

# PROCEDURE

<b>Name:</b>	Child Protection	
<b>Procedure code:</b>		
<b>Approved by MANEX/Manager:</b>	<b>Date:</b> 26 May 2020	<b>By:</b> MANEX
<b>Last review date:</b>	May 2020	
<b>Review timeframe:</b>	2 years	
<b>Next scheduled review date:</b>	May 2022	
<b>Related legislation:</b>	<p><i>Local Government Act 1993</i></p> <p><i>Child Protection (Working with Children) Act 2012</i></p> <p><i>Child Protection (Working with Children) Regulation 2013</i></p> <p><i>Children and Young Persons (Care and Protection) Act 1998</i></p> <p><i>Children and Young Persons (Care and Protection) Regulation 2012</i></p> <p><i>Children and Young Persons (Care and Protection) (Child Employment) Regulation 2015</i></p> <p><i>Advocate for Children and Young People Act 2014</i></p> <p><i>National Disability Insurance Scheme Act 2013 (Cth)</i></p> <p><i>Ombudsman Act 1974 (Amendment 68)</i></p> <p><i>Ombudsman Regulation 2016</i></p> <p><i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i></p> <p><i>Mandatory Reporter Guide 2010</i></p> <p><i>Children's Guardian Act 2019</i></p>	
<b>Association policies/documents:</b>	<p>MidCoast Council Code of Conduct</p> <p>MidCoast Council Child Protection Policy</p> <p>MidCoast Council Working with Children Check Procedure</p> <p>MidCoast Council Vacancy Management protocols and associated documents</p> <p>MidCoast Council Complaint Handling Policy and associated documents</p> <p>MidCoast Council Work Health and Safety management system</p>	
<b>Responsible division:</b>	Community Services	

## **Purpose**

This procedure supports Council's Child Protection Policy and outlines the processes Council will implement in order to ensure that children and young people who access Council services are safeguarded from harm.

This procedure should be read in conjunction with Council's Child Protection Policy, which details definitions of terms contained in this procedure.

## **Process**

### **1. Recruitment**

The processes for design, recruitment, screening and selection for child-related roles are outlined in Council's protocols and procedures regarding vacancy management and working with children checks.

### **2. Staff support**

All new Council officers receive a copy of Council's Child Protection Policy and associated procedures, Code of Conduct and Complaint Handling Policy prior to commencement. Officers also receive an overview of these documents as part of the induction process. Officers are required to indicate that they have read and understood these documents as part of their induction process.

All Council officers in child-related roles will:

- have a more senior officer assigned to support and supervise their work; and
- undertake training and refreshers on child protection including mandatory reporting obligations.

Council officers may access support and guidance on child protection from:

- their supervisor;
- Council's Child Protection Officer (CPO);
- Council's Manager Community Services; and/or
- External agencies including the Office of the Children's Guardian (OCG); NSW Ombudsman – Employment-Related Child Protection line (9286 1021) and the Child Protection Helpline (132 111).

Council employees may also access support through Council's Employee Assistance Program (EAP). The EAP is a free, confidential and professional service that can be accessed 24 hours a day on 1800 818 728 or a [www.accesseap.com.au](http://www.accesseap.com.au).

Children and young people who access Council services will be educated and supported to recognise behaviour that makes them feel unsafe or uncomfortable and encouraged an supported to report concerns.

### **3. Staff conduct**

All Council officers are required to comply with Council's Code of Conduct. In addition:

- Council officers engaged in child-related roles will:

- prioritise the safety and wellbeing of children and young people, and take responsibility for ensuring that the service operates in child-safe environments at all times;
  - act as a positive role model for children and young people, and model respectful behaviours at all times;
  - promote an open environment where children and young people can have a say and express their thoughts and feelings and be taken seriously;
  - treat all children and young people fairly, equally and with respect;
  - value children's and young people's ideas and opinions, and believe them;
  - communicate with children and young people in an age-appropriate manner;
  - maintain professional standards of conduct, including keeping clear boundaries between professional and personal;
  - promote respectful behaviour, and intervene in situations of bullying between children and young people;
  - be aware of their duty of care, and their legal obligations such as mandatory reporting of child harm concerns;
  - ensure another adult is present or in sight when working with children and young people, so far as is reasonably practicable;
  - only have physical contact with a child or young person in ways that are appropriate to the officer's professional or agreed role and responsibilities as well as the child's age;
  - respect children's and young people's privacy, and keep children and their families' information confidential unless otherwise required;
  - contact police if a child or young person is at immediate risk of abuse;
  - immediately record, report and act on concerns or complaints regarding child safety in accordance with Council's policies and procedures; and
  - abide by all organisational policies, procedures and this Code of Conduct;
- Council officers will not:
    - ignore, disbelieve or minimise allegations or concerns of abuse from children, young people or other adults;
    - act in a way that is likely to humiliate, oppress or degrade children or young people;
    - act in a way that is likely to result in harm to children or young people in any way, including physical, emotional, psychological, or cultural harm;

