the Child Protection Helpline
- advise the Reportable Conduct Unit if a matter has been or will be reported to Police
- assist authorised carers to understand their rights and responsibilities including self reporting in relation to allegations against employees

- seek advice from their managers or the Reportable Conduct Unit where uncertain about any requirement.

3.3 Roles

FACS is accountable for identifying whether children previously placed with a carer where reportable conduct has been sustained may have been at risk, and for responding appropriately.

Districts are responsible for making decisions regarding the placement of children and young people with carers who are subject to an open reportable conduct investigation.

Community Services Centres, Joint Investigation & Response Teams (JIRT), District based specialist teams are required to:

- take all appropriate action to minimise the risk to any child involved in or impacted by allegations against an employee
- conduct child protection safety and risk assessments where there are allegations against an employee, and liaise with the Reportable Conduct Unit to minimise duplication, particularly in relation to minimising the number of occasions children are interviewed about the alleged conduct
- have systems in place which ensure that all allegations against employees are reported to the Reportable Conduct Unit by close of business on the next working day
- provide information in a timely manner to the Reportable Conduct Unit in relation to reportable conduct matters, related risk assessments and any consequent recommendations

Reportable Conduct Unit is required to:

- Investigate, manage and coordinate responses to allegations against Community Services employees
- develop and apply processes so that allegations are dealt with confidentially and with procedural fairness
- maintain a database of allegations made against FACS carers
- notify the Ombudsman within 30 days of the Agency head receiving a reportable allegation
- provide information when requested, to the Ombudsman
- identify whether matters should be reported to the Professional Conduct, Ethics and Performance Unit (PCEP), to another employer or to an external agency, for example NSW Police or the Health Care Complaints Commission
- notify the findings of an investigation, where relevant, to the OCG
- supports system development and improvement by:
 - providing information to other employers where a Child Protection Helpline report does not meet the risk of significant harm threshold but contains an allegation of reportable conduct
 - providing information and guidance to Community Services' staff regarding allegations against employees
 - monitoring allegations for resolution and trend analysis

- undertaking long-term research to better inform policies and procedures regarding allegations against employees
- developing resources to improve practice, and the systems supporting practice.

Reportable Conduct Unit officers are available during office hours and can be contacted on:

Telephone: 9716 2149
Facsimile: 9716 2754
Email: Reportable Conduct CS@facs.nsw.gov.au

The Head of Agency, or their delegate, is required to:

- set up systems for providing a safe environment for children in the agency's care
- ensure systems are in place for recording and responding to all allegations
- monitor the implementation of systems which address allegations
- notify the Ombudsman about allegations, investigations and findings where necessary
- notify the OCG of findings of sexual misconduct or serious physical assault involving children by an employee to ensure the agency's compliance with other obligations under the *Ombudsman Act 1974*, Part 3A.

4. Notification of Allegations

4.1 Purpose

This procedure provides guidance to FACS staff on the steps that are to be followed if they become aware of:

- a reportable allegation against another Community Services' employee
- reports of an employee having a conviction for an offence involving reportable conduct.

This procedure should be read in conjunction with the Casework Practice Guidelines Managing Allegations Against Employees and Critical Events and Allegations at the Helpline¹² which set out Child Protection Helpline, CSC and JIRT procedures in full.

4.2 Policy and Practice

The Reportable Conduct Unit determines whether the information reported constitutes an allegation of reportable conduct and for collaborating with the District about how the response is best managed.

Notification of reportable conduct can also be made as a protected disclosure within the meaning of the Protected Disclosures Act 1994. Further information

¹² <http://cwp.docsonline.dcs.gov.au/en/Procedures/critical-events-and-allegations-at-the-helpline/>

regarding protected disclosures is available on the FACS intranet at the Internal Services, Accountability and Governance site.¹³

4.3 Procedures

Allegations can be made by children/young people, Community Services staff members, carers, service users, mandatory reporters, professionals or members of the public. This includes allegations being reported anonymously. Most allegations against employees are received through the Child Protection Helpline.

Caseworkers may be made aware of allegations against employees either during their working day, or when not at work. Any FACS staff member who is made aware of an allegation against a FACS employee should report the allegation through the Child Protection Helpline. The allegation will then be assessed from a child protection perspective and where the report contains information that may constitute an allegation of reportable conduct against an employee the Helpline will forward it to the Reportable Conduct Unit.

Where a referral has been made directly to the Reportable Conduct Unit from an agency or person external to Community Services, the Reportable Conduct Unit will:

- take the relevant details of the allegation
- contact the Helpline to initiate a child protection assessment to fulfil mandatory reporting responsibilities. This should be done with the notifiers' knowledge.

The Community Services' Triage Assessment Guidelines¹⁴ indicate that as a minimum, a Secondary Assessment Stage 1 should occur for every report that concerns an allegation against an authorised carer. This will focus on the safety and risk assessment for the child. The Reportable Conduct Unit has a parallel responsibility to investigate and making findings about allegations of reportable conduct by an employee.

5. Intake Assessment

5.1 Purpose

This procedure details the steps to be taken by Reportable Conduct Unit staff when an allegation is referred to the Unit to determine whether the reported allegation meets the threshold for reportable conduct.

5.2 Practice

When an allegation against a FACS employee is received it requires two assessment processes:

¹³ <http://intranet.facs.nsw.gov.au/policies>

¹⁴ <http://cwp.docsonline.dcs.gov.au/en/Procedures/>

1. An assessment of the child protection issues for the child/ren or young person.
2. An assessment of the information about the alleged conduct of the employee to determine whether the alleged conduct constitutes reportable conduct.

The two processes are interdependent however may not be conducted concurrently. The paramount consideration remains the safety, welfare and wellbeing of any children involved in the alleged conduct or any children who may be at risk of harm if they come in contact with the employee. A child protection assessment and response for children/young people who are in out of home care is a FACS priority.

Collaboration between the District and the Reportable Conduct Unit is essential, particularly when the District may take protective action prior to an investigative response by the Reportable Conduct Unit. Collaboration with the CSC or JIRT as early as possible in the two processes will minimise duplication of effort and manage the impact of investigations, particularly in relation to interviewing children.

On receipt of notifications of allegations, the Reportable Conduct Unit will assess whether:

- the information meets the threshold of reportable conduct.
- the matter requires notification to the NSW Ombudsman.
- the matter requires notification to any other external agency including Police.

The Reportable Conduct Unit is responsible for making notifications of reportable conduct about FACS employees as defined by this Policy to the NSW Ombudsman. CSC/Districts should not report matters directly to the Ombudsman.

5.3 Procedures

All referrals received at the Reportable Conduct Unit are recorded in the secure Reportable Conduct Unit case management system by the Intake Officer. The Intake Officer will record all relevant information, including:

- details of the employee and child(ren) and any other parties.
- dates the allegation was reported to Community Services and the Reportable Conduct Unit
- the nature of the allegation(s).

The Intake Officer will review KIDS to obtain information relevant to the allegation about the employee, the child/ren or young person, and their placement, events surrounding the allegation and casework action which has occurred or which is planned.

