

Managing Child Related Allegations, Charges and Convictions Against NSW Health Staff

Summary This Policy Directive sets out the procedures for managing child related allegations, charges and convictions against anyone working in NSW Health, where the alleged victim was under 18 years of age at the time of the alleged conduct. This extends to child abuse material, and non-work related and historical matters.

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Distributed to Ministry of Health, Public Health System, Divisions of General Practice, Government Medical Officers, NSW Ambulance Service, Environmental Health Officers of Local Councils, Private Hospitals and Day Procedure Centres, Health Associations Unions, Tertiary Education Institutes

Audience Workforce & Clinical Governance Directorates; Professional Standards and Conduct Units; All Managers / Supervisors

MANAGING CHILD RELATED ALLEGATIONS, CHARGES AND CONVICTIONS AGAINST NSW HEALTH STAFF

POLICY STATEMENT

NSW Health organisations must manage child related allegations, charges and convictions involving anyone engaged in work in NSW Health, whether in paid or unpaid work, in line with this Policy Directive and consistent with the processes outlined in NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)); http://www0.health.nsw.gov.au/policies/pd/2014/PD2014_042.html or in the case of staff of the Ministry of Health, the [Government Sector Employment Act 2013](#) and [Government Sector Employment \(General\) Rules 2014](#), supported by the [NSW Public Service Commission's Employment Portal](#).

SUMMARY OF POLICY REQUIREMENTS

All child related allegations, charges and convictions against NSW Health staff members must be immediately reported to the NSW [Child Protection Helpline](#) if there is suspected risk of significant harm relating to a child or a class of children.

NSW Health organisations may have to contact the [NSW Health Child Wellbeing Unit](#) for assistance in determining the level of risk of harm. The NSW Health Child Wellbeing Unit may also need to be contacted for further advice about the safety, welfare or wellbeing of a child, young person or unborn child and their family, as outlined in the Procedure. Where required, the Child Wellbeing Unit will escalate high risk matters to the Child Protection Helpline.

Any alleged criminal conduct must be immediately reported to the NSW Police.

All child related allegations, charges and convictions must be notified to the relevant NSW Health Chief Executive (or Secretary, for Ministry of Health staff) in a timely manner.

Where the person works in a different NSW Health organisation from where the allegation was identified, information must be forwarded to the relevant other NSW Health organisation, subject to the legislative framework for the release of information.

If it is known that the person works in another non-NSW Health organisation, information must also be forwarded to that organisation, subject to the legislative framework for the release of information.

Child related allegations, charges and convictions must be notified to the NSW Ministry of Health via a Reportable Incident Brief (RIB) by the Chief Executive (or delegate) within 24 hours.

NSW Health organisations must manage all child related allegations, charges and convictions in line with the requirements of this Policy Directive and consistent with the processes outlined in NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)), or the *Government Sector Employment Act 2013* (in the case of NSW Ministry of Health staff), including:

- Assessing and managing risks

- Providing appropriate support and advice about the process to the alleged victim and the staff member subject to the allegation, charge or conviction
- Investigating the allegations (unless the facts are clear and uncontested)
- Making findings and final decisions about any actions in response to the findings
- Giving the staff member an opportunity to respond to any allegations, adverse findings and proposed disciplinary action prior to any final decision.

Depending on the outcomes of these processes, and where required by NSW Health Policy Directive *Service Check Register* ([PD2013_036](#)), NSW Health organisations may also have to create a Service Check Register record for the staff member.

Child related allegations, charges and convictions must be notified as a reportable allegation or conviction to the NSW Children's Guardian within 7 business days of being brought to the attention of the Chief Executive of the NSW Health organisation in which the alleged perpetrator is currently employed or engaged, or the Secretary, NSW Health, unless the matter falls outside of the definition of reportable conduct, or the staff member does not come within the reportable conduct scheme.

In addition, NSW Health organisations must provide a completed investigation report ('entity report'), or an update ('interim report') to the Children's Guardian on the status of the reportable conduct investigation within 30 calendar days of the matter being brought to the attention of the Chief Executive / Secretary. An interim report must be followed by a notification of the final outcome once the investigation is completed.

NSW Health organisations must notify the Australian Health Practitioner Registration Agency if:

- They have a reasonable belief that any conduct by a staff member who is a registered health practitioner is 'notifiable conduct' under Section 140 of the [Health Practitioner Regulation National Law \(NSW\)](#)
- The Chief Executive of the NSW Health organisation suspects on reasonable grounds that any conduct of a staff member who is a registered health practitioner may constitute 'unsatisfactory professional conduct' under Sections 139B-139D, or 'professional misconduct' under Section 139E of the [Health Practitioner Regulation National Law \(NSW\)](#).

While the Reportable Conduct Scheme does not apply to former staff and an employer investigation is not required, the NSW Health organisation must still offer support to the alleged victim, make any other relevant mandatory notifications to external agencies, and review any available information from a systemic perspective with a focus on the ongoing safety of children.

NSW Health organisations must keep records relating to any child related allegations, charges and convictions and store them securely. Such records must be maintained for 100 years before being destroyed.

REVISION HISTORY

Version	Approved by	Amendment notes
November-2020 (PD2020_044)	Deputy Secretary People Culture and Governance	This version incorporates relevant changes to the Reportable Conduct Scheme provisions under the new <i>Children's Guardian Act 2019</i> , and clarifies obligations around child related conduct that falls outside of the Scheme. It clarifies NSW Health organisations' responsibilities in relation to the alleged victim. It outlines the provisions for seeking additional information from other relevant agencies and sharing information with non-Health employers. It outlines the requirements for managing child related allegations in the context of domestic and family violence, or received through the National Redress Scheme. It introduces a requirement to provide support to staff managing child related matters. It also updates references to FACS and JIRT, and clarifies the role of the NSW Health Child Wellbeing Unit.
PD2016_025 (June 2016)	Deputy Secretary Governance Workforce and Corporate	Updated to link more closely to the Misconduct Policy and to clarify requirements around the management of historic and outside work matters.
PD2006_025 (April 2006)	Director General	More detailed processes included.
PD2005_574 (April 2005)	Director General	New Policy replacing Circular 99/65.

ATTACHMENTS

1. Managing Child Related Allegations, Charges and Convictions Against NSW Health Staff: Procedure.

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1 BACKGROUND

1.1 About this Policy Directive

Child related allegations, charges and convictions include any allegations or criminal charges or convictions against a NSW Health staff member where the alleged victim was / is under the age of 18 years at the time of the alleged behaviour.

When managing child related matters, the safety, welfare and wellbeing of the child or children, or a class of children, must be the paramount concern in all actions and decisions.

In addition to this Policy Directive, and NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)), http://www0.health.nsw.gov.au/policies/pd/2014/PD2014_042.html or in the case of staff of the Ministry of Health, the [Government Sector Employment Act 2013](#) and [Government Sector Employment \(General\) Rules 2014](#), supported by the [NSW Public Service Commission's Employment Portal](#), a number of other policies may be relevant for managing child related allegations, charges and convictions. These include NSW Health Policy Directives on *Child Wellbeing and Child Protection* ([PD2013_007](#)), *Responding to Sexual Assault* ([PD2020_006](#)), *Identifying and Responding to Domestic Violence* ([PD2006_084](#)), *Service Check Register* ([PD2013_036](#)), *Managing Complaints and Concerns About Clinicians* ([PD2018_032](#)), and *Incident Management* ([PD2012_020](#)). References to these policies are made throughout this document where relevant.

