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## CHILD PROTECTION POLICY

### 1.1 PURPOSE

The purpose of this policy is to:

- Ensure that Hunter's Hill Council provides a safe, caring and nurturing environment for children using Council's services or attending Council events.
- Ensure all Council staff and volunteers working with children have undergone a Working with Children Check and that Council is fully compliant with all of the requirements of the Child Protection (Working with Children) Act 2012, the Child Protection (Working with Children) Regulation 2013, and the Child Protection Legislation Amendment Act 2015.
- Respond effectively to allegations of child abuse or inappropriate behaviour involving children.

### 1.2 SCOPE

This policy applies to situations where:

- Council seeks to employ persons for child-related employment;
- Council activities involves volunteers who are involved in child related work;
- Council receives allegations of child abuse or inappropriate behaviour with or in front of children concerning Councillors, Council Staff, Contractors or Volunteers.
- Council Rangers as they regularly work in close proximity to schools and children in the community

### 1.3 DEFINITIONS

**Clubs or other bodies providing services to children (including sporting bodies)**

Are defined in the legislation (Part 2 Clause 7) as:

(1) Work for a club, association, movement, society or other body of a cultural, recreational, and sporting or community service nature that involves providing programs or services primarily for children is child-related work.

(2) Without limiting subclause (1), work as a coach or as a team manager, or an assistant coach or assistant team manager, for a sport or activity for children is child-related work.



(3) However, the work is not child-related work if the work is work as a referee, umpire, and linesperson or otherwise as a sporting official or a grounds person, and the work does not ordinarily involve contact with children for extended periods without other adults being present.

<b>Child</b>	A child is a person under the age of 18 years.
<b>Council Staff</b>	Permanent, temporary and casual employees and contractors of Hunter's Hill Council.
<b>Child-Related Work</b>	Is paid or unpaid work that involves face to face contact with children in one of the nominated sectors?
<b>Employee</b>	For the purposes of the <i>Ombudsman Act 1974</i> includes Paid Employees of Council, Volunteers, Work Experience Participants and Students on Placements and Contractors/Sub Contractors.
<b>Home stay</b>	Means residence with another family for a period for the purposes of a cultural or educational program.
<b>Office of the Children's Guardian</b>	Is an independent government agency that administers the <i>Working With Children Check</i>
<b>Reasonable Grounds</b>	<p>Refers to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm, based on:</p> <ul style="list-style-type: none"> <li>• First hand observations of the child, young person or family.</li> <li>• What the child, young person, parent or another person has disclosed.</li> <li>• What can reasonably be inferred based on professional training and / or experience?</li> </ul>



It does not mean that reporters are required to confirm their suspicions or have clear proof before making a report.

**Reportable Allegation**

*(Ombudsman Act 1974)*

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

**Reportable Conduct**

*(Ombudsman Act 1974)*

Means:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material), or
- b) any assault, ill-treatment or neglect of a child, or
- c) any behaviour that causes psychological harm to a child,

Whether or not it is with the consent of the child.

**Reportable Conviction**

*(Ombudsman Act 1974)*

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

**Residential Services**

Is defined by the legislation (Part 2 Clause 14) as being:

- (1) Work at the following services is child-related work:
  - (a) refuges used regularly by children;
  - (b) boarding houses or places providing other residential services for children;
  - (c) Overnight camps for children.
- (2) Work in providing home-stays of 3 weeks or more for children is child-related work.



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**Risk of Significant Harm** A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or wellbeing of the child or young person are present to a significant extent

This means it is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent.

*What is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child's or young person's safety, welfare, or wellbeing.*

**Volunteer** Any person working without payment. Volunteers may include professionals, work experience students, Council committee members or any other person.

**Working with Children Check** Is the process whereby a person's suitability to participate in child related work is assessed. It involves a national police check and a review of findings of misconduct involving children. This process applies to all paid workers and volunteers aged over 18.



## 1.4 POLICY STATEMENT

### PART 1 POLICY GUIDELINES

#### 1. WORKING WITH CHILDREN CHECK

A *Working with Children Check* is a prerequisite for anyone in child-related work in NSW. A *Working with Children Check* includes a national police check and review of findings of misconduct involving children. The result is either a clearance or a bar.

A child-related worker is responsible for applying for his or her own *Working with Children Check*. **Council cannot apply on behalf of a worker.**

A *Working with Children Check* lasts for 5 years and is portable and renewable, however applicants are subject to continuous monitoring for new NSW Criminal and disciplinary records. If a worker becomes barred subsequent to being employed the employer will be notified.

