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Working with children – allegation handling

Purpose

This procedure establishes a system for dealing with child protection allegations that may be made against persons engaged by SLM, to protect the safety of children and ensure a fair and confidential process. It details SLM's legal obligations relating to the investigation, record keeping, risk management and external reporting of child protection allegations.

Background

SLM provides educational and entertainment services to children and many SLM workers come into contact with children during their working day. SLM is committed to providing a safe environment for children people during their visit. As an employer, SLM is responsible for managing risks to children, and must fulfil its obligations under the child protection legislation and requires all SLM workers to comply with the SLM Working with Children (WWC) Policy.

SLM also has responsibilities to its employees, volunteers and contractors and must comply with various legal obligations in the event that a child-protection allegation is made against one of them. It is also crucial that all SLM workers and the public have confidence that they can report inappropriate, unsafe and illegal behaviour knowing that it will be treated honestly and fairly.

Scope

This procedure applies to all SLM workers, including employees, work-experience students, interns, volunteers and contractors.

PROCEDURE

1. What is an allegation?

An allegation is defined as a concern for a child's safety in relation to:

- the actions or behaviours of a SLM worker; or
- the actions or behaviours of a person who is not a SLM worker, but who was on SLM premises when the incident occurred.

Examples of situations which may give rise to an allegation may include (this list is not exhaustive):

- a SLM worker is behaving in an unsafe or harmful manner towards children;
- a parent reports a child has been harmed as a result of participating in a program;
- a child tells a SLM worker that she or he has been or is being harmed; or
- a SLM worker reports receiving child pornographic images on their computer from another SLM worker.

An allegation is different from a complaint, which is defined as a concern for a child's welfare or wellbeing. Examples of a complaint include: dissatisfaction with the way a program is being operated, criticism of a risk after a child has been injured in a minor accident, concerns about the inappropriate behaviour of a SLM worker or report of a child being upset as a result of participating in an activity or program. Complaints are dealt with under the SLM Grievance Handling Procedure.

2. Dealing with an allegation

2.1 A SLM worker has grounds to make an allegation

Under section 16 of the SLM WWC Policy, any SLM worker must immediately report to the Head of Human Resources (HR) if they believe they have grounds to make an allegation.

If the allegation is made to another SLM worker, that person should attempt to refer the person making the allegation to the Head of HR. The SLM worker also must collect and record the precise details of the initial allegation or other information relevant to a risk to children and report those details to the Head of HR as soon as practicable.

The person making or receiving the initial the allegation must not attempt to investigate the allegation, inform the person against whom the allegation is made or discuss the matter, unless it is to answer questions from the person investigating the matter under this policy, the Police or Community Services.

If the allegation was received from a SLM worker that is a Mandatory Reporter, the Head of HR will remind this person of their responsibility to report reasonably held suspicions that a child is at significant risk of harm to the NSW Department of Community Services.

2.2 Head of HR to report to the Director and initial risk assessment

As soon as practicable after being notified of an allegation the Head of HR must report the matter to the Director.

The Director, in consultation with an appropriate employee, will conduct an initial risk assessment to identify risks to the child(ren) concerned by the allegation (see section 4 'Risk assessment'). The risk assessment will also consider the risks, if any, of the person that is the subject of the allegation remaining in their current position (see 4.3 and 7).

The Director will take appropriate actions to minimise identified risks such as changing the person's duties or work location. However the person should not be transferred to other duties without being informed, at least in general terms, about the allegations.

Where the person is not aware of the allegation made against him/her, and no decision has been made on the basis of a risk assessment to change their work duties or location, the person *should not* be told about the allegation at this point.

As there may be limited information on which to base an initial risk assessment, the situation should be reviewed as new information comes to light and mitigation actions taken as necessary.

2.3 Reporting the allegation to the Department of Community Services and the Police

If as a result of the risk assessment(s), the Director has reasonable grounds to suspect that a child is at risk of significant harm, and no report has yet been made regarding the allegation, the Director will direct that the Head of HR make a Risk of Significant Harm report to the NSW Department of Community Services.

At the same time, if the Director has reasonable grounds to suspect that a criminal offence has occurred involving a child, and the matter has not yet been reported to the police, the Director may direct that the allegation also be reported to the NSW Police.

2.4 Reporting the allegation to the Ombudsman

The Director will then determine whether the allegation is a reportable allegation to be notified to the Ombudsman. In short, this includes allegations (or convictions) concerning:

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child, including a child pornography offence;
- any assault, ill-treatment or neglect of a child; or
- any behaviour that causes psychological harm to a child.