This Policy Directive includes the requirements of the *Children's Guardian Act 2019* in relation to 'reportable allegations' and 'reportable convictions', as specified under Part 4 of the Act.

Management of child related allegations, charges and convictions against staff is only one aspect of keeping children safe in NSW Health institutions. A 'child-safe organisation' is one that takes deliberate steps to create and embed workplace cultures, adopt strategies and take actions to promote child wellbeing and prevent harm to children and young people. A child safe organisation creates conditions that increase the likelihood of identifying any harm and responds to any concerns, disclosures, allegations or suspicions of harm. For training and resources, refer to the NSW Office of the Children's Guardian's website for [Child Safe Organisations](#).

1.2 Key definitions

Child

Person under the age of 18 years of age as defined by Part 4 of the [Children's Guardian Act 2019](#).

Child related allegation or charge

Allegation or criminal charge against a NSW Health staff member where the alleged victim was / is under 18 years of age at the time of the alleged conduct / incident. A child related allegation or charge may fall under the Reportable Conduct Scheme.

Child related conviction

Conviction (in NSW or elsewhere), including a finding of guilt without the court recording a conviction, against a NSW Health staff member for an offence involving a victim that was under 18 years of age at the time the offence took place. A child related conviction may fall under the Reportable Conduct Scheme.

Child Wellbeing Units (CWUs)

NSW Health services staffed by child protection professionals who are able to provide telephone advice and support to health workers across the state in determining the level of risk of harm and responding to the needs of vulnerable children, young people, pregnant women and families. Health CWUs are open during business hours, when they will also respond to phone messages, eReports and emails sent after hours. CWUs also operate within the NSW Department of Education and the NSW Police Force.

Class of children

More than one particular child or young person who may be at risk of significant harm from abuse because of a person or a situation.

Joint Child Protection Response Program (JCPRP)

Tri-agency program delivered by the NSW Police Force, Department of Communities and Justice, and NSW Health. It provides a seamless service response to children and young people at risk of significant harm as a result of serious sexual abuse, physical abuse and/or neglect. The JCPRP was formerly known as the Joint Investigation Response Team (JIRT) program.

NSW Health organisation

Public health organisation as defined under the [Health Services Act 1997](#), Cancer Institute (NSW), NSW Ambulance, Health Infrastructure, HealthShare NSW, NSW Health Pathology, eHealth, any other administrative unit of the Health Administration Corporation, Albury-Wodonga Health in respect of staff who are employed in the NSW Health Service, the Ministry of Health, Health Professional Councils Authority and Mental Health Commission.

Registered health practitioner

Person who is registered under the [Health Practitioner Regulation National Law \(NSW\)](#) to practise a health profession, other than as a student, or holds non-practising registration under the [National Law](#) in a health profession. Health professions include those listed under [section 5 of the National Law](#).

Reportable allegation

Allegation that a staff member has engaged in conduct that may be reportable conduct under the [Children's Guardian Act 2019](#).

Reportable conduct

Defined under Part 4 of the [Children's Guardian Act 2019](#) as:

- a. A sexual offence committed against, with or in the presence of a child (such as sexual touching of a child; child grooming; production, dissemination or possession of child abuse material), or
- b. Sexual misconduct with, towards, or in the presence of a child (ie conduct that is sexual in nature but is not a sexual offence), or
- c. Ill treatment of a child (ie conduct that is unreasonable and seriously inappropriate, improper, inhumane or cruel), or
- d. Neglect of a child (ie a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, which causes or is likely to cause harm to a child), or
- e. An assault against a child (ie intentional or reckless application of physical force without lawful justification or excuse, or any act which intentionally or recklessly causes a child to apprehend immediate and unlawful violence), or
- f. Behaviour that causes significant emotional or psychological harm to a child (for example, exposure to domestic and family violence), or
- g. Failure to reduce or remove risk of a child becoming a victim of child abuse (under section 43B of the [Crimes Act 1900](#)) or concealing a child abuse offence (under section 316A of the [Crimes Act 1900](#)).

Reportable conduct may include conduct that has occurred outside of work or prior to the staff member's engagement in NSW Health, and historic matters where the alleged victim may now be an adult.

The [Children's Guardian Act 2019](#) further states that reportable conduct does not include:

- Conduct that is reasonable for the purposes of the discipline, management or care of a child, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- Use of physical force that, in all the circumstances, is trivial or negligible, but only if the circumstances in which it was used have been investigated and the result of the investigation recorded in accordance with appropriate procedures.

For further information about what kind of conduct would meet the threshold for a reportable allegation, refer to the Children's Guardian Fact Sheet No 1 "Identifying Reportable Allegations", available at <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/fact-sheets>. NSW Health organisations can also seek advice directly from the Office of the Children's Guardian's Reportable Conduct Helpline on 8219 3800.

Reportable Conduct Scheme

A scheme operated by the NSW Office of the Children's Guardian under the [Children's Guardian Act 2019](#) that monitors how certain organisations ('relevant entities') investigate and report on certain types of conduct ('reportable allegations' or 'reportable convictions') made against their current employees, volunteers or contractors. For information on how the Reportable Conduct Scheme applies to NSW Health organisations, see the flowchart in **Appendix 1**.

Reportable conviction

Conviction, including a finding of guilt without the court proceeding to a conviction, in NSW or elsewhere, of an offence involving reportable conduct under the [Children's Guardian Act 2019](#).

Safety Action Meeting (SAM)

Regular meeting of local government and non-government service providers that aims to prevent or lessen serious threats to the safety of domestic violence victims through targeted information sharing and responsive, timely and targeted actions.

Staff member

Anyone working in a NSW Health organisation, whether as a paid staff member or engaged in any other capacity, including as a volunteer, visiting practitioner, student attending a clinical placement, or anyone else appointed on an honorary or contractual basis.

1.3 Legal and legislative framework

1.3.1 Children's Guardian Act 2019

The [Children's Guardian Act 2019](#) prescribes the responsibilities of 'heads of relevant entities' for preventing, identifying and responding to 'reportable allegations' and 'reportable convictions' against their current staff. Under this Act, heads of NSW Health organisations (as 'heads of relevant entities') are required to notify the Children's Guardian of all allegations, charges and convictions against their staff that involve conduct which is, or may be, 'reportable conduct' within 7 business days of becoming aware of them.

The Reportable Conduct Scheme applies differently to different NSW Health organisations, with more onerous reporting requirements applying to those NSW Health organisations that are listed in Schedule 1 of the [Children's Guardian Act 2019](#). Furthermore, while the Scheme applies to all NSW Health staff, it only applies to contractors (including visiting practitioners) if they hold, or are required to hold, a Working with Children Check for the purposes of their work; and to volunteers if they provide services to children. See the flowchart at **Appendix 1** for further advice on the application of the Scheme in NSW Health.

A completed investigation report, or an update on the status of the investigation, must be provided to the Children's Guardian within 30 calendar days of the reportable allegation or reportable conviction being brought to the attention of the 'head of the relevant entity'. At the end of an investigation, the 'head of a relevant entity' must complete a final report on the outcome of the investigation and the action taken, or proposed to be taken, in response to such allegations or convictions.

When there is a finding of reportable conduct that is a sexual offence, sexual misconduct or serious physical assault, the Children's Guardian will also report the finding to the Working with Children Check Unit of the Office of the Children's Guardian.