##### 1.1. New Employees and Volunteers

Before engaging a new child related worker (whether paid or in a voluntary role) Council must verify on line that the preferred applicant has undergone a *Working with Children Check* and has received a clearance to work with children.

The worker on receiving a clearance as a result of the *Working with Children Check* will be issued with a *Working with Children Check* number. This number must be provided to Council along with their surname and date of birth to allow on line verification.

A notification letter is insufficient proof of a worker's clearance.

Council will then verify on line.

The following table summarises the possible results from a *Working with Children Check*.



Status	Meaning
Application in Progress	<p>A <i>Working With Children Check</i> application is being processed and the applicant may work with children.</p> <p>If the applicant becomes barred, Council will be contacted and advised on what to do next.</p>
Cleared	<p>This applicant has a <i>Working With Children Check</i> clearance that is valid until the listed expiry date. The applicant may work with children.</p>
Barred	<p>The applicant has been barred from working with children and it is an offence to engage this person for child-related work.</p>
Interim barred	<p>The applicant has been barred from working with children during the course of a risk assessment. It is an offence to engage this person for child-related work.</p>
Not found	<p>The database cannot find a matching <i>Working With Children Check</i> for any one of these reasons:</p> <ul style="list-style-type: none"> <li>• The data entered for verification (name, date of birth and Working With Children Check number or application number) has errors;</li> <li>• The person's application has been withdrawn or terminated without an outcome;</li> <li>• An application has not been completed by this individual.</li> </ul> <p>It is an offence to engage this person in child-related work or child-related roles.</p>



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If the outcome of online verification is 'cleared' or 'application in progress' the worker may begin working with children immediately. The worker will be subject to ongoing monitoring for relevant new records which may lead to the clearance being revoked before it is expired (i.e. barred from working with children).

If there is any other outcome of online verification, then the worker cannot be hired or permitted to engage in child related work.

All Council Committees will be responsible for identifying volunteers who require a *Working with Children Check* and for supplying their details including their surname and date of birth and their *Working with Children Check* Number to Council's Human Resource Manager to enable on line verification of their clearance to work with children.

Committees must not allow any new volunteers to begin Child related work until they have received written advice from Council that the volunteer has received a clearance from the *Working with Children Check*.

## 1.2. Change of Status

If an **existing** employee or volunteer is not granted clearance to work with children (i.e. a bar has been imposed) they must immediately remove themselves from that work and notify Council.

If Council receives a letter advising that a current employee or volunteer has become barred (or has an interim bar) Council must immediately remove that person from child-related work. It doesn't matter whether they are paid or unpaid, supervised or unsupervised.

The options available are:

- dismiss the worker;
- suspend them from child-related work pending the outcome of an appeal; or
- Transfer them to a non-child-related role within the Council (although Council is under no legal obligation to find an alternative position for a barred worker).



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**NOTE:** The courts cannot order the re-employment of a person for child-related work if the person is barred from working with children. Damages or compensation are not payable to a worker who has been removed from child-related work because they are barred from working with children.

### 1.3. Council Rangers

Council Rangers are required to obtain a *Working with Children Check*, as they encounter children in the community whilst carrying out their duties. Given their close proximity to schools and children in the community there are to be no exceptions to this clause.

### 1.4. Exemptions to Working with Children Check

If you are in child related work but you qualify for one of the exemptions (Part 4 Clause 20 of the *Child Protection (Working with Children) Regulation 2013* a *Working with Children Check* is not required. (See Appendix 1)

### 1.5. Work Not Considered to be Child Related

Some work is not considered to be child-related, which means it will not require a *Working with Children Check*. This work is set out in

**Clause 6 (4)** Work as a student on professional placement in the course of a student clinical placement in a hospital or other health service is not child-related work.

**Clause 7 (3)** Work as a referee, umpire, linesperson or otherwise as a sporting official or a grounds person is not child-related work, if the work does not ordinarily involve contact with children for extended periods without other adults being present

**Clause 8 (2)** Work in providing respite care or other support services primarily for children with a disability **is** child-related work; **but it is not child-related work if** the work does not ordinarily involve contact with children for extended periods without other adults being present.

**Clause 11 (3)** Providing food or equipment at or for a sporting, cultural or other entertainment venue or providing a venue is not child-related work.





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## 1.6. Expiry of Working with Children Check

A *Working with Children Check* is valid for five years. Workers must renew their *Working with Children Check* before it expires and provide Council with their new *Working with Children Check* number to allow Council to re-verify their status on line.