- engage in any form of sexual conduct with children or young people, such as showing children sexually explicit material, or encourage a child or young person to perform in a sexually provocative manner;
  - act in a way that may put children or young people at risk of harm;
  - unlawfully discriminate against any child on the basis of age, gender, race, culture, vulnerability or sexuality;
  - engage in unnecessary or inappropriate physical contact with children or young people, such as rough physical play or smacking;
  - use organisation equipment and technology (including but not limited to, internet connection, mobile phones, computers (including laptops and tablets), USBs and faxes and printers) to access or print pornographic content or other inappropriate material, or make any contact with children that is outside the normal work-related role, either directly or through social media sites, at any time;
  - use personal mobile phones, computers, tablets or cameras during working hours, while working with children or young people;
  - exchange personal contact details with children or young people or have unauthorised out-of-hours contact, socialisation or relationships with children or young people with whom they work directly;
  - do things of a personal nature that a child or young person can do for themselves, such as toileting or changing clothes, unless this is part the Council officer's role and in line with an agreed client/participation plan;
  - show favouritism to particular children or young people through special attention, or special relationships;
  - collect, use, store or share photographic or video footage or other images of any child or young person without their consent and the written consent of their parent/carer;
  - work with children or young people while under the influence of drugs or alcohol, or provide children with any illicit drugs or alcohol;
  - use any form of tobacco product while in the presence of children, expose children to any harmful by-products of tobacco (eg smoke), or provide children with tobacco or tobacco products;
  - use inappropriate language, discuss topics of an adult nature, or express personal views about different cultures, race or sexuality while children or young people are present; or
  - subject children to unauthorised restrictive practices such as using exclusionary time- out as punishment.
- Supervisors of Council officers in child-related roles will:
    - take responsibility for ensuring their staff in child-related roles understand and comply with the Code of Conduct and know their roles, responsibilities and duty of care obligations; and
    - deal with any breaches of the Code of Conduct seriously and responsively,

and take appropriate action.

#### 4. Reporting

Council takes seriously all concerns and allegations of harm or suspected harm to any child or young person accessing Council services. These matters will be handled sensitively, investigated in a timely manner, and with the safety of the child as the primary consideration.

##### a. Who can report

Concerns and allegations about harm and risk of significant harm to children and young people accessing Council services may be reported by anyone with reasonable grounds for belief, including a child or young person, carer, or community member.

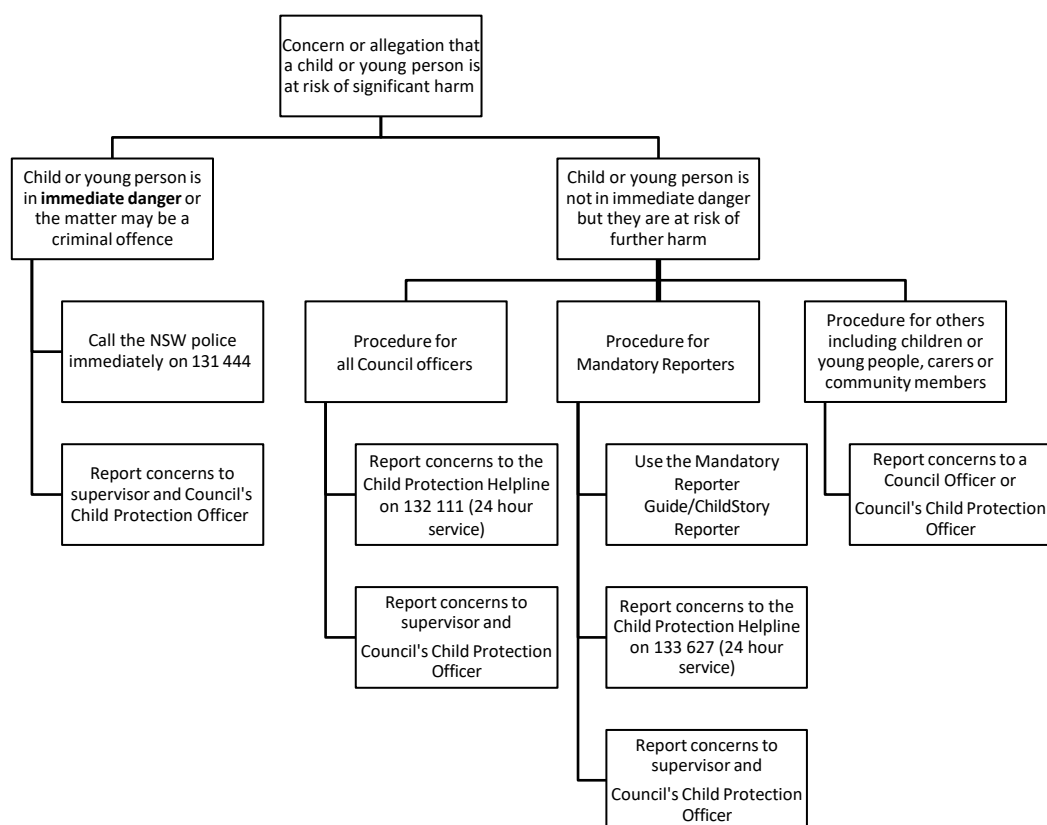
All Council officers will report concerns and allegations that a child or young person has suffered or is at risk of suffering significant harm regardless of whether or not the child is accessing a Council service.