5.4 Assessing whether the matter is a reportable allegation

The Reportable Conduct Unit Officer processing the received information assesses whether the allegation constitutes an allegation of reportable conduct and makes a recommendation about its acceptance. A Manager makes the final decision that is then recorded and communicated to relevant parties including Districts, and the NSW Ombudsman.

An allegation is assessed using the following criteria:

- whether the alleged victim was a child at the time of the alleged conduct as described in the *Ombudsman Act 1974 (the Act)* i.e. was under 18
- whether the subject of the allegation is an employee of FACS for the purposes of these Policies and Procedures at the time the allegation became known to the Agency
- whether the alleged conduct constitutes reportable conduct as defined in the Act

If the allegation is not a reportable allegation, it is not notifiable to the NSW Ombudsman. In these cases the Reportable Conduct Unit will advise the District that the Unit will take no further action and will provide any other relevant information for the consideration of the local CSC.

5.5 Notifying the Ombudsman

If the received information does constitute an allegation of reportable conduct the Reportable Conduct Unit will assess whether or not it is exempt from individual notification to the Ombudsman. The Manager will determine whether the matter will be investigated under the Class or Kind determination or will be a notified investigation.

A matter may be exempt from notification to the Ombudsman if:

- it involves the use of physical force that, in all the circumstances, is trivial or negligible; or
- it is conduct of a Class or Kind that is exempt from individual notification; or
- it is conduct that is reasonable for the purpose 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.

Allegations of reportable conduct that meet the threshold for notification to the Ombudsman must be referred to the Ombudsman within 30 days of FACS receiving the allegations.

The relevant manager in the Reportable Conduct Unit is responsible for ensuring that all relevant matters are notified to the Ombudsman, and that available information about child protection risk assessment is provided to the Ombudsman at the time of notification and that the notification occurs within the 30 day timeframe.

Notification documentation is sensitive and highly confidential and must be handled accordingly. Documents relating to the investigation of an allegation against an employee are sent to the Ombudsman, addressed to:

**Attention – Steve Kinmond
NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000**

5.6 Sensitive information

Information relating to an allegation may, in certain circumstances, need to be secured. These circumstances include but are not limited to:

- an allegation made about or matters that relate to criminal or disciplinary proceedings brought against a FACS salaried staff member
- matters relating to any person known to be related to a FACS salaried staff member
- matters concerning a person with a public profile
- where the matter relates to a child or a member of their family who may be involved in witness protection
- where media interest has occurred or is likely to occur
- where it relates to a deceased child
- the information is otherwise deemed sensitive by a Director.

See related Casework Practice procedure – Secure Files.¹⁵

Additionally, an easily identified coversheet is placed on the front of the file of a matter that has been secured to ensure that any communication outside the Unit can be managed carefully and no inadvertent communication occurs within the District/locale of the salaried employee.

5.7 Child protection assessment

Child protection assessment occurs through the Child Protection Helpline and the relevant CSC/JIRT. All referrals to the Reportable Conduct Unit should be reported to the Child Protection Helpline by the person who first became aware of the allegation.

5.8 Obtaining further information

To appropriately assess a referral, the Reportable Conduct Unit Officer may need to obtain further information. At a minimum, the Officer should review:

- the information contained in the referral
- Reportable Conduct Unit databases
- basic information from KiDS.

¹⁵ <http://cwp.docsonline.dcs.gov.au/en/Procedures/Preparing-and-maintaining-a-paper-file-and-secure-files/>

Further information may be required to determine:

- what the allegation(s) are;
- whether or not the allegation(s) could constitute a reportable allegation
- whether the allegations should be individually reported to the Ombudsman

The manager will consider where further information is required in order to assess a referral. Enquiries may include:

- further detailed review of KiDS
- contacting the relevant CSC/JIRT or District staff
- contacting the reporter
- contacting the Ombudsman's Office.

5.9 Intake report

The Reportable Conduct Unit officer taking a referral will collect all relevant information and prepare an intake report. The intake report should include the following information, and a rationale for all recommendations made:

- Details of the allegation/s
- History of any previous reportable conduct allegations, findings and outcomes for the involved employee and, if relevant, the child; including matters assessed as not reportable conduct.
- Whether the alleged conduct meets the threshold for reportable conduct
- Whether the allegation is exempt from notification to the Ombudsman
- Whether the District intends to undertake child protection risk assessment or take action to manage employee-related risks¹⁶
- What other Units or areas of FACS may be involved in the investigation (e.g. PCEP, JIRT).
- Whether the information needs to be reported to Police.
- Whether the information needs to be secured and how.

A manager will make the decision as to the matter being accepted or not as reportable conduct. This decision will be recorded on the intake report.

Administration staff:

- record information about the decision
- provide information to the District about the Reportable Conduct Unit's assessment of the allegations and any further action where this has not been done by the intake officer or duty manager
- provide information to any other relevant parties including the Ombudsman and the PCEP
- prepare a paper file.

¹⁶ For further information on risk assessment, refer to Section 7.3.3 of this document

5.10 Allocation

Managers allocate investigations in line with prioritisation ratings and existing caseloads, taking account of and addressing any actual, potential or perceived conflict of interest and skills of investigators.

The Prioritisation and Risk Assessment Tool (PRAT) is applied to matters that are required to be reported to the NSW Ombudsman and which cannot be allocated upon the intake decision being finalised. The Reportable Conduct Unit reviews all information and liaises with the District to gain a more complete understanding of the matter. The relevant information is entered onto the PRAT. The PRAT allocates the matter a score which assists the Reportable Conduct Unit to determine the allocation priority.

The PRAT remains a dynamic risk management tool which captures changes in these matters and is used critically as an interface with District staff to identify, manage and prioritise risk to children in out of home care.

5.11 Matters assessed as not reportable conduct

Where allegations are assessed as not reportable conduct, the Reportable Conduct Unit will notify the contact officers identified by the District, including the relevant District Director and/or Director Community Services, informing them of the assessment and that there will be no further Reportable Conduct Unit involvement.

Administration staff will then record relevant information and attach a hard copy of the email to the Intake and Notification Form and place it in the specified 'Intake Only' file.

5.12 Forms and Resources:

- Intake Form – built into AMS Database
- Prioritisation Assessment Guide – Internal Unit document
- Secure Files policy
- FACS information security policy
- Child Protection Helpline policies and procedures
- Ombudsman Guidelines for Investigations into Reportable Conduct.¹⁷

6. Investigation

6.1 Purpose

This procedure provides guidance to Reportable Conduct Unit investigators on the steps that are to be followed when an allegation has been assessed as being an allegation of reportable conduct, and an investigative response needs to be planned.

¹⁷ <https://www.ombo.nsw.gov.au/>

6.2 Policy and Practice

The general objectives of an investigative response to allegations of reportable conduct are:

- to determine whether the alleged conduct occurred and, if so whether it constituted reportable conduct
- to determine whether or not a notification to the OCG is required
- to determine whether recommendations could be made for action which would assist in avoiding future incidents of reportable conduct.

