Managing Incidents: Allegations, Duty of Care, Maltreatment & Disclosure
Management Practice

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**Objective**

The objective of this Management Practice is to ensure City of Stirling OSHC staff are aware of the scope of their responsibility in terms of children in their care (duty of care), including responding to allegations or abuse or neglect, understanding maltreatment and the disclosure of information.

**Scope**

This Management Practice applies to –

- All employed City of Stirling staff
- Volunteers to the Centres
- Any Visitors to the Centres (either employed by City of Stirling or not)

**(1) Key Information:**

- This Management Practice is directly related to the City of Stirling’s *Establishing a Protective Environment* Management Practice in terms of staff recruitment and employment, staff and child supervision and staff training.
- The City of Stirling places the highest importance on the safety and welfare of all children under its care. It is the responsibility of each OSHC centre to ensure suitable strategies are implemented in order to protect children and staff if incidents/allegations of abuse or neglect occur. All staff of City of Stirling OSHC should be familiar with the relevant legislation and regulations in order to better understand the responsibilities of their position.

*Children have a fundamental right to be protected and kept safe while they are in an approved service. Children who are unsafe are at risk of having their physical health and wellbeing negatively impacted on, which, in turn, can negatively affect children’s experiences, learning and wellbeing in the present and throughout their future lives.*

Guide to the National Quality Standard Element 2.3.2

- If an allegation against a staff member is made, the City of Stirling has the responsibility to its employees to uphold their right to confidentiality unless allegations are substantiated.
**(2) Duty of Care:**

- Each staff member of the City of Stirling OSHC must be aware of their responsibility to the children in their care. Each staff member has an obligation to the children attending OSHC that they will remain safe from risks of harm that reasonably ought to be foreseen.

_The nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service._


**When a Child needs to be protected:**

- In Australia cultural practices and traditions cannot be used as an excuse for abuse and sexual exploitation. This also applies to Aboriginal and Torres Strait Islander culture.

There are generally five types of child abuse and neglect, which may co-exist:

- physical abuse
- sexual abuse
- emotional abuse
- psychological abuse
- Child neglect.


**(3) Allegations/Concerns:**

**(3.1) Acting on Suspicion when there has been No Disclosure:**

- A concern about the welfare of a child is based on the observation of indicators or information that may lead to a belief formed on reasonable grounds that a child has been the subject of abuse/maltreatment.
- As many children are embarrassed, afraid or are too young or incapable (lacking cognitive or language development) to disclose they are being abused it is the duty of the OSHC staff to be observant in looking for child abuse indicators. Refer to the following website for indicators of the forms of abuse and neglect.


(No this covers physical, behavioural & parent/carer indicators)

- Keep a written record of all observations and any statements made by the child.
- Report the concerns to a senior staff member or the appropriate authorities – City of Stirling Children Service’s coordinator in this case, where you will be advised on your next step.
- Refer to _Child Protection: Managing Incidents Procedure_

**(3.2) If an Allegation is made about someone at Home or Any Other Place:**

- If a child discloses (directly or indirectly) information about possible abuse or OSHC staff observes child abuse indicators report the concerns to a senior staff member or the appropriate authorities - City of Stirling Children Service’s Coordinator in this case, where you will be advised on your next step.
- See: Child Safety Australia Website
- An incident also needs to be reported if the suspected abuse happens off the centre’s premises
- Refer to Sec 3.4: Issues That May Affect Reporting Suspected Abuse
(3.3) If an Allegation is made about a Staff Member at the Centre:

- This can arise from a variety of sources e.g. staff observations, something a child says, a complaint from a parent or member of the community.
- Report the concerns to a senior staff member or the appropriate authorities - City of Stirling Children Service’s Coordinator in this case, where you will be advised on your next step.
- Plan how to manage the situation within your centre – refer to Child Protection: Managing Incidents Procedure.

(3.4) Issues That May Affect Reporting Suspected Abuse:

- Concern that Reporting will be Detrimental to Relationships with Families (Breaking Family’s Confidence) –
  - A close relationship often develops between professionals and the families, with whom they work, leading to an increased reluctance to report suspected abuse or neglect. However, in situations where there are serious concerns about the safety and wellbeing of a child, there is a greater ethical responsibility to report concerns.

- Concern About a Child but Not Sure if Abuse has Occurred –
  - It is not the responsibility of OSHC staff to provide proof of abuse. This is the Department for Child Protection’s duty. A concern about the safety and well being of a child is paramount and should warrant contact with the Department for Child Protection or City of Stirling Children's Development Coordinator.

