

Sydney Olympic Park Authority Policy

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CHILD PROTECTION POLICY

1. Introduction

The issue of reportable conduct is a complex problem that has an impact on all areas of society.

The 1997 Wood Royal Commission into the NSW Police Service led to increased community awareness of the significant number of child sexual assaults and incidents of abuse that occur. It also highlighted the need for the development and implementation of strategies to protect children from abusive situations.

In response to recommendations from the Wood Royal Commission, the NSW Parliament enacted legislation to reduce the risk of abuse of children and young people by those entrusted with their care. The legislation is aimed at increasing the safety, welfare and wellbeing of children in our State. The relevant legislation is:

- Commission for Children and Young People Act 1998;
- Children and Young Persons (Care and Protection) Act 1998;
- Child Protection (Offenders Registration) Act 2000;
- Child Protection (Offenders Prohibition Orders) Act 2004;
- Child Protection (Working With Children) Act 2012; and the
- Ombudsman Act 1974

Whilst the legislation has primary applicability to organisations which deal directly with children and young people, such as the Departments of Family Community Services, Education and Communities, Health, Attorney General and Justice, non government schools, and child care services, the Sydney Olympic Park Authority (the Authority) is also required to comply, as a number of staff regularly interface with the general public, including children.

Protecting children from abuse is a common responsibility for all staff. Through the implementation of strategies that assist in preventing reportable conduct from occurring, the Authority has taken a pro-active role in relation to child protection and intervention.

As part of the Authority's commitment to the safety of children this policy on child protection has been developed.

2 Definitions

Child

“A person under the age of 18 years”.

Reportable Conduct

Reportable conduct means

- (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 conduct does not extend to:

- (a) 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
- (b) 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
- (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

Note.

Examples of conduct that would not constitute **reportable conduct** include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

Reportable Allegation

An allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct

Reportable Conviction

Any conviction of a person, in this State or elsewhere, of an offence involving reportable conduct, and includes a finding by a court that a charge for such an offence is proven even though the court does not proceed to conviction.

Child related work

“Child related work is work that involves direct, contact with children. In this context direct contact means physical or face to face contact.

Employee

1. Anyone employed by the Authority under the Public Sector Employment and Management Act 2002, whether or not their position requires them to work with children;

Disqualified Person

- (a) a person convicted of an offence specified in Schedule 2 of the *Child Protection (Working with Children) Act 2012*, if the offence was committed as an adult, or
- (b) a person against whom proceedings for any such offence have been commenced, if the offence was committed as an adult, pending determination of the proceedings for the offence, or
- (c) a person who is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*

Relevant employment proceedings

Relevant employment proceedings means proceedings (including disciplinary proceedings) in this State, or elsewhere, against an employee, by the employer or by a professional body or other body that supervises the professional conduct of the employee, being proceedings involving:

- (a) reportable conduct by the employee, or
- (b) sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or
- (c) any serious physical assault of a child

Worker

Worker means any person who is engaged in work in any of the following capacities:

- (a) as an employee,
- (b) as a self-employed person or as a contractor or subcontractor,
- (c) as a volunteer,
- (d) as a person undertaking practical training as part of an educational or vocational course (other than as a school student undertaking work experience).

3 Working with Children Check

The Working with Children Check is an important element in preventing people who pose a risk to the safety welfare and well-being of children from being employed or engaged in child related work

The Working with Children Check is a national criminal record check for workers proposed to be employed or engaged in child related work. This is a check for reportable conduct, child pornography, sexual activity or acts of indecency. It also includes a check on relevant Apprehended Violence Orders and a check of previous employment proceedings.

Workers proposed to be engaged in child related employment must apply for and obtain a Working With Children Check (WWCC) Clearance from the NSW Children's Guardian.

The person seeking a WWCC Clearance must apply for an appropriate clearance as follows:-

- (i) non-volunteer clearance for engagement in either paid or unpaid child related work. An application fee is payable by the person
- (ii) volunteer clearance for engagement in unpaid child related work. An application fee does not apply.