Investigations involve four main stages:

- planning – identify information and evidence required for the investigation and stakeholders to be consulted
- Evidence gathering – obtain and assess information which is already available, and gather remaining information and evidence and review information and evidence to consider whether the allegation/s accurately capture the alleged conduct
- Responding to allegations – give the employee the opportunity to respond to the allegations
- Analysis and reporting – analyse information and evidence, record information and evidence succinctly in the report, recommend a finding, identify practice considerations and any relevant recommendations for action to improve practice or the systems supporting practice.

Investigations are conducted in a timely manner. Accepted benchmarks for completion of investigations are 90 days from allocation to completion for matters that are reported to the NSW Ombudsman and 60 days for matters that are allocated for investigation under the Class or Kind determination.

There may be some circumstances where the need for action by another agency such as Police may legitimately delay the finalisation of a Reportable Conduct Unit investigation. Capacity of available investigators may also impede achievement of the benchmark timeframes.

Investigations are to be conducted with the utmost confidentiality, involving only those people who have an identified need to know about the matter.

Allegations may be responded to in different ways, depending on the nature of the allegation. In line with the Briginshaw proportionality principle, each investigation is planned with consideration of the nature of the allegation and the specific circumstances of the stakeholders involved.

It is important that all investigations are planned from intake, to coordinate the different roles and responsibilities of the District and the Reportable Conduct Unit. This enables a holistic and thorough approach, avoids duplication of effort, and minimises the impact of investigations, especially on children and young people.

6.3 Procedures

6.3.1 Developing a Plan

An investigation plan is a record of what the Reportable Conduct Unit will do to address the allegation. The investigation plan template contains standard items:

- Objectives of the investigation
- Proposed time-frames

The Plan also records:

- the allegation/s
- risks which may arise from the investigation for the child, employee and agency and how risks will be managed
- information and evidence required to investigate the allegation/s
- the level of investigative activity required to obtain required information or evidence
- communication and collaboration with the District, JIRT and other stakeholders e.g. NSW Police, PCEP
- where a decision has been made not to interview the child or young person or a witness, the rationale for that decision
- where a decision has been made not to inform the child or young person's parent of the allegation, the rationale for that decision
- when and how the subject of the allegation will be informed of the allegation, the investigation process, their rights, obligations and access to support, and possible outcomes of the investigation, taking account of information provided during a child protection response
- how any cultural issues or special needs of the relevant parties will be addressed during the investigation.

The plan will give a clear description of how the investigation will be undertaken and the rationale for planning decisions and is approved by a Manager.

The plan will be reviewed and updated as necessary throughout the investigation.

6.3.2 Determining Level of Response

All investigative responses should be based on the following principles:

- making best use of information and evidence which is already available
- undertaking the least intrusive approach possible to collect the information necessary to test the allegation
- undertaking the most expedient and timely approach
- undertaking levels of inquiry and evidence gathering commensurate with the nature of the allegations and any pattern of repeat allegations
- determining the context of the allegations and identifying unmet support and development needs
- making observations, suggestions and recommendations that focus on preventing further incidents of reportable conduct.

The level of response planned for any individual allegation is recommended by the allocated investigator and approved by their manager. To determine what level of response is required an investigator should consider:

- the nature of the allegation/s
- the current circumstances of the child(ren) and employee
- what information is already available and what further information is required to be able to make evidence-based decisions
- the potential outcomes from the investigation and impacts on the child(ren) and employee/s
- whether previous allegations have been made and substantiated
- the options available to an employee to respond to an allegation and any preferences or constraints expressed by any participant including contact with other children who are potential witnesses

Regardless of the level of response, the procedures for intake, information gathering, making findings and recommendations and reporting outcomes outlined in this document apply.

6.3.3 Risk Assessment

Risk assessment involves the pro-active consideration of potential risks which may arise during an investigation. Risks to the child(ren) involved in a reportable allegation, and other children who may be at risk from the employee are also assessed as part of a child protection response from the Helpline and CSC.

Risk assessment is part of investigation planning. The investigator should assess risks to:

- the subject child or young person
- other children who may have or previously had contact with the employee
- the employee
- the organisation and other employees within the organisation
- the integrity of the investigation
- the investigator.

If there are numerous, complex or significant risks, the investigator should consult the manager to discuss whether the separate risk assessment and management plan should be completed and attached to the investigation plan.

The risk assessment should be reviewed and updated as necessary throughout the investigative process, including at the conclusion of an investigation.

6.3.4 Internal communication

Communication with District staff is important, particularly in relation to planning concurrent child protection and reportable conduct responses.

Reportable Conduct Unit staff will consult the most appropriate CSC-based officer (responsible for child protection assessment or placement support) to discuss child safety and risk management, and provide them with all relevant information. So that an investigative response is not delayed, this contact will usually be by telephone in the first instance.

The Reportable Conduct Unit/CSC consultation should consider:

- how the safety of any child involved in the allegations is going to be secured in the immediate assessment period and during the investigation
- how to inform relevant parties about the allegations in an appropriate manner and at an appropriate time and place
- how all the essential information about the person against whom the allegations have been made and any child associated with the allegations and any witnesses/persons with relevant information will be gathered and assessed
- how FACS' dual roles of child protection assessment and reportable conduct investigation will be managed
- how investigative tasks will be allocated and timeframes for completing the investigation
- what investigative response is planned and the implications of this plan for both the CSC and the Reportable Conduct Unit.

The investigator will conduct the investigation in consultation with the CSC/JIRT/District.

Reportable Conduct Unit officers will not discuss matters with FACS staff outside the Reportable Conduct Unit unless it directly relates to the carriage or outcomes of the investigation.

6.3.5 Special considerations in planning

Investigators must be aware of and respect local Aboriginal culture and traditions and ensure that any investigation is conducted in a culturally appropriate way. This is best achieved through liaison with an Aboriginal staff member (within the Reportable Conduct unit or District) or community organisation.

Section 12 of the *Children and Young Persons (Care and Protection) Act 1998* is specific about the principles of participation for Aboriginal and Torres Strait Islander people.

Investigators should ask whether or not the employee, child or other person involved in an allegation would like an Aboriginal advocate or support person to support them through the process. Assistance will be given to access this support.

When investigating an allegation involving employees, children and families from Cultural and Linguistically Diverse (CALD) backgrounds, a critical part of obtaining accurate and comprehensive information is to ascertain the

relevance and influence of cultural, migration and settlement factors as it applies to individual circumstances.

Consultation and participation of appropriate external agencies and Community Language Assistance Scheme can provide assistance in addressing these issues. FACS' employees who do not communicate well in English are to be provided with professional interpreters to enable them to participate. Written correspondence may need to be translated into an employees' first language.

The Translating and Interpreter Service can be contacted on 131 450 to assist in translation.

FACS has several specialist units which provide support and advice in relation to domestic violence, disability, mental health, cultural diversity and drug and alcohol issues. Reportable Conduct Unit staff will consult with these units on matters which require special consideration in planning an investigation.