For more detail on what constitutes reportable conduct, see the Ombudsman's "Defining Reportable Conduct" factsheet at: <http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection>.

If it is a reportable allegation the Director will notify the Ombudsman within 30 days using the "notification form – Part A" at http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0007/4201/Notification-FormPARTA_Feb12.pdf.

This process also applies where the Director becomes aware that a SLM worker may have a reportable conviction.

3. Dealing with an investigation

3.1 Head of HR makes recommendations to the Director

In reporting to the Director, the Head of HR will make recommendations on the resources and further actions that are necessary to investigate the allegation or conviction.

If a risk of significant harm report has been made or there is evidence to suggest that an offence has been committed, the Head of HR should consult with the NSW Department of Community Services or NSW Police to determine what safeguards should be incorporated into the investigation.

3.2 Investigative principles and role of the investigator

The investigation will be conducted in accordance with the *Government Sector Employment Act 2013*, any Rules or Regulations made under the Act and any applicable guidance material. It will be conducted by an appropriate SLM employee or an external investigator engaged for this purpose (the investigator).

Once the Director has determined the form that an investigation should take, the Director should write to the investigator outlining the allegations he/she is to investigate and report on. Both the Director and the investigator should have regard to the Ombudsman document: "*Planning and conducting an investigation*" at <http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection>.

The investigation is to be by way of a fact finding exercise to determine whether on 'the balance of probabilities' the alleged conduct occurred. That is, whether it is more likely to have happened than not. However, the weight of evidence required to satisfy this will increase with the seriousness of the allegation and the likely consequences for the employee if it is proven.

The investigation process is not the same as a misconduct proceeding, however the outcome of an investigation may lead to misconduct proceedings.

If a risk of significant harm report has been made to Community Services or information about a possible offence has been advised to Police, the person conducting the investigation must be advised of this and will liaise with NSW Department of Community Services and NSW Police to ensure that:

- responsibilities of respective investigators are clearly understood
- relevant information is shared where practicable, and
- any concurrent investigation is not compromised in the course of the SLM investigation.

If the person that is the subject of the allegation has resigned before the conduct was reported or before an investigation can be completed, the investigation should nevertheless continue, if necessary without their assistance.

3.3 Communication with the person who is the subject of the allegation or investigation

After an investigation has commenced, the Director is to write to the person concerned, informing them of the nature of the allegations and who has been appointed to conduct the investigation.

The timing of this letter may depend on the circumstances of the allegation. In serious cases the person who is the subject of the allegations may not be informed until the investigation is complete. This is to try to avoid the contamination of evidence and intimidation or harassment of potential witnesses as well as allowing the person in question the opportunity to respond to the specifics of the allegation.

Once the investigator has obtained all the available evidence, he/she should put the allegation to the person and give the person an opportunity to respond. The person should be advised that they do not have to respond immediately as they are entitled to seek advice and that their response should be given at a recorded interview or in written form.

They may wish to have a support person present if they are interviewed about the allegation in person. The support person may be invited to observe but not interrupt the interview and should also be advised to keep details confidential (see section 6). This interview should be adequately recorded and, where possible, records signed and dated by all involved.

3.4 Director's assessment of investigation report

Once the investigation is completed the investigator's findings and recommendations will be reported in writing to the Director. The Director will assess the evidence regarding the allegation(s) and any conclusions or recommendations made by the investigator, and make a finding in relation to each allegation. For guidance on assessing evidence see the Ombudsman document: *'Making a finding'* at <http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection>.

A finding may be that the allegation is:

- sustained (i.e. a finding that the conduct occurred);
- not sustained – insufficient evidence (i.e. there is some evidence of weight however there is insufficient evidence available to reasonably establish that the alleged conduct did occur);
- not sustained – lack of evidence of weight (i.e. where the evidence is of such poor probative value or lacking in weight, such as to warrant a finding that, on the balance of probabilities, the conduct did not occur);
- false (i.e. where inquiries into the matter show reportable conduct or an act of violence did not occur). Some of these matters may be vexatious, for example where inquiries into the matter show the allegation was made without substance and to cause distress to the person against whom the allegation was made;
- not reportable conduct (i.e. where inquiries into the matter show the conduct was not reportable for the purposes of the *Ombudsman Act 1974*). For example, use of force that was trivial or negligible in the circumstances, conduct that was reasonable in the circumstances or accidental. This may include 'misconceived' matters, where inquiries into the matter show that, even though the allegation was made in good faith, it was based on a misunderstanding of what actually occurred and the incident was not reportable conduct.