Council must verify any employee or volunteer requiring a *Working with Children Check* every 5 years.

## 2. INVESTIGATING REPORTABLE CONDUCT, ALLEGATIONS AND CONVICTIONS

### 2.1. Code of Conduct

All Councillors, employees, contractors and volunteers of Hunter's Hill Council are responsible for promoting the safety and wellbeing of children and young people encountered in the workplace and community.

As such, employees, contractors and volunteers are expected to communicate with children in ways that are not likely to humiliate, frighten or distress any child.

Councillors, employees, contractors and volunteers will treat children with respect and be a positive role model in their conduct with them.

### 2.2. Reportable Conduct

All employees who become aware of reportable conduct, allegations or reportable convictions should notify the General Manager as soon as they become aware.

This obligation is part of Council's commitment to provide a safe, caring and nurturing environment for children using Council's services.

A reportable allegation against any public official is likely to constitute a protected disclosure under the *Public Interest Disclosures Act 1994*.

Council has an obligation to ensure that:

- All internal disclosures are properly addressed; and
- There are no reprisals taken against any person for making a legitimate disclosure or complaint.



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The General Manager must investigate all reportable conduct, allegations and reportable convictions concerning Council staff and prepare a report on the investigation containing:

- a) Any reportable conduct, allegation or reportable conviction against an employee of the Council.
- b) Copies of all statements taken in the course of the investigation and of all other documents on which the report is based.
- c) Any written submissions made to the General Manager concerning any such allegation or conviction that the employee concerned wished to have considered in determining what (if any) disciplinary or other action should be taken in relation to the employee.
- d) Whether or not Council proposes to take any disciplinary or other action in relation to the employee and the reasons why it intends to take or not to take any such action.

### 3. REPORTING DUTIES

There are a continuum of reporting obligations based on the seriousness of the behaviour that is alleged to have occurred.

#### 3.1. Ombudsman

The General Manager must disclose to the Ombudsman all reportable allegations of reportable conduct or reportable convictions against an employee, regardless of whether or not a child has been harmed or not and regardless of whether the alleged behaviour is thought to have occurred. The notification must be made within 30 days of the General Manager becoming aware of the reportable allegation or reportable conviction.

Once the investigation into a reportable allegation or reportable conviction has been concluded, the General Manager must forward the completed investigation report to the Ombudsman.



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Reportable conduct does not extend to:

- (a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- (b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures,

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

### 3.2. Department of Community Services

If a Council employee has reasonable grounds to suspect that a child is at risk of significant harm, and those grounds arise during the course of or from the person's work, the person must, as soon as practicable, report to the Child Protection Helpline 132111 or 133627 (if mandatory reporter) the name, or a description, of the child and the grounds for suspecting that the child is at risk of harm.

### 3.3. Office of the Children's Guardian

The General Manager is required to notify the Office of the Children's Guardian of the name and any other identifying particulars of any child related worker against whom Council has made a finding that the worker has engaged in the following conduct:

- (a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
- (b) any serious physical assault of a child.



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The report must be made to the Office of the Children's Guardian as soon as a final determination that sexual misconduct or serious physical harm has occurred, even if appropriate disciplinary action has not yet been determined or review or appeal processes remain available.

Council on written request of the Office of the Children's Guardian must provide the Office of the Children's Guardian with copies of records of allegations, investigations and findings concerning the worker who is the subject of the notification.

Council may amend or withdraw a notification of a finding of relevant misconduct if:

- the finding was quashed, withdrawn or amended;
- there was an error in the notification or the finding;
- the notification was wrongly made; or
- the person against whom the finding was made has died.

The Office of the Children's Guardian requires written notification of amendments or withdrawals of a finding of relevant misconduct. Council must provide a statutory declaration as to the reasons for amendment or withdrawal.

### **3.4. Police**

Where an allegation is made of criminal conduct or the death of a child the matter must also be reported to the Police.



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## 3.5. Working Subject of a Relevant Misconduct Finding

A Worker who is the subject of a relevant misconduct finding must be informed of that finding.

Council must as soon as practicable after making a notification advise the worker that Council has a statutory obligation to report the misconduct to the Office of the Children's Guardian and that the report has been made

## 4. RECORDS

### 4.1. Record Keeping

Council is required to keep records of child related workers including their:

- Full Name;
- Date of Birth;
- *Working with Children Check* Number (or Application Number) and expiry date;
- Date and outcome of on line verification.

These records may be electronic or in hard copy format, but must be made available or required for audit and monitoring purposes.