6.3.6 Notifying an employee of an allegation

In the first instance, employees involved in an allegation should be advised that an allegation has been made, the investigation process, their rights and obligations, their support options and potential outcomes of an investigation as soon as this is possible without jeopardising the integrity of the investigation. This is most likely to occur following any interviews of victims/witnesses.

Key issues that should be considered when advising an employee of an allegation include:

- the safety, welfare and wellbeing of the child or young person who is the subject of the alleged conduct, and other children involved with the employee
- the stability and permanence in out-of-home care placements
- the preservation of evidence
- the integrity of an investigation including police or Joint Investigative Response Team (JIRT) investigations
- the management of identifiable risks that the employee may inadvertently or purposefully take action that lessens the quality of evidence or contact with witnesses
- compliance with legislative obligations such as those involved in protected disclosures
- the management of identified risks to the employee, investigation or any other related party e.g. the person who made the allegation.

The name of the person who made the allegation/s must not be disclosed to the employee unless there is recorded consent and it is deemed to be necessary for the purpose of the investigation.

The stage at which an employee is told of the specifics of the allegations against them will vary depending on the progress of the investigation and the management of any risks.

Employees should be informed in writing and the allegations should be as specific as the available information allows. Generally this information is provided three days prior to an interview. The same considerations mentioned above are relevant to consider when providing an employee with the specifics of the allegation.

The Reportable Conduct Unit recognises the need to minimise as far as possible any delay between telling an employee that an allegation has been made against them, and giving them an opportunity to respond.

When an employee is already aware of the allegation/s through the child protection response, it will be important to ensure that the employee is aware that the Reportable Conduct Unit will also be investigating the allegations, why this investigation is necessary, the investigation process and an estimation of how long the process may take.

The Reportable Conduct Unit is responsible for determining what details of the allegations are formally provided to the employee, the timeframe and how this is done. In the early stages of an investigation it is likely that the employee can be advised about the general nature of the allegation/s. Specific information about the conduct which has been alleged to have occurred is likely to emerge during the investigation. It is also possible that additional allegations of reportable conduct may emerge during the investigation. If an employee is advised about the general nature of the allegation/s, the employee may choose to respond to the allegation/s but they are not required to formally respond to the allegation/s at that stage.

Unless there are reasons not to, a person should be contacted by phone in the first instance. The investigator should explain that an allegation has been made and describe the Reportable Conduct Unit's investigative process. The investigator should also explain that the allegation and information about the investigation will be sent to the employee in writing.

Written notification to the employee includes:

- available information about the allegation/s made against them
- information about the investigative process
- FACS' legislative obligations to individually notify the NSW Ombudsman of certain allegations made against employees
- FACS' legislative obligations to notify the OCG regarding certain completed employment proceedings
- the employee's rights and obligations during the process
- details of the support available to the employee during the process
- any expected or agreed timeframes in the investigative process, including any agreed dates for meetings or interviews
- contact details for the investigator handling the matter
- information about the employee's right to make complaints in relation to the investigation process.

It is recognised that reportable conduct investigations can be a difficult experience for those involved. Support for children and young people is provided by the CSC.

For authorised carers and other non-salaried employees, procedural support is available from Connecting Carers and counselling support is provided through Relationships Australia.

6.3.7 Notifying a child's parents of an allegation

Section 163 of the *Children and Young Persons (Care and Protection) Act 1998* provides that parents have a right to information about the progress and development of their children in out-of-home care. In some cases, this includes significant events such as a change of placement and allegations of reportable conduct.

The Reportable Conduct Unit considers that section 163 should apply unless this will impact negatively on:

- the safety, welfare and wellbeing of the child or young person who is the subject of the alleged conduct, or other children involved with the employee
- the wishes of the child or young person
- the stability and permanence of a child's placement where maintenance of the situation is seen as in the child's best interests
- the preservation of evidence
- the integrity of an investigation including police or Joint Investigative Response Team (JIRT) investigations
- the management of identifiable risks that the parent may inadvertently or purposefully take action that lessens the quality of evidence e.g. contact compliance with legislative obligations such as those involved in protected disclosures
- the management of identified risks to the employee, investigation or any other related party e.g. the person who made the allegation.

The Reportable Conduct Unit will consult District staff about whether any of these reasons apply, and about when, how and to what level of detail the child's parents should be informed. Contact with parents about an allegation should be undertaken by District staff.

6.3.8 Storage of files and records

Hardcopy files must be securely stored in the Reportable Conduct Unit. All files must be removed from an officer's desk and securely stored at the end of each working day.

Where the file relates to an active investigation, the file is to be stored in the investigator or manager's filing cabinet or office. This cabinet/office is to be locked at the close of business each day. Inactive files are stored in the allocated Reportable Conduct Unit compactus.

From time to time it may be necessary for a file to be transported or located in an area other than those mentioned. In any event files should be located in a secure place when not in use and their location recorded on a Unit database.

6.4 Forms and Resources

- Investigation Plan Report - Internal Unit document.
- Risk Assessment Matrix - Internal Unit document.

7. Evidence and information gathering

7.1 Purpose

This procedure provides guidance to Reportable Conduct Unit investigators on the steps that are to be followed once an investigation plan has been approved. It details the actions that may be taken in gathering evidence and information to be able to make a finding about alleged conduct.

7.2 Policy and Practice

During the investigative process the appointed investigator will collect all available, relevant information to recommend an evidence-based finding about an allegation; ensuring full documentation at all times.

An investigative response may also collect supporting information to make comment and recommendations on a carer's development and support needs and on casework practice, and the systems supporting practice

7.3 Procedures

To be able to recommend an evidence-based finding, an investigator needs to gather relevant information and evidence from:

- the child or young person about the incident and its context
- the employee(s) about the incident and its context
- witnesses, including other children in the home
- other sources and relevant parties

This information and evidence may be gathered by:

- structured interviews
- semi-structured interviews
- audio recording, minutes or notes
- meetings
- phone calls
- written correspondences
- requesting material from other agencies

An investigator may also:

- record physical evidence (for example photographs of a location or injury)
- gather and review records and files

The investigator should document the information gathered.

The investigator will consider any information that has already, or will be, obtained by the District through child protection and out-of-home care assessment. The investigator will also consider and accommodate to the extent possible any preferences or constraints on how each of the participants would prefer to engage in the investigation.

If, during the course of their information gathering, an investigator becomes aware of further child protection risk issues, the investigator will notify the Child Protection Helpline in line with mandatory reporter obligations.

7.4 Conducting Interviews

Each person involved in the investigation should be interviewed separately from other involved parties. Where a person refuses to be interviewed separately to other involved parties, the investigator, in consultation with their manager, will balance the likely detriment to the investigation caused by the person's refusal and determine an alternative course of action. This may include interviewing parties jointly. Decisions about joint interviews should be documented in the investigation report.