- Concern that Reporting May Cause the Child to be Removed from Their Family –
  - This may be a particular concern for reporters of Aboriginal or Torres Strait Islander descent or staff that are reporting about a child of Aboriginal or Torres Strait Islander descent due to past generations being forcibly removed from families and placed in institutionalised care.
  - The Department for Child Protection has a ‘child in family’ focus which sees the placement of a child outside their family as an option of last resort. The focus of the Department’s intervention, in the first instance, is to keep families together.
  - In the event that a child or young person may require placement out of home, an Aboriginal or Torres Strait Islander staff member must be involved at all relevant times in making the arrangements and are guided by the Aboriginal and Torres Strait Child Placement Principle which embraces the principles of self determination and community participation to ensure, as far as possible, that children remain within their family and community.

(1) The objective of the principle in subsection (2) is to maintain a connection with family and culture for Aboriginal children and Torres Strait Islander children who are the subject of placement arrangements.

2) In making a decision under this Act about the placement of an Aboriginal child or a Torres Strait Islander child, a principle to be observed is that any placement of the child must be considered as far as is practicable in the following order of priority —
   (a) placement with a member of the child’s family;
   (b) placement with a person who is an Aboriginal person or a Torres Strait Islander in the child’s community in accordance with local customary practice;
   (c) placement with a person who is an Aboriginal person or a Torres Strait Islander;
   (d) placement with a person who is not an Aboriginal person or a Torres Strait Islander but who, in the opinion of the CEO, is sensitive to the needs of the child and capable of promoting the child’s ongoing affiliation with the child’s culture, and where possible, the child’s family.

Children and Community Services Act 2004 Part 2 Div 3 Sec 12 (Aboriginal and Torres Strait Islander Child Placement Principle)

- Having to Give Evidence in a Court of Law –
  - The majority of reports made to the Department for Child Protection are resolved through effective engagement with families that lead to the provision of support services, resulting in increased safety for children. Very few reports result in an Application for Protection
Orders in the Children’s Court. However, if this does occur, you may be asked to give evidence to the Children’s Court.

- **Concern about Reporting Abuse that May be Appropriate to a Child’s Culture or Traditions** –
  - The abuse or neglect of children is not considered to be appropriate or condoned in any culture or religion. While concerns for the wellbeing of children should be informed by an understanding of cross-cultural parenting practices and cultural and religious backgrounds, it should never be used as an excuse or to justify abuse or neglect.

For more information regarding this area –

(4) **Disclosure:**

- Disclosures of abuse by children of any age must always be taken seriously.
- A child or adolescent may make a direct disclosure about the abuse or may allude indirectly to the abuse, for example 'I know someone whose father hits her across the face'.
- Young children often find it difficult to say that abuse is occurring, particularly when the abuser is a parent. Sometimes they are threatened by the abusive parent to keep them quiet about the abuse. Children often cover up for abusive parents when questioned about an injury, with statements like 'I can't remember', or 'It was my fault' or 'It doesn't happen very often'. Some children may accommodate themselves to a high level of family violence and may believe that physically abusive behaviour is normal. All children are more likely to disclose abuse to an adult with whom they have developed a trusting relationship.
- As a caregiver you may become aware of the possibility that a child may have been maltreated in a number of ways. A child may purposefully or unintentionally disclose information about maltreatment (refer to definition)

- The most important and immediate things a OSHC staff member can do are:
  - Always believe the child.
  - Reassure the child that telling you was the right thing to do.
  - Maintain a calm appearance.
  - Find a quiet place to talk.
- Keep a written record of all observations and any statements made by the child.
- Report the concerns to a senior staff member or the appropriate authorities – City of Stirling Children Service’s Coordinator in this case, where you will be advised on your next step.
- Refer to Child Protection: Managing Incidents Procedure

(5) **Child Protection and Mandatory Reporting** –

Child protection is the philosophies, strategies, guidelines, policies and procedures that are designed to protect children from intentional or unintentional harm. This can be in forms of neglect, abuse or assault and it is the responsibility of City of Stirling OSHC staff to be aware of aware of current child protection policy and procedures, including their legislative responsibilities in states and territories where these apply.

*Every educator, co-ordinator, family day care educator assistant and staff member has a legal and ethical obligation to act to protect any child who is at risk of abuse or neglect. To be able to act when required, educators, co-ordinators, family day care educator assistants and staff members must be aware of current child protection policy and procedures, including their legislative responsibilities in states and territories where these apply.*

Guide to the National Quality Standard Element 2.3.4
It is a legal requirement in Western Australia for doctors, nurses, midwives, teachers and police officers to report all reasonable beliefs of child sexual abuse to the Department for Child Protection.


(5.1) What is Reportable?
- Outcomes or actions from which children are in need of protection include; neglect, physical abuse, sexual abuse, domestic violence and psychological harm. These are all reportable offences.