Council officers in child-related roles are considered Mandatory Reporters under 'the Act' and are legally obliged to report concerns and allegations that a child or young person has suffered or is at risk of suffering significant harm.

##### b. How and when to report

###### i. Reporting Process

Council officers will report concerns or allegations that a child or young person is at risk of significant harm as follows:



## **ii. Reporting Timeframes**

Council officers will report concerns and allegations that involve immediate danger to a child or young person or potential criminal matters immediately.

Council officers will report concerns and allegations that do not involve immediate danger or potential criminal matters as soon as reasonably practicable, but no later than 24 hours of the concern or allegation arising.

## **iii. Reporting Methods**

Concerns and allegations may be reported to a Council officer or Council's CPO by:

- face to face meeting;
- phoning;
- email; or
- mail.

Council's CPO, Lyndie Hepple, can be contacted on:

- phone: 7955 7257 or 0427 266 145;
- email: [Lyndie.hepple@midcoast.nsw.gov.au](mailto:Lyndie.hepple@midcoast.nsw.gov.au); or
- mail: PRIVATE AND CONFIDENTIAL, Attention Lyndie Hepple, MidCoast Council, PO Box 450, Forster, NSW 2428

All reported concerns and allegations will be documented using Council's Child Protection Incident Report Form.

In all instances where a concern or allegation is reported verbally, it will be followed up with a written report using Council's Child Protection Incident Report Form as soon as practicable, but no later than 24 hours after the initial report.

Council's Mandatory Reporters will complete the Mandatory Reporter Guide/ChildStory Reporter on each occasion they have risk concerns, regardless of their level of experience or expertise.

## **iv. Managing Conflicts**

It may be inappropriate for a Council officer to report a concern or allegation regarding child safety to their supervisor ("the supervisor") or Council's CPO in instances where:

- The concern or allegation involves the CPO, the supervisor or other senior management;
- the supervisor does not have the authority to address the concern or allegation; and/or
- the supervisor or CPO are unable to provide procedural fairness for any reason such as bias or conflict of interest.

In such cases the Council officer may report the matter to any of the following Council officers:

- their supervisor's immediate supervisor;
- Council's Manager Community Services; or
- Council's Manager Human Resources

Or the matter may be reported to the Children's Guardian.

#### v. Reporting Reportable Allegations and Reportable Convictions

Where an allegation involves reportable conduct or a reportable conviction, Council's CPO (or their delegate) will notify the relevant authorities, as follows:

Type	Agency Notified	Timeframe	Notification Format
All reportable allegations and reportable convictions	Office of the Children's Guardian	Within 7 business days of becoming aware of the allegation or conviction	7-Day notification form approved by the OCG at: <a href="http://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/notification-forms">www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/notification-forms</a>
	NSW Police if a reportable allegation is involved	Immediately	By calling the Police Assistance Line on 131 444
Allegations of reportable incidents under the NDIS Act	NDIS Quality and Safeguards Commission (NDIS Commission)	Within 24 hours of becoming aware of the allegation or conviction	Forms approved by the NDIS Commission at <a href="http://www.ndiscommission.gov.au">www.ndiscommission.gov.au</a>
		Within five business days if certain information is not known or cannot reasonably be obtained within 24 hours of becoming aware of the allegation or conviction	

#### vi. Reporting to the Head of the Agency

Council's CPO (or their delegate) will notify the General Manager (or their delegate) of any and all reported concerns and allegations and progress of investigations