The Director will then determine what action is to be taken as a result of the findings. If the person concerned remains in employment the Director must determine whether the findings support that the matter should be dealt with by way of misconduct proceedings or remedial process in accordance with the *Government Sector Employment Act 2013*, any Rules or Regulations made under the Act and any applicable guidance material.

At this stage it may be appropriate to review the initial risk assessment and consider whether to take any action based on a continuing risk to a child that was not taken when the initial risk assessment was made.

3.5 Notifying Ombudsman of the outcome of the investigation

The Director will notify the Ombudsman of the outcome of the investigation using the "notification form – Part B" at http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0008/4202/Notification-FormPARTB_Aug12.pdf.

The Director may write to the parents or carers, to the child and the person who initially made the allegation, if appropriate, informing them of the outcome of the investigation. The letter(s) should take account of the privacy rights of the person who is the subject of the allegation. The letter(s) may include an offer to discuss the matter, if appropriate. The Director will write to the person that is the subject of the allegations stating the outcome of the investigation and the action he/she intends to take (e.g. misconduct). This letter could include an offer to discuss the matter, as appropriate.

3.6 Reporting to the Children's Guardian of the outcome of the investigation

If the investigation has found that the person has engaged in 'relevant misconduct' the Head of HR should report this to the Children's Guardian by filling in an online form [see 16.4 of the *SLM WWC Policy*].

In short, relevant misconduct findings are where a SLM investigation determines that the person has engaged in sexual misconduct involving or in the presence of a child (including grooming), or any serious physical assault of a child.

For further detail on what conduct must be reported or how to report findings to the Children's Guardian, see the Children's Guardian document *"Information for reporting bodies: Reporting certain misconduct involving children"* at:

<http://www.kids.nsw.gov.au/Working-with-children/New-Working-With-Children-Check/Child-related-employers/Tools-for-HR-and-Communication-Managers>.

The Head of HR will notify the person in writing that a finding of relevant misconduct has been made about them and that the Children's Guardian has been notified. This is likely to affect their Working With Children clearance. Notifying the person provides them with the opportunity to exercise their right to access and seek correction of documents that relate to the investigation.

Reporting a finding of relevant misconduct to the Children's Guardian is a separate process to SLM's misconduct processes, although the latter will inevitably be triggered when SLM's investigation has found that a SLM worker has engaged in such misconduct.

4. Risk assessment

4.1 Initial risk assessment

After an allegation is made, the Director in consultation with an appropriate employee will conduct a risk assessment in relation to the allegation. The purpose of this initial risk assessment is to identify and avoid or minimise the risks to:

- the child(ren) who are the subject of the allegation;
- other children with whom the person in question may have contact;
- the person against whom the allegation has been made;
- the employing contractor/licensor; and
- the proper investigation of the allegation.

At the time an allegation is made, limited information may be available to inform this risk assessment. For example, the initial complaint or allegation may have been made anonymously or little detail about the allegation may have been provided. It is, therefore, important to apply an on-going risk assessment approach. See 4.4 below.

4.2 Immediate response to an allegation

The immediate response to an allegation should ensure the safety of the child or other children. In seeking to do so the person(s) undertaking the risk assessment will consider following issues:

- does the child require protective intervention? Depending on the level of risk identified, a report to the 'Helpline' of Community Services or the police should be made regarding the child and the person that the allegation is about;
- whether any steps need to be taken to prevent further reportable conduct;
- support for the child(ren) involved should also be considered where appropriate.

4.3 Employment-related issues

The person undertaking the risk assessment must also consider whether it is appropriate for the SLM worker that is the subject of the allegation to remain in their current role, be moved to another role or be suspended.

- In determining what action should be taken, factors to consider may include:
 - the nature and seriousness of the allegation(s);
 - the vulnerability of the children that the person would be in contact with at work. For example, the age of the child(ren), their communication skills, or disability;
 - the nature of the role occupied by the person. For example, their level of interaction with children;
 - the level of supervision available for the person;
 - the availability of support for the person on a day-to-day basis if their duties are unchanged;
 - the person's disciplinary/misconduct history;
 - the nature of the person's engagement with SLM – for example whether he/she is a permanent or temporary employee, volunteer, student or contractor; and
 - other possible risks to the investigation.