Any person being interviewed will be informed of their rights to a support person, and should be given details of how to access a support person should they wish to do so. In general, a support person should not be a potential witness or other person involved in the investigations.

Interviews can be conducted in a range of ways, as deemed appropriate for the circumstances; for example, face to face, by telephone or through formal written correspondence. Information from previous interviews (for example Police or FACS child protection assessment) may be used where relevant.

The investigator should develop an interview plan which details information to be sought and outlines lines of inquiry to be pursued during the interview. Each interview needs to be planned to allow relevant information to be obtained. The interview should be documented including details of the location, time and format; who attended; the questions asked and the responses provided. It is best practice that formal interviews are recorded in the form of audio recording and/or transcription. Records of interviews should be verified by those involved wherever possible. Legible, comprehensive notes are to be made when audio recording and transcription are not available or appropriate to the level of investigative response.

Interviewees can request copies of transcripts or notes relating to their interview. Copies of recordings will be provided, where they have been made, rather than written transcripts.

If the interviewee disputes the accuracy of the record of interview, he or she should be asked to indicate in writing what they believe was actually said.

It is best practice to interview relevant parties before the allegations are put to the person against whom the allegations have been made.

This should occur unless there are no grounds to consider that the evidence could be compromised if the employee is interviewed before other parties, and there are compelling reasons to interview the person against whom the allegations have been made earlier in the process.

Reasons for making this determination should be clearly documented on the case running-sheet in AMS.

When conducting an interview the investigator should consider the:

- information needed from the interviewee
- most appropriate structure for the interview (e.g. formal, informal)
- interviewee's age and developmental stage
- resources required for the interview
- how support will be provided to any child interviewed.

Following an interview consideration should be given as to whether any information provided during the course of an interview requires referral to another business unit or agency – for example the Complaints Unit, NSW Police or JIRT.

Interviewing Employees

A request for an interview with an employee may be made verbally or arrangements for an interview may be set out in the letter notifying the person of the allegation.

Interviews may be conducted with the person against whom the allegation has been made to:

- clarify matters and provide information to the employee
- gather information to assist in the investigation
- put the allegations to the employee and allow them to respond.

Each allegation should be put to the employee separately so they are given the opportunity to respond to each allegation. The employee should be given sufficient particulars of each allegation based on the available information to allow them to respond as fully as possible.

The employee can be given the opportunity to respond to allegations during an interview or by completing a written statement. The investigator should clearly explain to the employee, in writing and/or verbally, their rights in responding to an allegation or finding, including the right to have support in developing a response.

Prior to being interviewed an employee will be given:

- at least 24 hours notice of the interview, unless they waive this timeframe
- details of the time, date and location of the interview
- advice that they may invite a support person/observer to be present
- an explanation of why the interview is taking place.

At the commencement of an interview the employee is to be advised:

- the purpose of the interview
- how the interview will be recorded
- the role of the support person/observer, if one is present
- that they will be given the opportunity to fully respond to the questions asked and to provide their comments regarding the allegations, including giving their version of events
- that they will have the opportunity to view transcripts, tapes or notes of their interview, and make comments
- that they can provide further information at a later date.

At the close of the interview the investigator should advise the employee about the next steps and anticipated timeframes

7.5 Administrative review

The purpose of an administrative review is to analyse information already gathered in relation to an allegation and make a finding based on that information. This approach ensures that Community Services' investigative principles have been adhered to without unnecessary delay and duplication in work.

Information may be gathered through an administrative review when the circumstances include, but are not limited to:

- trivial or negligible allegations which have not resulted in more than transitory harm to a child
- sufficient information or examination of available information has already occurred to enable a finding to be made
- there is no benefit in the Reportable Conduct Unit conducting further enquiries or carer development activities

An administrative review is conducted by reviewing written records and other evidence already gathered by District staff (for example KiDS records or previous investigation reports) or, in some cases, external agencies. An investigator may also collaborate with District staff and/or have contact with an employee to canvas the allegations.

It may be appropriate in some cases for new information gathering activities to be undertaken if, on further analysis, an evidence-based finding cannot be made from the information already available.

7.6 Written Statements

Written statements can be used if it is considered appropriate for the purposes of addressing the allegations or in responding to particular special considerations in an individual matter.

Written statements from a child can be completed on the Child Statement Form. The form should be given to the child with clear, age appropriate, verbal instructions of the nature of the information to be covered in the statement. The statement is to be signed and dated by the child and by a witness.

Written statements from adults can be made on the Reportable Conduct Unit Adult Statement form.

Alternatively, a child or adult may choose to write a letter and sign and date it.

Children may also provide evidence or information through other media if it is deemed appropriate by the investigator in the circumstances. This could include via mobile phone, video or instant messaging.

7.7 Client File Management

The Reportable Conduct Unit file management will comply with the NSW *State Records Act 1998* and the FACS 'Preparing and Managing a Paper File' procedure. Any record or document created or obtained during the course of an investigation must be:

- clearly dated and attributed
- retained on the physical file and not be deleted or removed, unless it is an exact duplicate of another, earlier record.

The Reportable Conduct Unit database should be used to record all decisions and actions. Updates to the investigation process are documented in the case running-sheet. The running sheet should be printed on completion of the investigation and placed on the physical file.

7.8 Forms and Resources

- Reportable Conduct Unit Adult Statement form - Internal Unit document
- Reportable Conduct Unit Child Statement Form - Internal Unit document

8. Making Findings and Recommendations

8.1 Purpose

This procedure provides guidance to Reportable Conduct Unit investigators on making findings in relation to allegations of reportable conduct. It also details the process for making recommendations in relation to particular findings where relevant.

8.2 Policy and Practice

After assessing all the information gathered during an investigation the person investigating the allegations must make a finding for each allegation.

The investigator should also identify strengths and weaknesses in FACS' practice or systems which may have impacted on the employee's conduct. The investigator may make recommendations or identify practice considerations to build on strengths or manage weaknesses.

8.3 Procedures

8.3.1 Making a Finding

Findings reflect the strength or weight of the evidence gathered. The following important factors are considered when analysing the information gathered:

- whether the information has come from a reliable source
- if the information is relevant to the incident and its context
- if the information is consistent with other accounts from either the same or different sources
- whether the information is corroborated by other sources
- how much time has elapsed between the event and providing the information
- how opinion, bias and and/or conflict of interest may impact on the information provided by any participant (e.g. victim, employee, witness).

The standard of proof to make a finding is the civil standard of proof. The “balance of probabilities” applies in investigations of allegations against employees. The investigator must be satisfied that it is more likely than not that the allegation is true in order to sustain an allegation.