There are penalties for employers under the [Children's Guardian Act 2019](#) for failure to make mandatory reports, for unlawfully disclosing information, and for taking detrimental

action in relation to staff or other persons for complying with the reportable conduct scheme.

Information about the reporting and investigation obligations of entities under the scheme is available on the Children's Guardian website at

<https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/organisations-in-the-scheme>.

The forms for both the 7-day and 30-day notification are available at

<https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/notification-forms>.

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

The [*Children and Young Persons \(Care and Protection\) Act 1998*](#) provides for the care and protection of, and the provision of services to, children and young people. The Act defines a 'child' as a person who is under the age of 16 years, and a 'young person' as a person who is aged 16 and above but under the age of 18 years.

A key objective of this Act is that all institutions, services and facilities responsible for the care and protection of children and young people provide them with an environment that is free of violence and exploitation. It prescribes the role of the Department of Communities and Justice, and the roles of families, agencies and communities, in relation to child protection.

Under the Act, any person who has reasonable grounds to suspect that a child or young person, or a class of children or young persons, is at risk of significant harm, can report this to the Secretary of the Department of Communities and Justice (via the Child Protection Helpline). Such reporting is mandatory for certain persons under s.27 of the Act. As an alternative, mandatory reporters can report child protection or wellbeing concerns to the NSW Health Child Wellbeing Unit and, in doing so, will have fulfilled their mandatory reporting responsibilities. The Act also provides for prenatal reporting. Section 29 of the Act provides for certain protections for any reports made in good faith.

The Act also provides the mechanisms by which 'prescribed bodies' may exchange information relating to the safety, welfare or well-being of a particular child or young person or class of children or young persons (Chapter 16A of the Act). All NSW Health organisations (including the Ministry) are deemed 'prescribed bodies' under the Act. Under Chapter 16A, relevant information can be provided / requested by a prescribed body for the purposes of assisting the recipient:

- (a) "to make any decision, assessment or plan, or to initiate or conduct any investigation, or to provide any service, relating to the safety, welfare or well-being of the child or young person or class of children or young persons (including, where applicable, to provide prioritised access to any service to a child or young person or class of children or young persons at risk of significant harm); or
- (b) to manage any risk to the child or young person (or class of children or young persons) that might arise in the agency's capacity as an employer or designated agency".

For further information, refer to NSW Health Policy Directive *Child Wellbeing and Child Protection* ([PD2013_007](#)).

1.4 Support for staff managing child related allegations, charges and convictions

Managing child related allegations, charges and convictions can be both challenging and distressing. NSW Health organisations must ensure that they have local processes in place to support staff members dealing with these matters.

Such support may include, but is not limited to, access to relevant subject matter experts within the organisation, training in trauma informed care and vicarious trauma, access to the local employee assistance program, team debriefs etc.

1.5 Implementation of this Policy Directive

The following have key responsibilities in relation to this Policy Directive:

Chief Executives / the Secretary must ensure that:

- All staff are aware of their responsibilities under the *NSW Health Code of Conduct* ([PD2015_049](#)) to notify the designated person in their Health organisation if they become aware of an allegation, charge or conviction involving an under 18-year-old victim against anyone working in NSW Health
- There are clear internal reporting lines to facilitate notifications about child related allegations, charges and convictions to the Chief Executive
- Local procedures and systems are in place for managing child related allegations, charges or convictions and making relevant mandatory external notifications
- Local processes are in place to support staff who manage child related matters.

Workforce Directorates / Human Resource Departments / Internal Audit Units / Governance or Professional Conduct and Standards Units / other designated areas/staff must:

- Ensure provision of information, advice and monitoring as necessary to support effective implementation of this Policy Directive
- Conduct an initial review of any child related allegation, charge or conviction referred to them to determine what further action (including mandatory notifications) is required
- Manage any child related allegation, charge or conviction referred to them in line with this Policy Directive.

All staff must:

- Notify their line manager or supervisor, or Workforce Director or equivalent of the NSW Health organisation, or other designated position as specified in local procedures, as soon as possible after they become aware of any child related allegation, charge or conviction against them, or against another NSW Health staff member.

2 INITIAL REVIEW AND RESPONSE

2.1 Receiving information

A child related allegation, charge or conviction may arise or be identified through a number of sources, including but not limited to:

- Information provided by a Child Wellbeing Unit, the Joint Child Protection Response Program's (JCPRP) Joint Referral Unit, a local JCPRP Unit, the Police, or the Department of Communities and Justice. Such information may be provided directly to the relevant NSW Health organisation or via the Ministry of Health's Workplace Relations Branch.
- Complaints or concerns, including by patients or their carers or made anonymously, and including those relating to clinical procedures
- A presentation to an Emergency Department or other NSW Health facility or service
- Observations by a manager or colleague
- Self-disclosure by a staff member
- Disclosure by a domestic and family violence victim to a NSW Health staff member (where the perpetrator is also a NSW Health staff member)
- Information gained at a Safety Action Meeting (SAM) regarding a NSW Health staff member who is a 'person of interest' in domestic and family violence where children are involved <https://www.legislation.nsw.gov.au/-/view/act/2007/80>
- Information in circulation in the public domain, either through formal channels covering matters under investigation (eg press reporting) or informal channels (social media etc)
- A request for information or child safe report from the Australian Government's National Redress Scheme for people who have experienced institutional child sexual abuse.

NSW Health Policy Directive *Child Wellbeing and Child Protection* ([PD2013_007](#)) provides procedures on how to respond to disclosures of child wellbeing concerns or abuse.

The first step at all times is to identify and address any immediate risk to a child or young person.

At the same time, the information must be forwarded to the Workforce Director or equivalent of the NSW Health organisation, or other position as specified in local procedures, for initial review (including whether the Reportable Conduct Scheme applies) and decisions about further action required (eg risk management, mandatory notifications, investigation etc).

2.1.1 Where information relates to a staff member of a different NSW Health organisation

Sharing information about child related allegations, charges and convictions between NSW Health organisations is subject to one of the relevant legislative thresholds being met, ie:

- Information exchange at Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#), or
- Secondary use of information under Schedule 1(10) of the [Health Records and Information Privacy Act 2002](#)
- Exemptions for limits on use of personal information under s.17 of the [Privacy and Personal Information Protection Act 1998](#).

For further assistance in interpreting the legislative framework, contact the NSW Health organisation's Legal Department.

Provided one of these thresholds or an exemption is met, if the person subject to the child related allegation, charge or conviction works in a different NSW Health organisation from where the matter was identified, the information must be forwarded to the relevant other NSW Health organisation. That NSW Health organisation must then initiate the appropriate management process.

This would usually be through the relevant Workforce Director or equivalent, or can be facilitated by the Ministry's Workplace Relations Branch in consultation with the Ministry's Prevention and Response to Violence, Abuse and Neglect (PARVAN) Unit (for example, if there are concerns about providing the information to the relevant Workforce Director, such as a potential conflict of interest, or a risk to the safety of the child or their non-offending family member).

In these cases, the NSW Health organisation that identified the allegation is still responsible for ensuring that any immediate safety or child protection issues within their control are addressed, such as a report to the Police, [Child Protection Helpline](#) or [NSW Health Child Wellbeing Unit](#), a referral of the victim to Sexual Assault Services etc, as required.

Relevant information about any immediate risks and action taken to mitigate such risks must also be provided to the NSW Health organisation where the staff member subject to the allegation works.