Once granted by the Children's Guardian a person's WWCC Clearance is valid for 5 years (from the date it is granted), unless it is cancelled sooner by the Children's Guardian.

The Authority must verify the WWCC Clearance with the Children's Guardian prior to the worker commencing child related work.

The checking process will identify that

- (i) the person may be engaged in child related work
- (ii) the person is 'barred' or is subject to an 'interim bar'

In the latter case, the person cannot be employed or engaged in child related work

The Children's guardian will cancel a person's WWCC Clearance if they become aware that the person is a disqualified person or if they are satisfied that the person poses a risk to the safety of children.

The Children's Guardian will notify the Authority in writing if at any time following the initial verification/clearance,

- (i) the person's WWCC Clearance is cancelled (ie the person is now barred). In such cases the person's employment or engagement in child related work is to be terminated.

- (ii) the person becomes subject to an interim bar in which case the person must not continue to be employed or engaged in child related work

Where a person moves from one child related work role to another child related work related work role within the Authority, a further WWCC is not required.

4. Other Responsibilities

In addition to the Working with Children Check, the Authority is required to provide the Children's Guardian with details of any relevant employment proceedings that have been completed against any Authority employee within the last five years and any that happen in the future. It is only required in cases of sexual misconduct, including grooming, or acts of violence in the workplace where these acts involve children, are directed at children, or take place in the presence of children.

For the purposes of child protection employment legislation, relevant employment proceedings include any action to investigate matters which have been the subject of allegations involving reportable conduct, sexual misconduct, or acts of violence committed by the employee in the course of employment.

It is not necessary to notify the Children's Guardian where completed employment proceedings have proven the allegations to be false vexatious or misconceived.

Completed employment proceedings also include processes which have been completed at the instigation of the employee, ie, those circumstances where an employee terminates their employment by their own choice prior to the Authority having the opportunity to finalise the disciplinary process.

5 Notifying The Children's Guardian

The Authority, through the General Manager, Commercial and Corporate, is required to make a report in the form approved by the Children's Guardian and submitted to the Children's Guardian online via the Children's Guardian's website.:

This information must be provided to the Children's Guardian as soon as the relevant employment proceedings are completed. This information must be provided to the Children's Guardian, irrespective of any information to be provided to the Ombudsman in relation to the same matter.

6 Ombudsman Act 1974

The Ombudsman Act 1974 requires the Ombudsman to oversee and monitor investigations into reportable allegations against employees of the Departments of Family and Community Services, Education and Communities, Health, Attorney General and Justice, as well as area health services, non-government schools, childcare services and substitute residential child care services. These organisations are classified as "designated agencies". Any reportable allegation against an employee regardless of whether it occurred in the workplace, home or elsewhere must be reported.

The Ombudsman Act 1974 extends this application to include all other public authorities within the coverage of the Act if the alleged reportable conduct occurred in the course of the person's employment with the organisation. These organisations are classified as non-designated public authorities.

The Ombudsman's Office has advised that the Sydney Olympic Park Authority (the Authority), is a non-designated public authority under the legislation as a number of its employees and service providers, interface with the general public, including children.

In this regard the Chief Executive Officer of the Authority will advise the Ombudsman of reportable allegations and convictions against Authority employees, and will subsequently provide information in relation to the investigation and outcomes of any such allegations and convictions, in so far as they relate to the conduct of the employee in the course of their employment with the organisation.

7 Role of the Ombudsman's Office in Child Protection Matters

The role of the Ombudsman in child protection is to ensure that if an allegation is levelled against an employee of the Authority then the allegation is properly investigated and that appropriate action is taken following the investigation.

For an allegation to be notified to the Ombudsman, the following components are necessary:

- The person who is the subject of the allegation must be a current employee of the Authority, or have been an employee at the time the allegation was made and must be identifiable. This does not necessarily mean identified by name, as a person may be identifiable by other information including their description and work schedules.
- The allegation must describe behaviour that may constitute reportable conduct.
- The alleged victim must have been aged under 18 years at the time of the alleged offence or behaviour.