In relation to the standard of proof, the following advice is provided by the NSW Ombudsman:

‘According to the ‘Briginshaw’ principle¹⁸, the amount of evidence required to get to this stage varies; the more serious the likely consequences for the employee if the allegation is proven, the greater the weight of evidence that is required. Under this principle, where an employee is likely to receive a caution if the allegation is true then it might be reasonable for the investigator to choose to take one person’s word against another where this appears to be justified. Where the allegation is so serious that the employee may potentially be dismissed, there would need to be more evidence of the employee’s wrongdoing to enable the decision-maker to be reasonably satisfied.’¹⁹

Findings must be made from the following options:

- **Sustained** (on the balance of probabilities, there is sufficient evidence that the alleged conduct did occur)
- **Not sustained** (on the balance of probabilities there is sufficient evidence to suggest that the alleged conduct did not occur; or where there is insufficient evidence available to establish that the alleged conduct did occur)
- **Not reportable conduct** (where the evidence available indicates that the conduct does not constitute reportable conduct).

¹⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336

¹⁹ NSW Ombudsman, *Child protection in the workplace*, 2004

The investigator recommends a finding to the manager, providing a clear rationale. The manager determines the finding and ensures that the rationale is documented.

8.3.2 Recommendations, Practice & Systemic Considerations

As part of the investigative process, the Reportable Conduct Unit may make observations or recommend proactive steps which could prevent further incidents of reportable conduct, both in individual circumstances and systemically across FACS. This may be through identifying practice considerations and/or making recommendations based on findings.

Practice considerations are context-related observations designed to assist FACS to prevent further reportable conduct. Practice considerations may include ways of addressing identified carer or placement support and development needs, or be observations about strengths and weaknesses in practice and/or the systems supporting practice which has contributed to the reportable conduct occurring.

The Assistant Director of the Reportable Conduct Unit will approve any recommendations or practice considerations that are being made and will be responsible for ensuring that those recommendations or practice considerations are brought to the attention of the appropriate delegated officers.

9. Reporting outcomes

9.1 Purpose

This procedure provides guidance to Reportable Conduct Unit investigators on findings in relation to allegations of reportable conduct. It details the steps to be taken in formally notifying an employee of the result of the information gathering, and providing them with the opportunity to respond.

9.2 Policy and Practice

It is important for procedural fairness and transparency that all outcomes, including findings and recommendations, are clearly recorded and that relevant parties are informed of the outcomes of an investigation and their right to challenge those outcomes.

An investigator should document outcomes of an investigation:

- constructing an outcome report
- written advice to relevant parties
- collating the documentation and information gathered during the investigation process and attaching to the file
- attaching finalisation documents to the Key Information Directory System (KiDS) under the Carer Development Plan

The Reportable Conduct Unit should notify the following parties of the outcomes of an investigation:

- employee
- NSW Ombudsman, in relevant circumstances
- relevant FACS District
- OCG, in relevant circumstances
- any other agreed parties

The issue of advising the child or young person of the outcome of an investigation is subject to current review by Community Services and the NSW Ombudsman.

9.3 Procedures

9.3.1 Outcome Report

The Outcome Report contains:

- a list of the allegations
- a statement of the evidence
- an assessment of the relevance and reliability of the evidence concerning each allegation
- a separate finding for each allegation as to whether, on the balance of probabilities, the person has engaged in the alleged conduct, including any response to the allegations by the child or young person and the employee and rationale for the finding.
- where a not sustained finding is made despite there being some evidence that the employee may have engaged in the alleged conduct, that evidence should be recorded
- a conclusion which details what practice and systemic considerations and/or recommendations (if any) the Reportable Conduct Unit will make.

Investigators should commence populating the Outcome Report from the time they start investigating a matter.

Original copies of all documentation relevant to the investigation are part of the Outcome Report. This includes, but is not limited to:

- assessments
- reports
- interview notes
- statements
- documentation of physical evidence and photos.

Class or Kind and Investigation outcome reports are approved by the manager. Contentious outcome reports are approved by the Assistant Director Reportable Conduct Unit. Approval must occur prior to provision of advice to any parties.

9.3.2 Notifying the employee

At the completion of the investigation, the Reportable Conduct Unit will formally advise the employee that the investigation has been completed.

The employee will be advised:

- of the findings of the investigation
- of the right to request a review/ that they can request that additional information or statements be added to their confidential file
- whether the matter has or has not been referred to the Ombudsman
- whether or not a notification has been made to the Office of the Children's Guardian.

The formal advice should where necessary acknowledge any aspects of the investigation that may have impacted on procedural fairness. Section 11 details how the Reportable Conduct Unit responds to requests for review.

9.3.3 Notifying the NSW Ombudsman

When the investigation and all relevant documentation are complete, the Reportable Conduct Unit provides the NSW Ombudsman with a copy of all documentation relevant to an investigation, where the matter has not been exempt from notification.

9.3.4 Notifying The Office of the Children's Guardian (OCG)

Section 35 and Schedule 1 of the Child Protection (Working with Children) Act 2012 require FACS to notify the OCG of the name and other identifying particulars of any employee against whom FACS has made a finding of:

1. sexual misconduct committed against, with or in the presence of a child, including grooming of a child;
2. any serious physical assault of a child by the employee.

Only findings of sexual misconduct and serious physical assault must be reported to the OCG by FACS.

The Reportable Conduct Unit uses OCG published guidelines to assess whether an employee's conduct reaches the threshold for reporting to the OCG.

This assessment is made by the investigator and their manager when an investigation is finalised and the outcome report has been approved by the relevant approving manager or Director.

Relevant misconduct findings are reported to the OCG through an online website.²⁰

²⁰ <https://wwwcheck.ccyp.nsw.gov.au/Employers/Login>

A full copy of the OCG guidelines can be accessed at the OCG website.²¹

9.3.5 Notifying District staff

In addition to communication during the investigative process, the District should be notified in writing of the outcome of the investigation. This notification will explain:

- that the matter has been finalised
- the outcome of the investigation
- any recommendations made by the Reportable Conduct Unit and monitoring requirements.

Investigation finalisation reports are attached to the carer development plan on KiDS by the Reportable Conduct Unit to enable CSC staff responsible for the care of the child/ren or young person, and/or the support of the carer, to take account of the investigation material when reviewing the placement and planning appropriate casework action.

9.3.6 Victims Compensation and claims against the State

Children who are or who have been in the care of the Minister may be entitled to Victim's Compensation if they have suffered abuse while in a placement. Children who have experienced very serious harm may in some circumstances be eligible to make a claim against the State. FACS' Legal Services Branch facilitates these processes. The Reportable Conduct Unit notifies Legal Services if the nature and circumstances of a sustained serious allegation suggest that a claim against the State may be possible.

9.3.7 Notifying Children and significant others

The issue of advising the child or young person of the outcome of an investigation is subject to current review by Community Services and the NSW Ombudsman.

9.3.8 Case Closure

The Reportable Conduct Unit will close and finalise an investigation when all final documentation is approved and, where relevant, referred to the NSW Ombudsman and/or OCG.

Before a case is closed it will be reviewed to ensure that all:

- relevant information is recorded in the electronic and hard copy files
- supporting documentation is located on the physical file
- correspondence has been saved in both the electronic and hard copy files.

The information in the database should then be amended to reflect that a matter has been closed.

²¹ www.kidsguardian.nsw.gov.au

Once a case has been closed the file is to be securely stored in the compactus storage. If an investigator removes a file from the compactus the change in location is recorded in a file note.