When sharing this information, care must be taken not to share the victim's personal or health information which is not relevant, or which may jeopardise a person's life or physical safety. For further information on circumstances where agencies are exempt from sharing information under Chapter 16A please refer to NSW Health Policy Directive *Child Wellbeing and Child Protection* ([PD2013_007](#)), or seek assistance from the organisation's Legal Department. Note that additional safety considerations apply where allegations relate to domestic and family violence (see section 5.3).

Staff working in NSW Health Child Wellbeing Units can receive information about child related allegations, charges or convictions against NSW Health staff members across the state. In addition to assessing the level of risk and planning actions to address child protection or wellbeing concerns, Child Wellbeing Units are to contact the Ministry of Health's Workplace Relations Branch for help in identifying the appropriate contact for the relevant NSW Health organisation, in order to initiate the appropriate management process by that Health organisation.

Staff who receive such information about staff of another NSW Health organisation through their involvement in the Joint Child Protection Response Program (JCPRP) or a Safety Action Meeting (SAM) are also to contact the Ministry of Health's Workplace Relations Branch in the first instance.

2.2 Determining how the matter is to be managed

2.2.1 When are allegations, charges and convictions child related?

An allegation, charge or conviction is child related and must be managed under this Policy Directive if:

- Its description indicates it may be 'reportable conduct' as defined in section 1.2 of this Policy Directive, and
- Its alleged victim was under the age of 18 years at the time of the alleged behaviour or incident (irrespective of the age of the victim at the time of the disclosure), and
- It is against a NSW Health staff member as defined in section 1.2 of this Policy Directive.

Most child related allegations, charges and convictions against current NSW Health staff are captured in the NSW Reportable Conduct Scheme and the requirements under the [Children's Guardian Act 2019](#). However, there are exceptions. Refer to the flowchart at **Appendix 1** to determine whether the requirements under the Scheme apply.

Where a child related allegation, charge or conviction does not fall under the Reportable Conduct Scheme, notifications to the Children's Guardian are not required, but other mandatory notifications may still apply (eg the Police, Child Protection Helpline, Australian Health Practitioner Regulation Agency, as appropriate).

Furthermore, if the conduct occurred in the course of the staff member's work, it must be managed in line with this Policy Directive (excluding requirements specific to the Reportable Conduct Scheme) and consistent with the processes outlined in NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)) and, where relevant, *Managing Complaints and Concerns About Clinicians* ([PD2018_032](#)).

If the conduct occurred outside work, its relevance to the workplace and the role and duties of the staff member must be assessed to determine if any further action by the NSW Health organisation is required.

2.2.2 Seeking additional information for the initial review

Where the initial information received is too vague or non-specific to allow for its assessment and/or management, the NSW Health organisation must attempt to make additional enquiries to clarify the allegation, charge or conviction.

This may include seeking further information from the person raising the allegation, seeking information about a related legal proceeding from the courts or requesting information from other 'prescribed bodies' which may be involved under Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#).

Under very limited circumstances, the NSW Health organisation may be able to review health records of the child to complete the initial review and the subsequent risk assessment. These circumstances are set out at Schedule 1(10) of the [Health Records and Information Privacy Act 2002](#) and include where the organisation has reasonable grounds to suspect that unlawful activity has been engaged in, or a staff member of the organisation may have engaged in conduct that may be grounds for disciplinary action, or in circumstances of a 'serious or imminent threat' to the life, health or safety of an individual. Further advice must always be sought from the NSW Health organisation's Legal Department before accessing such records.

Where it is not possible to obtain enough information to determine if the matter is a reportable allegation or conviction and/or to conduct an investigation (including being able to put specific allegations to the staff member to allow them to respond), it may not be possible to take any further action (including making any notifications). This must be clearly documented in record keeping.

2.3 Initial notifications

All child related allegations, charges and convictions against NSW Health staff members must be:

- Immediately reported to the [Child Protection Helpline](#) if there is a suspected risk of significant harm relating to a child or a class of children.

The [Online Mandatory Reporter Guide](#) or the [NSW Health Child Wellbeing Unit](#) will help determine whether the risks meet the threshold for reporting to the Helpline. Refer also to NSW Health Policy Directive *Child Wellbeing and Child Protection* ([PD2013_007](#)).

A report to the Child Protection Helpline is to also include information about the person's role in NSW Health and whether they have contact with children, any risk management action planned or taken, and a contact person for consultation and ongoing exchange of information. The Helpline must be advised if a report to the Police has also been made.

- Immediately reported to the NSW Police if the allegation is about criminal conduct. This is in addition to any report to the Child Protection Helpline, and also includes allegations that may not meet the threshold for a report to the Child Protection Helpline (for example, production, dissemination or possession of child abuse material, etc). It is an offence under the [Crimes Act 1900 \(NSW\)](#) to fail to reduce or remove a risk of a child becoming a victim of child abuse (s.43B of the Act), or to conceal a child abuse offence (s.316A of the Act).
- NSW Health organisations may also need to contact the [NSW Health Child Wellbeing Unit](#) in order to seek:
 - Advice and information to clearly identify child protection risks, harm and vulnerabilities

- Relevant information held about past or current child protection or wellbeing related concerns recorded by any Child Wellbeing Unit or by the Department of Communities and Justice (including the Child Protection Helpline)
- Advice on interventions, treatments and/or referrals for vulnerable or at risk children, young people and families
- Guidance around how to raise health, safety and wellbeing concerns with parents.

Where required, the Child Wellbeing Unit will escalate high risk matters to the Child Protection Helpline.

- Notified to the relevant NSW Health Chief Executive (or Secretary, NSW Health for Ministry of Health staff) in a timely manner. This would usually be through the Workforce Director or equivalent of the NSW Health organisation, or other position as specified in local procedures.

Where the person subject to the allegation works in a different NSW Health organisation from where the alleged reportable conduct has been identified, information must immediately be forwarded to the relevant other NSW Health organisation. (Refer also to section 2.1.1.)

- If it is known that the person is also employed in another non-NSW Health organisation, and if that organisation is a 'prescribed body' under Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#) (eg a private health facility within the meaning of the [Private Health Facilities Act 2007](#)), information must also be forwarded to that organisation.

This is subject to meeting one of the relevant legislative thresholds, ie information sharing at Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#), or secondary use of information under Schedule 1(10) of the [Health Records and Information Privacy Act 2002](#).

- Notified within 24 hours to the NSW Ministry of Health via a Reportable Incident Brief (RIB) as required by NSW Health Policy Directive *Incident Management* ([PD2020_020](#)).
- Notified to the Children's Guardian within 7 business days of being brought to the attention of the Chief Executive (or the Secretary for staff of the Ministry of Health), if the allegation / conviction falls under the Reportable Conduct Scheme (refer to the flowchart at **Appendix 1**).

The notification form is available at <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/notification-forms>.

- Notified to the Australian Health Practitioner if the staff member is a registered health practitioner and the NSW Health organisation has a reasonable belief that they have behaved in a way that, under the [Health Practitioner Regulation National Law \(NSW\)](#), constitutes 'notifiable conduct' (section 140 of the Act), 'unsatisfactory professional conduct' (sections 139B-139D of the Act), or 'professional misconduct' (section 139E of the Act).

Refer also to [Information Sheet 16: Mandatory Notification Requirements to AHRPA / Relevant Professional Council](#), which supports NSW Health Policy Directives *Managing Misconduct* ([PD2018_031](#)) and *Managing Complaints and Concerns About Clinicians* ([PD2018_032](#)).