The Ombudsman can respond to a reportable allegation notification in one of three ways. The Ombudsman can oversee the investigation conducted by the Authority, monitor the investigation, or can assume direct control of the investigation.

The Ombudsman is also required to scrutinise the systems that designated agencies and public authorities have for preventing reportable conduct by employees and for responding to reportable allegations and convictions against employees. To do this, the Ombudsman may require agencies and public authorities to provide the Ombudsman with information about those systems.

The Ombudsman can accept complaints from employees and others about the functioning of those systems, but generally only after the designated agency or public authority has been informed of the complaint, and has had the opportunity to deal with the complaint.

8 Reporting Allegations of Reportable Conduct

The Authority's employees may become aware of reportable conduct allegations through a variety of sources. The Authority's employees should familiarise themselves with the following procedures to ensure that any reportable allegations are reported to the General Manager, Commercial and Corporate or their supervisor.

The Children and Young Person's (Care and Protection) Act 1998 protects employees reporting a child 'at risk of harm' to the Department of Family and Community Services, whilst the Protected Disclosures Act 1994 protects employees making a protected disclosure. When these Acts do not apply, an employee's compliance with this mandatory policy will provide protection in most circumstances.

Self reporting

All Authority employees are required to disclose in writing if they have been charged and/or received a reportable conviction. Any failure to do so may contradict the terms of the *Child Protection (Offenders Prohibition Orders) Act, 2004* the Government Sector Employment Act 2013, and the Authority's Code of Conduct, and could result in disciplinary or other action against the employee.

Reporting by other Authority employees

The Authority's employees are required to disclose in writing to their supervisor or the General Manager, Commercial and Corporate any alleged misconduct by an employee, constituting or involving reportable conduct of which they become aware.

An allegation against an employee of the Authority is to be notified regardless of the opinion of the seriousness or accuracy of the allegation. This is necessary for the following reasons:

- a minor allegation may, upon investigation, reveal more serious conduct;
- minor allegations may reveal a pattern of behaviour which warrants further scrutiny or a particular response by the Authority's management;
- where the allegation is false, a transparent investigation will provide reassurance that the finding was the correct one, and help avoid subsequent doubt or criticism of the finding;
- where the allegation is false and malicious, a transparent investigation will provide that same reassurance, while complete records will assist in dealing with any similar or subsequent allegations made by the complainant.

Reporting by the Authority's clients and/users of facilities

In certain cases, an Authority employee may be informed by a member of the public, who is using the facilities at Sydney Olympic Park, of a suspected reportable allegation against another Authority employee, or suspected reportable conduct by a person other than an employee of the Authority. The officer of the Authority concerned should take note of the details of the allegation and report the matter in writing to the General Manager, Commercial and Corporate, as a matter of urgency.

Where the allegation concerns a person(s) who is not an employee of the Authority the General Manager will ensure that all necessary reporting obligations are adhered to. Where the allegation is made against an employee of the Authority the processes outlined below will apply.

Reporting by other investigative agencies

In the event that the Authority receives advice from an investigative agency, for example the NSW Police or the Department of Family and Community Services, that an Authority employee is under investigation for a reportable allegation, the Authority will advise the Ombudsman of the allegation.

In some instances a reportable allegation against an Authority employee may be the subject of a complaint to the Ombudsman before the Authority becomes aware of it. In these cases, the Ombudsman will generally refer the complaint back to the Authority for a response or appropriate action.

9 Notifying the Ombudsman's Office

The Chief Executive Officer will notify the Ombudsman as soon as practical of the following:

- Of any reportable allegation, or reportable conviction, against an employee of the Authority of which the Chief Executive Officer becomes aware (required to be reported within 30 days).
- Whether or not the Authority proposes to take any disciplinary or other action in relation to the employee and the reasons why it intends to take or not to take any such action.
- Of any written submissions made to the Chief Executive Officer concerning any such allegation or conviction that the employee concerned wished to have considered in determining what (if any) disciplinary or other action should be taken in relation to the employee.