A case will be reopened if the NSW Ombudsman requests further information regarding that case, or if a review is requested.

9.4 Forms and Resources

- Reportable Conduct Unit Investigation Report template - Internal Unit document
- Finalisation Submission - Built into AMS Database
- Case Closure Checklist - Internal Unit document

10. Responding to Ombudsman requests and reviews

10.1 Purpose

This procedure provides guidance to Reportable Conduct Unit staff on responding to Ombudsman's requests for further information or reviews of information in relation to investigations.

10.2 Policy and Practice

Under section 25B of the Ombudsman Act 1974, the Ombudsman is to keep under scrutiny the systems agencies have in place for preventing reportable conduct, and responding to allegations of reportable conduct when they do occur.

Further information can be found in the Ombudsman's Child Protection in the Workplace Guide.

10.3 Overseeing an investigation

When the Ombudsman decides to oversee an investigation, Reportable Conduct Unit staff continue their investigation. During this process the Reportable Conduct Unit may contact the Ombudsman for advice and feedback.

At the conclusion of the investigation FACS provides the Ombudsman with:

- an outcome report detailing the results of an investigation
- advice on any actions taken as a result of an investigation
- copies of supporting documentation.

The NSW Ombudsman reviews investigations to assess if they have been properly conducted, have come to an appropriate finding and resulted in action that was appropriate based on the investigation outcomes. The Ombudsman will review the documentation and final report and will either:

- advise FACS that no further action is requested
- require further information

- request that FACS undertakes further investigative action
- request that FACS reviews its findings.

If the Ombudsman has not received information about the finalisation of a matter they are overseeing within expected timeframes the Ombudsman will request an update of the status of the investigation.

10.4 No Ongoing Ombudsman Oversight (NOO)

In some matters the NSW Ombudsman decides that ongoing oversight of the investigation is not warranted. In these circumstances the Reportable Conduct Unit will provide the Ombudsman with final advice to the Ombudsman at the end of the investigation but is not required to provide the NSW Ombudsman with an outcome report or any further information from the Reportable Conduct Unit except in the following circumstances:

- If additional allegations are raised against the subject employee that result in:
 - the risk assessment being escalated; or
 - a referral to Police, JRU or for a child protection response within Community Service.
- If Police otherwise become involved in the matter
- If the subject employee resigns from or otherwise leaves FACS employ before the investigation is finalised.

10.5 Monitoring an investigation

The Ombudsman can monitor an investigation pursuant to Section 25 (E) of *The Ombudsman Act 1974*. Monitoring involves a more active involvement by the Ombudsman in an investigation. FACS will be required to provide regular updates about the progress of the investigation. During the monitoring process the Ombudsman may:

- request information on the progress or status of an investigation
- confer with the persons conducting the investigation about the conduct and process of the investigation
- observe interviews conducted by or on behalf of the agency as part of the investigation

At the conclusion of the investigation FACS will provide the Ombudsman:

- a final report detailing the results of an investigation
- advice on any actions taken as a result of an investigation
- copies of supporting documentation.

The Ombudsman will send FACS written feedback advising of the assessment of the adequacy of the investigation. The report will identify the strengths of the investigation process as well as areas for general improvement for any future investigations or policy development, including making recommendations or requesting additional information, where appropriate.

10.6 Direct investigation by the Ombudsman

The Ombudsman may, at any time, decide to directly investigate a matter, but will generally only investigate if:

- significant risks to children have not been identified or addressed by FACS
- FACS indicates it lacks the capacity to investigate a particular matter
- there is a sufficient conflict of interest preventing FACS from properly investigating
- the final report from FACS indicates wrong conduct in an original investigation
- The Ombudsman may also conduct an investigation concerning any inappropriate handling of a response to any such reportable allegation or reportable conviction, whether on the Ombudsman's own initiative or in response to a complaint.

If the Ombudsman decides to directly investigate, Community Services will be advised in writing. The Reportable Conduct Unit may need to defer any investigation process until after the Ombudsman has completed an investigation.

Under the Act the Ombudsman has the powers to:

- require FACS to produce documents
- enter and inspect any premises occupied or used by FACS
- inspect any document or article on the premises
- summons and compel a witness to give evidence before the Ombudsman
- require a person who has relevant information to answer specific questions.

Once the Ombudsman has completed an investigation the outcomes are reported to FACS.

10.7 Audit

The Ombudsman can audit FACS' systems as part of the Ombudsman's function to keep reportable conduct and complaint handling systems under scrutiny.

Audits may be conducted independently of the investigation and monitoring role of the Ombudsman.

When conducting an audit, representatives from the Ombudsman's office may:

- review FACS' policies and procedures
- review FACS' documentation in relation to individual matters
- visit FACS' premises
- speak with Reportable Conduct Unit staff.

10.8 Community Services (Complaints, Reviews and Monitoring) Act 1993

The Ombudsman can also, under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, review the situation of a child or group of children in care. In carrying out a review the Ombudsman is to look at such aspects of the welfare, status, progress and circumstances of the child or children as the Ombudsman sees fit.

This review may be on application, or may be of the Ombudsman's own initiative.

Where this review considers a reportable conduct investigation or casework with a child or young person named as a victim or witness in an allegation against an employee, the response will be managed by the Reportable Conduct Unit.

10.9 Procedures

Requests and notifications from the Ombudsman are sent to the Office of the Chief Executive, then to the Reportable Conduct Unit. It is the responsibility of the allocated investigator and manager to prepare a response for the Ombudsman. This may include:

- collecting information from the District
- collating documentation or information from documentation
- extracting data from the RCU database

An investigator will then present the response to their manager for approval.

Responses to the Ombudsman will be in writing, unless:

- the request is simple, and
- the request has not come in writing.

Where a response is not provided in a formal letter, the investigator should clearly document the content of a phone call, fax or email.

The Ombudsman can also request further information about the investigation and actions taken under section 25F(3) of the Ombudsman Act 1974.

The Ombudsman can request a review of the findings if it believes that they are not supported by the evidence provided.

The Assistant Director Reportable Conduct Unit will ensure that findings are reviewed by a manager who has not been involved in the investigation in accordance with the internal review principles.²²

²² <http://cwp.docsonline.dcs.gov.au/en/Procedures/reviewable-administrative-decisions/>

11. Reviews, Appeals and Right to Information

11.1 Purpose

This procedure provides guidance to Reportable Conduct Unit staff on how and when a review can be requested by an employee who has been the subject of an allegation. It also details how a review will be undertaken.

11.2 Policy and Practice

Any action taken against an employee following an investigation could be subject to appeal.

An employee can request that the Reportable Conduct Unit review its investigation findings and recommendations; or decision to refer the employee's details to the OCG, if the employee believes the investigation process has:

- been unfair or biased
- not followed written policy and procedure
- not considered all the evidence or information available.

An employee may also seek to access information held about them regarding a relevant employment proceeding. This may, in some circumstances, include access to information prior to completion of the investigation. All requests to review files and documentation are made under the Government Information (Public Access) Act 2009.