3 MANAGING RISKS

3.1 Risk assessment and management

The NSW Health organisation must do a risk assessment and, if required, put in place an ongoing risk management strategy as soon as possible in line with NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)). A risk assessment template is available on the [NSW Health Intranet](#). The managing misconduct policy also outlines some options for managing the identified risks.

The risk assessment needs to identify the risks for:

- The child(ren) who are the subject of the allegation
- Other children with whom the staff member may have contact
- The staff member against whom the allegation has been made
- The employing NSW Health organisation
- Other parties to the child related allegation (eg witnesses, reporters, victims of domestic violence)
- The proper investigation of the allegation.

The risk assessment and management of child related allegations, charges and convictions must include consultation with the local Child Wellbeing Coordinator or Child Protection Unit, sexual assault services, and/or senior clinical staff, as relevant. This is to ensure that child protection and patient safety issues and/or victim needs are considered and addressed.

If the risk assessment determines that risk management action is necessary, the action must be specific and proportionate to the circumstances. In some instances, the NSW Health organisation may also have to create a Service Check Register record for the staff member. See NSW Health Policy Directive *Service Check Register* ([PD2013_036](#)) for further information.

In all circumstances, the paramount responsibility of the NSW Health organisation is the protection of all children in its care. If there are identified risks that need to be managed, the NSW Health organisation must convey this to any relevant external agency involved in the matter. They must also advise the external agency of when the risk management action will start, and what advice they proposed to give to the staff member.

Any risk management measures must be reviewed, and any risks reassessed, at a minimum every 30 days, or whenever relevant new information becomes known. A final risk assessment must be done at the end of the investigation.

3.2 Responsibilities in relation to the alleged victim

3.2.1 Providing appropriate support

In addition to any risk management measures put in place, under NSW Health Policy Directive *Child Wellbeing and Child Protection* ([PD2013_007](#)) the NSW Health organisation has a responsibility to ensure that, as far as possible, the needs of any alleged victim(s) and their non-offending family are being addressed.

Where appropriate, the alleged victim(s) and their non-offending family must be offered a referral to a NSW Health child protection unit or sexual assault service to receive a psychosocial, medical and/or forensic response. The NSW Health organisation will need to consider whether it is more appropriate to refer them to a service outside of the NSW Health organisation where the alleged perpetrator is employed or engaged.

Even if the alleged victim and their non-offending family do not take up the referral, the NSW Health organisation needs to consult with the child protection unit or sexual assault service about how to provide appropriate support to them during the management of the allegation.

Where the allegation is non-work related (such as within the staff member's own family or personal life), or historical (including where the alleged victim is now an adult), the NSW Health organisation must still consider how the alleged victim(s) and any non-offending family members can be offered support and advised of the NSW Health organisation's reporting and investigative responsibilities.

The NSW Health organisation needs to liaise with the relevant contact officer of the NSW Police, the Joint Child Protection Response Program (JCPRP) and/or the Department of Communities and Justice (if they are involved in the matter) regarding the needs of the alleged victim(s) and/or their non-offending family.

For further information, see also NSW Health Policy Directives *Child Wellbeing and Child Protection* ([PD2013_007](#)) and *Responding to Sexual Assault* ([PD2020_006](#)).

3.2.2 Planning contact with the alleged victim and/or their family

NSW Health organisations must take particular care to plan any contact with the alleged victim or a non-offending family member, if they were not the person who brought the allegation to the organisation. This includes considering ways to avoid re-traumatising the alleged victim, and the potential impact on the alleged victim of an investigation which they do not wish to participate in (or their non-offending parent or carer does not permit them to participate in), but which the NSW Health organisation is obliged to go ahead with.

When planning contact with the victim and their family, the NSW Health organisation's Violence, Abuse and Neglect (VAN) Manager or Child Protection Unit should be contacted for specialist advice, as appropriate.

Generally, the following needs to be considered:

- Whether a specialist health service has a pre-existing relationship with the victim (eg Sexual Assault, Youth Health, Mental Health) and can help make initial contact with the victim

- Safety, confidentiality and timing in making contact (including security when leaving messages)
- The child's and/or family member's preferences for contact (eg phone calls, text messages, emails)
- Whether the child or family member needs an interpreter, communication aids or assistance with verbal or written communication
- Ensuring that any contact first clearly establishes who the other person is and whether it is safe to speak, and then provides the name and role of the caller, the purpose for the contact, and how any information shared may be used and documented.

3.2.3 Advice to be provided to the alleged victim or their family

The NSW Health organisation must also ensure that the alleged victim and/or their non-offending family are:

- Advised of the responsibilities the NSW Health organisation has in relation to child related allegations, charges and convictions
- Advised of any NSW Health's reporting requirements to the Police, the Department of Communities and Justice, and/or the Children's Guardian, as applicable
- Offered support in making a report to the Police themselves, as appropriate
- Provided with information about the progress of any investigation
- Advised of the findings of any investigation
- Kept informed of any action planned or being taken in response to the alleged conduct
- Provided with a nominated NSW Health contact who will be available to them during the process
- Provided with information on the [Charter of Victims Rights](#), including the right to seek financial assistance, and their right to make a complaint under the Charter.

3.3 Advising the staff member

The timing of advice to a staff member about a child related allegation against them must be part of the risk assessment and involve consideration of the following:

- Does the information received need to be further clarified before it can be determined how it needs to be managed?
- Are there any significant risks that would suggest the timing of the advice needs to be delayed (for example, could informing the staff member put the health and safety of a person at risk, or compromise the investigation)? In these circumstances the NSW Health organisation's Violence, Abuse and Neglect (VAN) Manager or the Ministry of Health's Workplace Relations Branch should be consulted.

- Has an external agency, such as the Police or the Department of Communities and Justice or the Joint Child Protection Response Program (JCPRP) been consulted about the timing of the advice? Have they asked the NSW Health organisation to delay notifying the staff member?
- Has a report been made to the Child Protection Helpline or the Police, and if not, does this need to be done before any advice is provided to the staff member?
- Is it necessary to take immediate risk management action of which the staff member needs to be advised?

Any decision to delay notifying the staff member should be clearly documented, including reasons for the delay and an expected timeframe for next steps.

The NSW Health organisation must ensure that the staff member is:

- Advised of the responsibilities the NSW Health organisation has in responding to child related allegations, charges and convictions
- Provided with information about the process
- Offered support, as required, including access to the organisation's Employee Assistance Program
- Advised of their right to have a support person present at any interviews, and of the role of the support person
- Afforded procedural fairness throughout the process
- Afforded appropriate confidentiality throughout the process
- Advised, at the appropriate time, of any notification requirements (eg the Children's Guardian, Australian Health Practitioner Regulation Agency etc)
- Provided, at the conclusion of the investigation, details of any findings in relation to reportable conduct and/or misconduct.

4 INVESTIGATION

4.1 The investigation process

Refer to NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)) for general information on the investigation / management process, as well as the procedural fairness principles that apply. This section provides additional information specific to investigating child related allegations (including reportable allegations).

NSW Health organisations must maintain strictest confidentiality in relation to the investigation and management of any child related allegations, charges and convictions. The [Children's Guardian Act 2019](#) introduces specific offences in relation to reportable allegations / convictions for any person who discloses information about the progress of an investigation, its findings, or the action taken in response to the findings, other than as permitted by the Act.