Council must retain all records of investigations into reportable allegations and reportable convictions. Records must include the investigation report prepared in accordance with section 2 of this policy and any correspondence, information or reports forwarded on to external agencies in relation to the allegations, investigations and findings.

Records that relate to any allegation, investigation and findings that are required to be notified to the Children's Guardian must be kept for a period of not less than 30 years unless the records are lodged with the Children's Guardian.



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## 4.2. Access to Records

A worker who is the subject of a relevant misconduct finding must be informed of that finding and that his or her employer has a statutory obligation to report the misconduct to the Office of the Children's Guardian.

Workers are able to use the *Government Information (Public Access) Act 2009* (GIPA) to seek access to information held by Council about the recorded misconduct finding. They may do this even after they have left the Council's employment and cannot be charged any fees by Council to access this information. This is stipulated in section 46(2) of the *Child Protection (Working with Children) Act 2012*.

If a worker makes a GIPA request for these records to the Office of the Children's Guardian, the Office will refer the request to Council for action, unless the information is held solely by the Office (in which case the Office will manage the request for information).

The person is also able to apply for the amendment of Council's records relating to information about relevant employment proceedings, on the basis that the information is, in the person's opinion, incomplete, incorrect, out of date, or misleading.

## 5. PRIVACY

Council will do its utmost to preserve the privacy of both those against whom allegations are made and those who notify reportable conduct under Council's Internal Reporting Policy (CORP.S-Pol. 17). However, the Ombudsman and the Office of the Children's Guardian will be given details of those who are the subject of reportable allegations or convictions in accordance with section 3 of this policy.



## RELATED RESOURCES

Hunter's Hill Council Code of Conduct (CORP.S-Pol.03)

Hunter's Hill Council Internal Reporting Policy (CORP.S-Pol.17)

Hunter's Hill Council Disciplinary Policy and Procedure (H.R.-Pol. 22)

## POLICY OWNER

The General Manager is the policy authority.

## AUTHORISATION AND REVIEW

### Next Review Date

This policy is to be reviewed in 2018 or with any changes to relevant legislation or Council policy.

### Version Control Table

Date	Version	Res. No.	Key Changes	Author
12.11.01	1.0	534/01	Initial policy	Rosanna Guerra
11.12.06	1.1	572/06	Revision is response to changes in legislative and Council Practice	Anna Yusef
24.03.14	1.2	66/14	Revision is response to changes in legislation. Doc ID 201823	Wendy McGuirk
13.11.17	1.3	322/17	Update in response to changes in legislation.	Rosanna Guerra



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## EXEMPTIONS

### Part 4, Clause 20 of the Child Protection (Working With Children) Regulation 2013.

If you are in child-related work but you qualify for one of the following exemptions, you do not need to apply for a *Working With Children Check*:

- Administrative, clerical or maintenance work, or other ancillary work, that does not ordinarily involve contact with children for extended periods.
- A worker who works for a period of no more than five days in a calendar year, if the work involves minimal direct contact with children or is supervised when children are present.
- Informal domestic arrangements not carried out on a professional or commercial basis.
- Work with close relatives of the worker (not including work as an authorised carer foster carer or other authorised carer of children in statutory and supported out-of-home care).
- Volunteering by a parent or close relative:
  - of a child in activities for the child's school, early education service or other educational institution; except where the work is part of a formal mentoring program or involves intimate personal care of children with a disability
  - with a team, program or other activity in which the child usually participates or is a team member; except where the work is part of a formal mentoring program or involves personal care of children with a disability.
- A visiting speaker, adjudicator, performer, assessor or other similar visitor at a school or other place where child-related work is carried out if the work of the person at that place is for a one off occasion and is carried out in the presence of one or more other adults.
- A health practitioner in private practice, if the practice does not ordinarily involve treatment of children without one or more other adults present.
- A health practitioner who is working in and visiting NSW from outside the State, if the period of work does not exceed a total of five days in any period of three months.
- A co-worker or work supervisor where a child works.





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- Work by an interstate visitor:
    - in a one-off event such as a jamboree, sporting or religious event or tour, if the event is the only child-related work carried out by the worker in NSW in that calendar year and the period of work does not exceed 30 days.
      - who holds an interstate working with children check, or is exempt from the requirement to have such a check in his or her home jurisdiction, whose child related work in NSW is for no more than 30 days in any calendar year.
    - NSW Police or Australian Federal Police officers in their capacity as police officers.
    - Home carers accredited with a current police certificate for aged care, for home care work where the clients are not primarily children.
    - People under the age of 18.