- If the person remains in the workplace, a decision should be made about the duties they will undertake and who will monitor and assess the risks associated with the person having access to children while undertaking work.
- If Community Services and/or the police are involved, the Director or employee delegated to undertake the risk assessment should check with Community Services and/or police to see if any action taken by SLM will interfere with their investigations. It might also be appropriate to discuss any proposed changes to the concerned person's duties.
- Appropriate support for the person who has had the allegation made against them should also be provided.

Until the investigation is completed and a finding is made, any action, such as suspending or moving a SLM worker to alternate duties, is not to be considered an indication that the alleged conduct did occur.

The Director must record why decisions are made to take, or not take, any action as a result of a risk assessment.

4.4 **Ongoing risk assessment and management**

When gathering information about an allegation, the investigator in consultation with the Director must manage any new risks that emerge, and ensure that, on the basis of their ongoing risk assessment, appropriate support is being provided for:

- the child(ren) who were the subject of the allegation
- the SLM worker who was the subject of the allegation, and
- other relevant parties (this may include parents or carers of the child, other children or other employees affected by the allegation, for example, a witness to the alleged conduct).

It is also important to:

- ensure that the person that is the subject of the allegation is treated fairly and afforded procedural fairness, and
- address actual or perceived conflicts of interest.

4.5 **Risk management at the conclusion of the investigation**

At the completion of the investigation, a finding will be made in relation to the allegation and a decision made regarding what action, if any, is required in relation to the SLM worker, the child(ren) involved and any other parties.

The Director may direct the investigator or another employee to ensure that all relevant risk issues have been considered and/or to review the way in which the allegations or concerns about risks of harm were managed. Such a review could result in recommendations relating to:

- training for one or more SLM workers;
- changing work practices in certain situations;
- changes to the physical environment; or
- reviewing or amending aspects of the WWC Framework.

5. Recording information relating to allegations

When an allegation is made, the following information must be recorded:

- The allegation (an accurate and as close to verbatim account as possible of what has been said and by whom).
- SLM's initial response to the person making the allegation, the alleged victim(s) and the person who is the subject of the allegation;
- Consideration of the need to notify the NSW Police of a suspected criminal offence, or Community Services of a child who may be at risk of significant harm, and the outcome of any reports made.
- A plan detailing how the investigation is to be carried out, including whether Community Services and/or Police need to be notified.

- The initial risk assessment, including what the identified risks are, the arrangements to manage those risks and the action taken in relation to the child or SLM worker that is subject to the allegation (eg change in duties, support or counselling).
- All interviews, including details of the questions and responses. This should also include the location of the interview, who was present and the start and finish times of the interview. Where possible, records should be verbatim, verified, signed and dated by all involved;
- Any decisions made, both during and at the conclusion of the investigation, including their rationale, the role (job title) and name of the person making the decision and the date the decision was made;
- Any personal contact, discussions or emails with anyone about the matter. This should include the date, details of the discussions, questions, advice and outcome, the name of the person making the contact, details of their role (job title) and agency and where appropriate, the reason for the contact;
- A summary report that details the allegation, the investigation process, the findings in relation to each allegation (including the rationale for the finding), the final risk assessment (which includes any final decision about the SLM worker and the factors that have been considered) and any subsequent action that is to be or has been taken.

Note that all SLM records relating to reportable conduct are subject to NSW Ombudsman scrutiny. The Head of HR is to ensure that records relating to the allegation are kept on a file that is separate to the employee's personnel file and stored securely.

6. Confidentiality

Allegations of child abuse or reportable conduct can have serious effects on the person they are made against, as well as SLM generally. Fair and complete resolution of allegations can be put at risk if evidence is leaked as evidence can be contaminated.

All SLM workers have a responsibility to maintain confidentiality following the making of an allegation. It is important as far as possible that only those directly involved in reporting, assessing and responding to allegations are aware of the proceedings. The matter can only be discussed with persons involved in the investigation or otherwise dealing with the allegation, and those in a confidentially supporting or counselling role.

The Head of HR and the investigator must remind all parties of their obligation to maintain confidentiality, and that a finding of misconduct may result if they breach confidentiality. Any breaches of confidentiality must be immediately reported to the investigator, Head of HR or the Director.

All records made for the purpose of recording the making of or responding to allegations or reportable conduct must be stored securely by the person making them, and at conclusion of the investigations be collated by the Head of HR in a single, secure file. All copies made during the course of the investigation must be destroyed.