#### c. Initial response to reports

On receipt of an allegation, Council's CPO (or their delegate or alternate report

handler in the case of conflict), hereafter referred to as “the report handler” will:

- Clarify details of the allegation including who, what, when and where;
- Assess whether or not a child or young person is at risk of significant harm, and if so, make a report to the Child Protection Helpline (132 111);
- Consider whether or not the allegation may constitute a criminal offence and if so, make a report to the police and seek advice from the police before taking any further action;
- Assess any possible risks posed to children receiving Council services and take any necessary interim action to ensure the safety and wellbeing of the children. This includes considering whether or not the Council officer’s duties need to be changed during the investigation process;
- Assess whether or not the allegation relates to reportable conduct or a reportable incident and, if so, ensure that the notification is made to the relevant authorities as per clause 4.b.v of this procedure;
- Consider who else may need to know about the allegation, as well as what to tell people who are not involved but are aware of the allegation (eg other employees or parents). All parties to an investigation will be reminded of the sensitive and confidential nature of the matter and be advised that it is not appropriate to discuss the matter and
- Address any support needs of both the child and council officer who is the subject of the allegation.

Council officers who are the subject of a concern or allegation maybe removed from their child-related role until the outcome of the investigation is known. The officer may be given alternate duties if such duties are available. If no alternate duties are available the officer may be suspended, take leave or leave without pay, or have casual work withdrawn, as deemed appropriate, until the outcome of the investigation is known.

#### **d. Investigating concerns and allegations**

##### **i. Planning and Coordinating the Investigation**

Before commencing any investigation, the report handler will ensure council has clearance to proceed if the matter was reported to Police and/or Department of Communities.

Once Council has permission to conduct an investigation in relation to a Council officer, the report handler will:

- Spend time planning the action to be taken and documenting any decisions made before the commencement of the investigation;
- Engage a qualified independent investigator to conduct the investigation on behalf of Council. When engaging the investigator, the report handler will ensure that any actual or potential conflicts of interest that may be held by the investigator (particularly in relation to the Council employee or the child) are identified, assessed and managed; and



- Keep file notes of this planning process.

ii. Information Gathering

The report handler will ensure the investigation proceeds in accordance with Council's policies and procedures regarding investigations, counselling and discipline and the code of Conduct.

This includes consideration to:

- Privacy and confidentiality;
- Seeking parent/carer permission to interview a child or young person, if appropriate;
- Providing information on the investigation purpose and process to investigation participants, including roles, rights and responsibilities;
- Formally putting the allegation/s to the council officer and providing an opportunity for them to respond;
- The Council offer may provide a written submission concerning the allegation or conviction for the purpose of determining what, if any, disciplinary or other action should be taken;
- Allowing the Council officer to have an appropriate support person present if they are interviewed as part of the investigation;
- Ongoing risk management; and
- Appropriate record keeping including:
  - documenting and verifying evidence;
  - documenting other concerns and/or allegations that may arise during the investigation;
  - documenting decisions made in relation to the investigation; and
  - documenting advice (both given and received) and discussions in relation to the investigation.

Where required, the report handler will assist the investigator to access information required as part of the investigation, eg access to Council records and facilities.

All Council officers must fully co-operate with any investigation that takes place.

If a Council officer who is the subject of a concern or allegation leaves their employment/engagement with Council before the investigation is complete and a finding made, the report handler will notify the Office of Children's Guardian and the NDIS Quality and Safeguards Commission.

**e. Investigation findings and decision-making**

Investigators engaged by Council are required to:

- Document all information gathered during the investigation
- Coherently and objectively analyse and weigh the evidence to support any conclusions;
- Identify the finding/s best supported by the available evidence;
- Propose any recommendations arising from the investigation; and
- Provide this material to Council's General Manager (or their delegate), through the report handler, to make a decision on the matter.

The following findings may result from an investigation:

- Sustained: a finding that the conduct occurred. Note that the Children's Guardian Act 2019 states that a finding of reportable conduct must be made if the head of the investigation is satisfied that the case against the Council officer has been proved;
- Not sustained – insufficient evidence: a finding that there is some evidence of weight however there is insufficient evidence available to reasonably establish that the alleged conduct did occur;
- Not sustained – lack of evidence of weight: a finding that the evidence is of such poor probative value or lacking in weight, such as to warrant a finding that, on the balance of probabilities, the conduct did not occur;
- False: a finding that reportable conduct or an act of violence did not occur. Some of these matters may be vexatious, for example where the investigation shows the allegation was made without substance and to cause distress to the person against whom the allegation was made; or
- Not reportable conduct: a finding that the conduct was not reportable. For example, use of force that was trivial or negligible in the circumstances, conduct that was unreasonable

Matters considered as 'trivial or negligible', or exempted from being reportable conduct still require a finding to be made.