4.2 Concurrent external investigations / criminal proceedings

Where the Department of Communities and Justice, the Police, or the Joint Child Protection Response Program (JCPRP) are undertaking a child protection / criminal investigation, or have advised that they may undertake such an investigation, NSW Health organisations must maintain ongoing liaison to ensure that external and internal investigations are coordinated effectively, and that information is exchanged, as required, to assist in the ongoing assessment and management of risk.

NSW Health organisations must also seek information about court proceedings and their outcomes to help manage risks and conduct internal investigations / make findings.

4.2.1 Timing of internal investigations

Irrespective of any action external agencies may take, the relevant NSW Health organisation must conduct an internal investigation into a child related matter (unless the facts are clear and uncontested, such as when there is a conviction) and make its own findings and decisions about any disciplinary action.

However, the NSW Health organisation must generally not progress its internal investigation until the external investigations and any associated proceedings have concluded and the external agency has indicated that they have no objections to NSW Health conducting its investigation.

Even when an investigation is delayed, the NSW Health organisation must still complete all relevant notifications and continue to assess and manage the risks based on available information.

Where an investigation is suspended due to an ongoing criminal investigation or court proceeding, and the allegation or charge falls under the Reportable Conduct Scheme, the NSW Health organisation must advise the Office of the Children's Guardian of the suspension and steps being taken to manage risks. In these cases, the NSW Health organisation may not have to provide an entity report or an interim report to the Office of the Children's Guardian until 30 days after the suspension has ended.

In certain limited circumstances it may be appropriate to complete the employer investigation and make findings and decisions about disciplinary action while the external criminal or child protection investigations and/or court processes are ongoing. Such circumstances may include where the staff member has entered a guilty plea. However, in the case of reportable conduct, the Office of the Children's Guardian may still ask that the NSW Health organisation monitor the outcome of the external proceedings. The reason for starting the internal investigation must be documented and approved by the Chief Executive or their delegate.

In these circumstances, the NSW Health organisation must maintain close liaison with the relevant external agencies, and continually consider and manage the associated risks. Such risks include the possible contamination of a criminal investigation, unnecessary interviewing of victims, not having access to all relevant evidence, management of a staff member's right to silence in criminal matters etc.

4.2.2 Exchanging information with the Department of Communities and Justice / Police / Joint Child Protection Response Program (JCPRP)

Where the Department of Communities and Justice, the Police or the JCPRP have involvement in the matter or may have information relevant to the NSW Health organisation's investigation and assessment of potential risk to the workplace, separate requests for information must be made to each agency in accordance with Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act](#).

Information requested may include details of the complaint or disclosure (including the name and age of the alleged victim if not already known), records of interviews with the alleged victim or any other relevant parties, and any other relevant information. It may also be necessary to clarify with the Police whether they have closed or suspended their investigation, and what information may be provided to the staff member.

A template letter for requesting information from external agencies is available on the [NSW Health Intranet](#).

The NSW Health organisation may also need to provide information to the Department of Communities and Justice, the Police, or the JCPRP about risk management action it is taking or planning to take, and the nature of any potential risks given the staff member's role in the workplace.

For further information about exchanging information under Chapter 16A, refer to NSW Health Policy Directive *Child Wellbeing and Child Protection* ([PD2013_007](#)) or contact the [NSW Health Child Wellbeing Unit](#), or in the case of a JCPRP matter, the NSW Health organisation's Violence, Abuse and Neglect (VAN) Manager or Child Protection Unit.

4.2.3 Seeking information about criminal charges and court proceedings

Where the staff member has been charged with a child related offence, the NSW Health organisation must ask the staff member for information and any relevant documentation to assist it in making risk management decisions. Such information includes:

- The charges against them
- Any statements they have provided to the police
- Court dates
- How they intend to plead
- Any other information that may be relevant to assess the risks.

Where the matter has already been before the courts, NSW Health organisation must also request information about the court outcome, by asking the staff member to provide relevant documentation.

Information must also be requested directly from the Police, and the Department of Communities and Justice, and/or courts. A template letter for requesting information from the courts is available on the [NSW Health Intranet](#).

4.2.4 Assessing information obtained from external agencies

The NSW Health organisation must:

- Review the information provided by the external agency
- Identify and make any further enquiries as necessary
- Determine what needs to be put to the staff member for a response
- Complete its internal investigation (unless the facts are clear and undisputed)
- Make its own findings and decisions about further action.

Depending on the assessment of the information and outcomes of any criminal proceedings, the following actions may be appropriate:

- In limited circumstances, if the NSW Health organisation is satisfied that the information conclusively demonstrates that the allegation was false and that no further information is required, it may move directly to making a finding.
- If the charge does not proceed to a conviction or finding of guilt, the NSW Health organisation must still complete its own investigation and make its own findings and, where required, make its own decisions about further action.
- If an external agency has substantiated an allegation, but there is no criminal conviction, the NSW Health organisation must still make its own findings and decisions about further action.
- If the court proceedings result in a conviction or a finding of guilt without conviction, the NSW Health organisation must get details of the conviction or finding, complete its risk assessment to determine whether any risk management action is needed, and make its own decisions about further action.

In all situations, NSW Health organisations must follow the procedural fairness requirements of this Policy Directive and NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)).

4.3 Deciding whether the child needs to be interviewed

It is not always appropriate or necessary to interview the child who is the alleged victim. NSW Health organisations must consider the following in deciding whether to interview the child:

- Sufficiency of available information about the alleged conduct, ie for a young child, the conduct was reported by a colleague / parent who directly witnessed the alleged behaviour, and they have provided detailed information.
- Whether the child has already been interviewed by an external agency, and the NSW Health organisation has obtained details of the interview. If the NSW Health organisation is concerned about the sufficiency of the information, they are to raise this with the external agency.
- The child's age / developmental stage or other factors that may affect the child's ability to provide detailed information.

- Whether the child's parent(s) / carer(s) consent to their child being interviewed, and for older children, whether the child consents.
- Any other factors that indicate an interview may result in further trauma or be detrimental to the welfare of the child.

Where the NSW Health organisation makes a decision not to interview a child, it must clearly document this decision and include it in the final investigation report.

A decision to interview a child must be made in consultation with the NSW Health organisation's Violence, Abuse and Neglect (VAN) Manager. If a child is to be interviewed, they must only be interviewed by persons with sufficient skill or expertise in obtaining children's evidence, and this process must occur in consultation with the VAN Manager. Child protection staff may be best placed to conduct an interview with a child. Expert support will need to be provided to children / young people with developmental delay or intellectual disability to enable them to express themselves and be understood.

5 ISSUES ARISING IN CHILD RELATED MATTERS

5.1 Allegations arising from clinical procedures

Health organisations must manage child related allegations arising out of clinical procedures in line with this Policy Directive. They must also consult NSW Health Policy Directive *Managing Complaints and Concerns About Clinicians* ([PD2018_032](#)).

To assist in determining whether the allegation meets the definition of a child related allegation, an appropriately qualified and independent clinician may need to review whether the conduct was reasonable for the purpose of the discipline, management or care of the child, having regard to their age, maturity, health or other characteristics and to any relevant code of conduct or professional standard.

The Chief Executive or an appropriately delegated person must have approved any decision that the allegation does not meet the definition of a child related allegation, and therefore does not need to be managed under this Policy Directive.

5.2 Anonymous allegations

NSW Health organisations must assess and manage any anonymous child related allegations in line with this Policy Directive.