11.3 Procedures

Employees may have rights of appeal about decisions or sanctions in matters where a reviewable decision has been made by the District including the cancellation or variation to a carer's authorisation or the removal of a child from an authorised carer. These decisions can be internally reviewed and may be appealed through the NSW Civil and Administrative Tribunal (NCAT). Reviews and appeals will be coordinated by the District/CSC.

Consultation between the Reportable Conduct Unit and the District will be arranged in appeal cases.

The Reportable Conduct Unit can review the findings reached in an investigation and the decision to notify employment proceedings to the OCG. Requests for a review of a finding must be made in writing and addressed to the Assistant Director, Reportable Conduct Unit who will manage the review.

Requests are to be sent to:

<p>Assistant Director Reportable Conduct Unit Locked Bag 4028 ASHFIELD NSW 1800</p>
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For a review to be undertaken, the employee must provide additional information that was not considered during the investigation or identify an aspect of procedural fairness that was compromised during the investigation.

The Assistant Director, Reportable Conduct Unit will consider whether the employee's request warrants a review and advise the employee of the decision. Where an employee provides additional information or identifies an issue of procedural fairness, the Assistant Director will accept the request, except in exceptional circumstances and with the approval of the Executive Director.

If the Assistant Director, Reportable Conduct Unit approves a review, it will be conducted in the same way as a review requested by the NSW Ombudsman. The internal review will be undertaken by an appropriately knowledgeable reviewer who was not involved in the initial investigation or approval of the findings.

The reviewer will make a recommendation to the Assistant Director or Executive Director that either affirms or varies the outcome of the original investigation or referral to the OCG. The employee will be notified of the outcome, the rationale for it, and the employee's right to make a further complaint.

11.4 Right to Information

A person who is the subject of an investigation may apply for access to certain documents under the *Government Information (Public Access) Act 2009* (GIPA Act). The Right to Information Unit is responsible for determining the documents to be provided and those that cannot rightfully be released.

All Right to Information applications will be processed as described in FACS Right to Information procedures which can be found on the FACS Intranet.²³

Exclusions will be made only to protect the identity of victims and notifiers and to ensure compliance with privacy and other legislation.

The employee, having inspected the file, may submit additional documentation that will be added to the investigation file. If the employee contends that the additional or clarified information was relevant to the finding, an application for review of the finding may be made.

11.5 Appeals to External Agencies

The Ombudsman oversees FACS' investigations and will receive complaints from employees during or after an investigation. The Ombudsman can suggest a change in findings, suggest further inquiries are undertaken and can directly investigate matters. However, the Ombudsman is not an appeals body and does not have determinative powers.

²³ <http://docsonline.dcs.gov.au/internal-services/right-to-information.html>

Screening agencies who prepare Working With Children background checks invite employees to provide their own information additional when completing their assessment of risk.

The right to an appeal to an external agency will only arise where there has been a detrimental action towards an employee. Authorised carers may have certain matters reviewed by the NSW Civil and Administrative Tribunal (NCAT). Relevant reviewable decisions for authorised carers include:

- a decision of the relevant decision-maker to authorise or not to authorise a person as an authorised carer, to impose conditions on an authorisation, or to cancel or suspend a person's authorisation as a carer
- a decision of the relevant decision-maker to grant or to remove from an authorised carer the responsibility for the daily care and control of the child
- a decision of the Minister or the Secretary under s246 with respect to the accommodation of a child.

Prior to requesting that the NCAT review a matter, an authorised carer must request an internal review by FACS.

Detailed information regarding NCAT is available on their website.²⁴

12. Continuous Practice Improvement

12.1 Purpose

This procedure provides guidance to Reportable Conduct Unit staff on how the Reportable Conduct Unit reviews and improves its own practice and how it identifies strengths and areas for improvement in wider FACS' practice and in systems supporting practice.

12.2 Policy and Practice

The Reportable Conduct Unit is committed to operating efficiently and effectively in order to meet the needs of stakeholders, particularly children and young people. The Reportable Conduct Unit undertakes ongoing quality control and evaluation of investigative processes to ensure maintenance of best practice standards.

The Reportable Conduct Unit's quality system is based on adherence to the following principles:

- a commitment by all staff to continuous improvement of investigative processes
- a commitment to ongoing learning and skills development for all staff in the unit
- input and involvement of all staff in identifying and implementing quality improvements

²⁴ <http://www.ncat.nsw.gov.au/ncat/index.html>

- systematic use of qualitative and quantitative review and stakeholder feedback as the basis for identifying and prioritising improvement opportunities

The Reportable Conduct Unit is also committed to using evidence from reportable conduct investigative action in identifying opportunities to develop and improve practice and the systems supporting practice across FACS.

13. Management of Non-ROSH reports containing allegations against employees of other agencies

13.1 Purpose

This procedure provides guidance to Reportable Conduct Unit staff on how the Reportable Conduct Unit manages Non-ROSH reports that contain allegations against employees of other agencies.

13.2 Policy and Practice

The Reportable Conduct Unit is responsible for ensuring that matters assessed at the Helpline as not constituting a report of significant risk of harm to a child (Non-ROSH) but contain information that may constitute an allegation against an employees of another agency, are forward to the respective employing agency. This information is exchanged under Chapter 16A of the legislation. The Reportable Conduct Unit approaches this exchange with the view of maximising the sharing of information in order to ensure the welfare and wellbeing of children and young people and promote interagency cooperation.

13.3 Procedures

The Child Protection Helpline receives reports that contain allegations against employees of other agencies. If the matter is assessed as reaching ROSH then the report is forwarded to the relevant District for action. If the matter does not meet ROSH it is forwarded to the Reportable Conduct Unit for action.

All relevant non-ROSH allegations are forwarded by the Helpline to the Reportable Conduct Mailbox. In doing so the Helpline forwards the relevant contact record and a completed “Child Protection Helpline Report for Non-ROSH Allegations Against Staff of Other Agencies” form. The intake officer forwards the contact record and Helpline form to the nominated officer in the Reportable Conduct Unit.

The nominated officer determines the correct person in the designated agency to receive the information about their employee. The Reportable Conduct Unit approaches this project with a view to maximising the information that can be shared with other agencies in an effort to improve the welfare and wellbeing of children and young people.

Information is exchanged with the relevant agency under the provisions of Chapter 16A of the *Children and Young Person (Care and Protection) Act 1998 NSW*. It is therefore necessary to confirm each matter can lawfully be exchanged. This requires a careful consideration of the legislation and the nature of the agency reported. Sometimes this is a complex decision, this is especially so for reports about sporting bodies. Legal advice should be sought if a decision cannot be made about the legal basis for sharing information and informing an agency.

If there is no legal basis to forward information to an agency, consideration should be given to providing the information to the NSW Police or the NSW Ombudsman.

13.4 Forms and Resources

- FACS Standard Letter for Release of Information to an Employer under Chapter 16A - Internal Unit document.