After a finding has been made, the General Manager (or their delegate), hereafter referred to as "the decision-maker" will:

- Make a decision as to whether to accept or reject any recommendations made by the investigator and, if making an alternate decision document their reasons, taking into account:
  - The nature of the reportable allegation and any defence, and
  - The gravity of the matters alleged;

The General Manager must also consider whether the reportable allegation relates to conduct that is in breach of established standards applying to the Council officer, including:

- Professional standards
- Codes of conduct

- Accepted community standards.
- Make a decision as to what action will be taken as a result of the investigation, and document the reasons for their decision. When deciding the appropriate action to be taken as a result of the investigation, the decision-maker will consider any previous relevant matters relating to the officer.

Action taken may include:

- Disciplinary action (up to and including termination of employment) in relation to the officer who is the subject of the allegation;
- Amendments to policy and procedures; and/or
- Any strategies to minimise future risk of reportable conduct by the officer;
- If the allegation is found to be false and vexatious, make a decision regarding what action to take, if any, against the person(s) who made the allegation;
- Provide written advice on the investigation outcome to the child or young person, their parents or carers and the complainant, taking into account the privacy rights of the officer who is the subject of the allegation; and
- Advise the Council officer of the outcome of the investigation and the action that will be taken, ensuring that any verbal advice is documented and followed up with formal written notification to the officer.

Any disciplinary action taken as a result of an investigation will be managed in accordance with council's policy and procedure regarding counselling and discipline.

#### f. Conclusion of the investigation

At the conclusion of the investigation, the report handler will notify the relevant authorities of the outcome as follows:

Agency notified	Timeframe	Information Provided
Office of the Children's Guardian (OCG)	<p>Within 30 days after receipt of the report of the reportable allegation or conviction; unless the following is provided within 30 days:</p> <ul style="list-style-type: none"> <li>• An interim report, and</li> <li>• A reason for not providing the report within 30 days, and</li> <li>• An estimated time frame for the completion of the report</li> </ul> <p>In which case, the Children's Guardian may grant an extension.</p>	<p><i>30-day interim report form</i> or <i>Entity report form</i>, approved by the OCG at:  <a href="http://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/notification-forms">www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/notification-forms</a></p>

NDIS Quality and Safeguards Commission (NDIS Commission) – if required (NDIS Commission will advise if a final report is required)	Within 60 business day of submitting the initial notification – if required	Final report including: <ul style="list-style-type: none"> <li>• Investigator name</li> <li>• When the investigation was undertaken</li> <li>• Finding/s made</li> <li>• Correct or other action taken after the investigation</li> <li>• Copy of the investigation report</li> <li>• Information on if/how persons with disability (or their representative) have been kept informed of progress, findings and actions relating to the matter.</li> </ul>
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If the investigation results in a change to the Council officer's WWCC status, actions will be taken in line with Council's Working with Children Check Procedure.

#### **g. Appeals**

A Council officer may apply to the NSW Civil and Administrative Tribunal to appeal a Working with Children bar. An interim bar may only be appealed after six months.

To lodge an appeal, a council Officer must lodge an application with the NSW Civil and Administrative Tribunal within 28 days of receiving notification of a bar.

Council officers are encouraged to seek independent legal advice about the appeal process.

#### **h. Record keeping**

All information relating to concerns and allegations raised will be collected, managed and stored in accordance with Council's Privacy Management Plan.

Records are stored in a secure place that is separate (but linked by reference) to the employees' personnel file, with access only by approved Council officers.

Information relating to outcomes impacting on the employee's work will be stored on the employee's personnel file. Examples include if the employee is directed to amended duties, training, counselling or additional supervision, is allowed to resign, or is dismissed by Council.

Records regarding allegations, investigations, outcomes and action taken will be kept for 30 years in accordance with the Act.

Information will be disclosed to external parties as required for legal reasons, including when:

- requested from a prescribed body under section 248 of the Children and

Young Persons (Care and Protection) Act 1998, or under the provisions of Chapter 16A of the Children and Young Persons (Care and Protection) Act, 1998. Such information must relate to safety welfare or wellbeing of child or young person. The organisation is not required to disclose information under Chapter 16A if it believes it would prejudice a criminal investigation or coronial inquest, endanger a person's life or is not in the public interest.

- requested in writing from the Office of the Children's Guardian (OCG) as part of an investigation into an allegation.

### **Review and revision**

This procedure is reviewed every two years or when legislation changes, whichever comes first.

### **Responsible officer/department/section**

Manager Community Services.

### **Attachments**

Nil.