Not being able to identify the complainant does not of itself prevent the NSW Health organisation from taking action. What action they will take will depend on the level of detail provided, and their ability to obtain further detail.

When the NSW Health organisation is assessing what, if any, action it can take in response to an anonymous complaint, it must consider the following:

- Are there any details in the allegation that can be confirmed or refuted (for example, was any context provided, were details of the alleged behaviour provided, was there a time frame, was any workplace named, were details of any alleged victims or witnesses given, was any physical or other evidence provided)?

- Has the [NSW Health Child Wellbeing Unit](#), the Police and/or the Department of Communities and Justice provided any additional information in relation to the allegation?

5.3 Allegations related to domestic and family violence

Where a child or young person is suspected to be at risk of significant harm as a result of exposure to domestic and family violence, and the alleged perpetrator is a NSW Health staff member, the allegation must be managed in line with this Policy Directive.

NSW Health organisations must exercise particular care where such information is obtained through Safety Action Meetings (SAMs). Victims referred to SAMs have been assessed as being at serious domestic violence threat, and therefore it is of utmost importance that the NSW Health organisation does not alert the alleged perpetrator to the information they have received.

The relevant NSW Health organisation must, in consultation with their Violence Abuse and Neglect (VAN) Manager:

- Plan how to respond to the needs of the victim(s), including fulfilling reporting responsibilities, consistent with NSW Health Policy Directives *The First 2000 Days Framework* ([PD2019_008](#)) and *Identifying and Responding to Domestic Violence* - ([PD2006_084](#)).

Where the allegation was identified at a SAM this planning must occur in consultation with other SAM members. Refer to the [Safety Action Meeting Manual](#) for further information.

- Liaise with the NSW Health organisation's Information Manager to safeguard against the potential inappropriate use or disclosure of the medical records of the victim(s).

If the conduct falls within the scope of the Reportable Conduct Scheme, the NSW Health organisation which employs the staff member must make an initial notification to the Children's Guardian. The notification must clearly note the potential increased risk to the victim and their children that the usual investigative or other management processes, and the related procedural fairness requirements, could pose.

Before taking any further action, the employing NSW Health organisation must consult the Office of the Children's Guardian directly about the next steps. In some instances, the Children's Guardian may exempt the NSW Health organisation from conducting an investigation into a reportable allegation.

When sharing information within and between NSW Health organisations, care must be taken not to share victims' personal or health information which is not relevant or which may jeopardise a person's life and safety. Decisions on what information to share are to be made in consultation with the NSW Health organisation's Violence, Abuse and Neglect (VAN) Manager and/or the [NSW Health Child Wellbeing Unit](#). The provision of such information must be accompanied by a statement, consistent with Part 13A of the [Crimes \(Domestic and Personal Violence\) Act 2007](#) and the NSW Government's [Domestic Violence Information Sharing Protocol](#), that information shared at SAMs and actions pertaining to victims (including children) must never be shared with the alleged perpetrator.

5.4 Allegations received through the National Redress Scheme

Child related allegations may sometimes come to the notice of a NSW Health organisation through a request for information or child safe report from the Australian Government's [National Redress Scheme](#) for people who have experienced institutional child sexual abuse. The request for information includes a redress application, which may name an alleged perpetrator.

If the alleged perpetrator is a staff member of the NSW Health organisation, the allegation has to be managed and investigated in line with this Policy Directive, including making any relevant mandatory notifications. If the allegation falls under the Reportable Conduct Scheme, relevant notifications include notifications to the Children's Guardian.

The [National Redress Scheme for Institutional Child Sexual Abuse Act 2018](#) allows a government institution to use the protected information in a redress application for ensuring the safety or wellbeing of children, including for investigatory, disciplinary or employment processes related to the safety or wellbeing of children.

The Scheme is responsible for contacting the applicant to ask if they would like to participate in an internal investigation and disciplinary procedure undertaken as a result of their redress application. Proceeding with an internal investigation with or without the survivor's involvement must consider the potential impact on the survivor and be carried out in a trauma informed way.

For further information about the National Redress Scheme, see <https://www.nationalredress.gov.au/>.

5.5 Allegations involving child abuse material

Where an allegation involves production, distribution or possession of child abuse material, the NSW Health organisation must contact the NSW Police immediately and seek advice before initiating an internal investigation or alerting the staff member.

If the alleged use involves a NSW Health device, it must be quarantined without warning so that there is no opportunity for files to be deleted, or the computer to be switched off or on, or other evidence to be tampered with.

The NSW Health organisation must take special care to ensure that:

- Any alleged child abuse material is not unnecessarily transmitted or disseminated within the NSW Health organisation
- The material is contained
- Only a limited number of nominated senior staff members are involved in any investigation
- The process for making any decisions or assessment of the material is clearly documented as part of the investigation.

As part of its response to the allegation, the NSW Health organisation must audit the staff member's use of NSW Health devices, subject to identifying any potential risks to the investigation.

The NSW Health organisation must be guided by the Police in classifying material as child abuse material.

5.6 What if the Police do not charge the staff member or the Court makes a finding of 'not guilty'?

The NSW Health organisation must progress its own investigation (unless the facts are clear and uncontested) and make its own findings and decisions about any further action in line with this Policy Directive and NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)).

There are many reasons why matters do not proceed to charges or to a conviction. In criminal proceedings, the standard of proof required is 'beyond reasonable doubt', whereas in civil matters, the standard is the 'balance of probabilities'. Therefore, regardless of the outcome of the criminal investigation or proceedings, an allegation may still result in a sustained finding of reportable conduct and/or misconduct when assessed at the civil, not criminal, standard.

5.7 What if the staff member no longer works in NSW Health?

Where a NSW Health organisation receives information about an allegation, charge or conviction involving child related conduct within NSW Health by a former NSW Health staff member, the relevant Chief Executive (or the Secretary, NSW Health if the person was formerly engaged in the Ministry of Health) must be notified.

The Reportable Conduct Scheme does not extend to former staff members, and no investigation by the NSW Health organisation is required. However, any other relevant mandatory reports must be completed, as appropriate. These may include the Child Protection Helpline if there is a suspected risk of significant harm to a child or class of children (for example, if it is known or likely that the person is currently employed in child related employment), the Police in the case of a criminal allegation, etc.

The NSW Health organisation must also offer support to the alleged victim, as appropriate, including in reporting the matter to the Police or to any other external oversight or investigative agency.

Depending on the level of information available, the NSW Health organisation must also review the circumstances of the alleged conduct with a focus on ensuring the ongoing safety of children in its care. Refer to NSW Health Policy Directive *Child Wellbeing and Child Protection* ([PD2013_007](#)) for further advice.

5.8 What if the alleged victim is now an adult?

If the allegation relates to a NSW Health staff member, it must be managed in line with the requirements of this Policy Directive regardless of the current age of the alleged victim. While the alleged victim may now be an adult, the alleged perpetrator may be someone who remains in child related employment and/or has current access to children, which could mean that a class of children are at risk.

Refer to NSW Health Policy Directives *Child Wellbeing and Child Protection* ([PD2013_007](#)) and *Responding to Sexual Assault* ([PD2020_006](#)) for further information on managing disclosures from adults.

5.9 What if the allegation is retracted, the complaint withdrawn, or the alleged victim wants no action taken?

The NSW Health organisation is still required to meet the requirements of this Policy Directive. Findings will need to be made on the basis of available information.