7. What happens to an employee when an allegation is made against them

A SLM worker may not be aware that an allegation has been made against them until they are notified in writing by the Director. This letter will set out in broad terms what they are alleged to have done, the purpose and process of the investigation and who has been appointed to conduct the investigation.

Where an initial risk assessment determines that urgent action must be taken regarding the person's work arrangements, then the person will be informed of the allegation and the actions that are being undertaken as a result of the initial risk assessment.

The person will next be contacted by the investigator who will put the allegation to them in more detail, explain their rights and giving him/her the opportunity to respond. He/she will be advised that they do not have to immediately respond as they are entitled to seek advice or support prior to doing so. The person's response will be given either at a recorded interview or in written form.

The investigator will inform him/her that they may bring a support person if they are interviewed about the allegation in person. The support person may observe but may not interrupt the interview or act as an advocate and should also be advised by the investigator to keep details confidential. The support person may be a union representative but not a practising lawyer. However, at any

time during an investigation the person can seek advice from external sources such as an independent legal practitioner.

At the conclusion of the investigation the Director will assess the evidence and make a finding in relation to each allegation. Each allegation will be: sustained; not sustained (insufficient evidence); not sustained (lack of evidence of weight); false; or, not reportable conduct.

The Director will notify the person of the findings of the investigation and of any SLM actions regarding the person as a result of these findings (e.g. commencement of SLM misconduct proceedings).

Roles and responsibilities

- Director:
 - oversees the WWC Allegation Handling Procedure;
 - ensures that appropriate decisions are made at each stage of the allegation handling process;
 - determines the initial risk assessment and any action immediately required;
 - determines whether an allegation relates to reportable conduct and informs the NSW Ombudsman;
 - determines who is to conduct an investigation, plans the investigation with that person and provides instructions to them regarding the conduct of the investigation;
 - informs the person subject to the allegation about the investigation;
 - takes appropriate action at the conclusion of the investigation after considering the recommendations of the investigator;
 - reports the outcome of the investigation to the person concerned and the NSW Ombudsman, and ensure that reports are made to the Children's Guardian as necessary.
- Members of the Executive (Director and Assistant Directors):
 - support the Director and follow this Procedure in dealing with allegations, as required.
- Head of HR:
 - ensures that each stage of the process is carried out in accordance with this Procedure;
 - ensures that correspondence and recommendations are drawn up for action by the Director at each stage of the process;
 - ensures that proper records are made and securely maintained;
 - ensures that confidentiality in relation to each stage of the reporting and investigation process is maintained;
 - liaises, if necessary, with external parties such as the NSW Department of Community Services, and the NSW Police
 - reports findings of an investigation to the Office of Children's Guardian (NSW).
- SLM workers:
 - SLM workers must be aware of their responsibilities under the Code of Conduct: Staff and Volunteers and the WWC Framework, in particular their obligation to report complaints, suspicions and allegations regarding children to the Head of HR or the Director.

Definitions

- Child: is a person under 18 years of age, unless otherwise specified.
Mandatory Reporter: under the *Children and Young Persons (Care and Protection) Act 1998* mandatory reporters include: any employee in child-related work; any contractor or service provider in child-related work; and any SLM Manager or Supervisor with direct supervisory responsibilities for a person engaged in child-related activities.
- Risk of significant harm: a child is at risk of significant harm if there are current concerns for their safety, welfare or wellbeing. For further detail see section 23 of the *Children and Young Persons (Care and Protection) Act 1998*.

- SLM premises: means all real property owned or operated by SLM, including under lease, licence, Government agreement or otherwise.
- SLM worker: means any person engaged by SLM in a paid or unpaid capacity including: employees, contractors, volunteers, work experience students or interns.
- WWC Framework: means the Working With Children Policy, the Code of Conduct: Staff and Volunteers and this Procedure.

Legislation

- *Children and Young Persons (Care and Protection) Act 1998* (NSW)
- *Ombudsman's Act 1974* (NSW)
- *Child Protection (Working with Children) Act 2012* (NSW)
- *Government Sector Employment Act 2013* (NSW)
- *Government Sector Employment Rules 2014* (NSW)
- *Government Sector Employment Regulation 2014* (NSW)

Related SLM policies

- Working With Children Policy
- Code of Conduct: Staff and Volunteers
- Dignity & Respect Policy (under development)
- Grievance Handling Procedure

Superseded documents

- None

Revision history

Version	Date issued	Notes	By
1	17/07/2014	Procedure developed	Policy & Compliance Officer

Review date

This procedure will be reviewed every 3 years. The next review date is 14/07/2014.

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