The Authority will also assess any immediate care and protection issues and take appropriate action to minimise any risks to the children) involved, to the Authority employee(s) involved, to the Authority, and to the integrity of the investigation. The Ombudsman will be notified of the initial risk assessment, any subsequent risk assessment and any action taken as a result of those assessments, should they be identified as significant.

10 Process for Investigating the Allegation

The Authority is concerned that any investigation into a reportable allegation is handled appropriately and sensitively. Every effort will be made to ensure that children are interviewed on as few occasions as possible as this can be a daunting and intimidating experience, especially at a time soon after they have apparently experienced abuse.

Any investigation will be conducted according to the principles of procedural fairness/natural justice, with an employee given an opportunity to respond to

allegations and provide evidence, which will be carefully considered. Any finding will be made fairly on the available evidence.

The Authority will consider the following when determining what course of action to take during an investigation:

- Where necessary, the Authority will seek advice as to whether to commence or conduct an investigation against an employee. The Authority will seek the advice of the Department of Family Community Services, the Police Service, or the NSW Ombudsman.
- Depending on the nature of the allegations, the Authority may decide to investigate the matter internally or to seek the assistance of an agency that has appropriate skills and experience in the area of conducting investigations, or in dealing with reportable conduct matters. If it is a serious criminal matter, the Authority will not undertake any investigation until the police investigation or the prosecution is completed.
- If the matter is to be investigated externally, the Authority will inform the Ombudsman that this is the course of action to be followed.
- The Authority will also inform the Ombudsman of the working arrangements in place for the employee who is being investigated.

11 Confidentiality

The Authority will investigate allegations as impartially, fairly, and discreetly as possible. The results of the investigation/enquiry, and the identity of the persons the subject of the allegations will be kept confidential, as will the identity of any children involved, unless there is a lawful requirement to provide information regarding the investigation/enquiry.

All persons interviewed in the course of the investigation will be asked not to disclose any information about the investigation.

12 Informing the person who is the subject of the Allegation

The Authority will inform the person who is the subject of the allegation(s), within a reasonable time frame, bearing in mind the need to ensure that an initial investigation is not compromised, that they are being investigated.

The person who is the subject of the allegation(s) will be provided with sufficient information about the allegation(s) and any evidence collected in the course of the investigation to enable the employee to explain, answer or rebut the allegation and evidence.

The person will also be provided with a reasonable opportunity to put their case (either orally or in writing) to the person carrying out the investigation for or on behalf of the Authority, before any final decision/determination/report or the like is made.

The person who is the subject of the allegations will be offered support and counselling from an external counselling service.

The person who is the subject of the allegations will be formally advised of the outcome of the investigation, including the substance of any adverse comment that may be included in a report/ memorandum/letter or the like arising out of the investigation. They will also be advised of their right to make a complaint to the Ombudsman if the employee is not satisfied with the response to, or handling of, the allegations.

Where the allegations are clearly wrong or unsubstantiated, the person who is the subject of the allegations is entitled to the support of the Authority and its senior management. This might include a letter to the person making the allegations and to the person the subject of the allegations setting out the Authority's views that the allegations were either clearly wrong or unsubstantiated.

13 Completion of the Investigation

Once the investigation into the allegations has been concluded, the Chief Executive Officer will provide the Ombudsman with:

- a report of the investigation, including the findings made by the Chief Executive officer after considering the evidence obtained by the investigation, as well as copies of all the statements, interviews, documents and other evidence which form the basis for the finding(s) made;
- any comments that the Authority wishes to make about the report; and
- advice as to what action has been taken or is proposed to be taken in respect of the reportable allegation or conviction under investigation (including any disciplinary action).

All records associated with the conduct of the investigation will remain confidential and will be stored in a secure location.

14 Breaches of this Policy

Employees will be advised of the policy, where it is located on the network, and the requirement to familiarise themselves with its contents, on commencing employment with the Authority. The failure of employees to observe this policy could lead to disciplinary action or possible civil proceedings.

The Authority Contact - For further information please contact:
General Manager, Commercial and Corporate 9714 7426
Manager, Human Resources 9714 7307

Alan Marsh
Chief Executive Officer