Retractions must not be interpreted as indicating the incident(s) did not happen. Whether or not another agency remains involved, the NSW Health organisation must seek information to understand the reasons for the retraction and consider this when assessing risk, and when considering evidence to make a finding.

Where the reasons relate to concerns around personal safety, the NSW Health organisation needs to explore the different options for addressing those concerns with the person, including the involvement of the Police.

6 MAKING FINDINGS AND DECISIONS ABOUT ACTION

6.1 The process for making findings and decisions about action

Refer to NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)) for general information on making findings and decisions about action in response to those findings, as well as the procedural fairness principles that apply.

6.2 Standard of proof

The standard of proof required for all NSW Health misconduct findings is the civil standard, that is, “on the balance of probabilities”. In other words, based on available evidence, it must be more probable that conduct has occurred than that it has not.

In addition, the more serious the potential misconduct, and therefore the more serious the consequences for the staff member, the stronger the evidence must be to support an adverse finding.

Findings of reportable conduct for the Children’s Guardian must also be proved to the civil standard.

6.3 Misconduct findings

NSW Health organisations must make findings regarding child related allegations in line with NSW Health Policy Directive *Managing Misconduct* ([PD2018_031](#)) about:

- Whether the alleged conduct was substantiated
- If yes, whether it constitutes misconduct
- If yes, whether remedial, disciplinary or other action (in the case of volunteers etc) is required.

Where the child related allegation is captured in the Reportable Conduct Scheme, a finding in relation to reportable conduct must also be made.

In some instances, a finding of misconduct may be made even if a finding of reportable conduct is not made.

6.4 Findings for the Children’s Guardian

Where the child related allegation, charge or conviction is captured in the Reportable Conduct Scheme, NSW Health organisations must advise the Children’s Guardian of the findings they have made after completing the investigation (including whether they have made a finding of reportable conduct), and the action they have taken or will be taking.

When making a finding in relation to reportable conduct, the decision-maker must consider whether the reportable allegation relates to conduct that is in breach of established standards applying to the staff member, having regard to:

- Professional standards
- Codes of conduct, including any professional or ethical codes
- Accepted community standards.

For further guidance, refer to the Children’s Guardian Fact Sheet 8: Making a Finding of Reportable Conduct, available at <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/fact-sheets>.

6.5 Final risk assessment and further action

Regardless of the finding of the investigation, NSW Health organisations must do a final risk assessment to inform any further action to be taken.

The action to be taken must address all identified risks, including those relating to:

- The child or children involved (eg counselling, ongoing support)
- The staff member (remedial or disciplinary action, ongoing support)
- Organisational culture (eg improved education and awareness of child protection issues)
- Systems (eg contributing work practices, skills gaps)
- Procedures and processes (eg gaps)
- Risks outside the NSW Health organisation’s control (eg is there a basis for releasing information about the matter to another external agency under Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#)).

The final risk assessment will also help the NSW Health organisations ensure the ongoing safety of children from a systemic perspective.

7 FINALISING THE PROCESS

7.1 Notifying affected parties of the outcome

As in any misconduct process, all parties (eg the staff member subject to the investigation, the alleged victim and/or their family or carer) must be advised of the outcome of the process in so far as it relates to them, having regard to the confidentiality rights of other people involved.

The staff member subject to the investigation must be notified in writing of:

- The outcome of the investigation / management process
- Any relevant consequences (including, if relevant, that the Office of the Children's Guardian will refer any sustained finding of sexual offence, sexual misconduct or serious physical assault to its Working With Children Check Unit), and
- Any internal review or appeal mechanisms.

For matters within the scope of the Reportable Conduct Scheme, specific requirements apply in relation to the child and their family/carer. Under section 57 of the [Children's Guardian Act 2019](#), relevant information must be disclosed to a child to whom a reportable allegation relates, and/or their parent, and/or an authorised carer who provides out of home care for the child, unless it is not in the public interest to disclose information to those parties. Such information includes:

- Any findings made by the NSW Health organisation
- Any action taken (including against the staff member) in response to those findings).

For further guidance on these requirements, including confidentiality considerations, how information may be disclosed and what may constitute 'not in the public interest', refer to the Children's Guardian Fact Sheet 7: Disclosing information to children, parents and carers, available at <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/fact-sheets>, or call the Office of the Children's Guardian's Reportable Conduct Helpline.

7.2 Notifying the Australian Health Practitioner Regulation Agency

If the staff member is a registered health practitioner, the NSW Health organisation must identify any requirements to notify the Australian Health Practitioner Regulation Agency (AHPRA). Mandatory notifications apply when the Chief Executive has formed a reasonable belief that the practitioner has behaved in a way that constitutes 'notifiable conduct', 'unsatisfactory professional conduct' or 'professional misconduct' under the [Health Practitioner Regulation National Law \(NSW\)](#).

'Notifiable conduct' is defined in section 140 of the National Law.

'Unsatisfactory professional conduct' and 'professional misconduct' are defined in sections 139B–139D of the National Law.

Refer also to [Information Sheet 16: Mandatory Notification Requirements to AHRPA / Relevant Professional Council](#), which supports NSW Health Policy Directives *Managing*

Misconduct ([PD2018_031](#)) and *Managing Complaints and Concerns About Clinicians* ([PD2018_032](#)).

7.3 Final notification to the Children’s Guardian

For matters that fell under the Reportable Conduct Scheme, the NSW Health organisation must notify the Children’s Guardian once it has finalised the investigation or other management action, and made findings (including those related to convictions) and final decisions about action (or a decision to take no action).

The notification must be made through the *Final Entity Report* form, which is available at <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/notification-forms>. The notification must be accompanied by copies of all relevant documents, including transcripts of interviews and copies of evidence, unless already provided previously.

A separate notification to the Children’s Guardian under the *Child Protection (Working With Children) Act 2012* for the purposes of a Working With Children Check is not required, as this is captured in the *Final Entity Report*.

7.4 Service Check Register

If required by NSW Health Policy Directive *Service Check Register* ([PD2013_036](#)), the NSW Health organisation must create a Service Check Register record for the staff member.

8 KEEPING RECORDS

NSW Health organisations must keep appropriate records of all stages of the process and the outcomes relating to any child related allegations, charges and convictions (including false, malicious or disproven allegations). The records must be kept on a confidential, restricted access file that is separate from the staff member’s personnel file in a central secure location or electronic record management system. Related files are to be cross-linked to each other to assist with future management.

The records must be retained for a minimum of 100 years and then destroyed, as required by the [General Retention and Disposal Authority: Administrative Records \(GA28\)](#) of the State Archives and Records.

The Office of the Children’s Guardian may audit any records relating to child related allegations, charges and convictions, including where a decision has been made that a matter is not reportable to the Children’s Guardian. For further detail on what records must be kept, refer to the Children’s Guardian Fact Sheet 6: “Keeping records”, available at <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/fact-sheets>.

Records relating to the management of child related allegations, charges and convictions are subject to the provisions of the [Government Information \(Public Access\) Act 2009 \(GIPA Act\)](#). However, correspondence from the Children’s Guardian about reportable

allegations is 'excluded information' under section 6 of the GIPA Act and cannot be released to any person without prior consent from the Children's Guardian.

9 APPENDIX LIST

1. Flowchart: Application of the Reportable Conduct Scheme to NSW Health organisations

APPENDICES

Appendix 1: Application of the Reportable Conduct Scheme to NSW Health Organisations