(5.2) What are Reasonable Grounds?
- You do not need to have proof to report any concerns you have about the safety of a child or young person. Indicators that represent reasonable grounds to report a suspected offence include:
  - A child or young person discloses that he or she has suffered or is suffering non accidental physical injury or sexual abuse
  - Someone else advises you that a child or young person has been sexually abused or non-accidentally injured, or
  - Your own observations of the child or young person's physical condition or behaviours lead you to reasonably suspect that the child or young person has suffered or is suffering non-accidental physical injury or sexual abuse.

Reporting Suspected Harm:

- Mandatory Report Service
  Department for Child Protection
  Available 24 hours a day, seven days a week.
  Free call 1800 708 704 (excluding mobile telephones)
  Fax 1800 610 614
  Email mrs@dcp.wa.gov.au
  Postal Address PO Box 8146
  PERTH BC WA 6849


Liability:
- It is a moral and ethical requirement that any suspected abuse is reported. Any person who reports suspected child abuse or neglect cannot be held liable for damages or legal proceedings as long as the report was made in “good faith”.

(1) This section applies if a person acting in good faith —
gives information to the CEO or another officer about any aspect of the wellbeing of a child;
(2) In giving the information or making the report or notification the person —
(a) does not incur any civil or criminal liability; and
(b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and
(c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person’s employment or to have engaged in unprofessional conduct.

Children and Community Services Act 2004 Part 4 Div10 Sec129 (Protection from Liability for Giving Information)

Confidentiality:
The Department for Child Protection is legally obligated to keep all reports confidential. It is illegal for DCP employees to tell a family where a complaint came from. However, if a complaint comes before the Children’s Court, it is possible the department’s files could be subpoenaed and information made available to the family of the child.

(6) Licensee Convicted of an Offence:
Grounds for cancellation of provider approval
The Regulatory Authority may cancel a provider approval if-
(b) the Regulatory Authority is satisfied that the continued provision of education and care services by the approved provider would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by an education and care service operated by the approved provider; or
(c) the approved provider has been found guilty of an indictable offence or an offence that if committed in this jurisdiction would be an indictable offence; or
(d) the approved provider has been found guilty of an offence under this Law as applying in any participating jurisdiction;

If a staff member is convicted of an offence, parents of the children attending the OSHC centre must be informed.

Notice to parents of suspension or cancellation
(1) This section applies if a provider approval has been suspended or cancelled under section 27, 28, 33 or 34.
(2) The Regulatory Authority may require the person who is or was the approved provider to give written notice of the suspension or cancellation and its effect to the parents of children enrolled at all or any of the education and care services operated by that person.
(3) A person must comply with a requirement made of that person under subsection (2).

Definitions

Allegation:
a statement of claimed fact contained in a complaint (a written pleading filed to begin a lawsuit), a criminal charge, or an affirmative defence (part of the written answer to a complaint). Until each statement is proved it is only an allegation. Some allegations are made "on information and belief" if the person making the statement is not sure of a fact.

Child Abuse/Maltreatment:
refers to non-accidental behaviour towards another person, which is outside the norms of conduct and entails a substantial risk of causing physical or emotional harm. Behaviours may be intentional or unintentional and include acts of omission and commission. Specifically abuse refers to acts of commission (physical, sexual, emotional abuse) and neglect acts of omission (emotional, medical, educational, physical neglect also failure to supervise and exposure to violent environments.)

Australian Legal Definitions (Sept 2007):

For detailed definitions on the main 5 types of child abuse/maltreatment refer to:
Australian Institute of Family Studies: What is Child Abuse and Neglect?

Disclosure:
When a child volunteers information about abuse or neglect to a staff member. Disclosures can happen by accident or a child may let others know in a disguised manner, e.g.
• “blurt out” a harmful experience or a fear of something
• confide in private
• tell another child
• provide hints such as drawings, in role play or through stories
• pose a “what if” or “friend of mine” scenarios
• present with somatic symptoms such as constantly feeling “sick

Child Protection Policy:

Disclosure can also refer to the legal requirements of the City of Stirling OSHC to pass on information as required by contract or law.

**Duty of Care:**
City of Stirling OSHC staff have a responsibility to take reasonable care for the safety and welfare of a child whilst under the supervision of the centres. The duty is to take such measures as are reasonable in all the circumstances to protect children from risks of harm that reasonably ought to be foreseen.

**Mandatory Reporting:**
Occurs where a person is obliged by law to report specific forms of child abuse to a government authority where that person reasonably suspects that that abuse has occurred.

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**Relevant Policies/Documents**

- Dept for Child Protection – Responding to a Child who makes a Disclosure of Sexual Abuse

- Dept for Communities – Allegation of Child Abuse

- Dept for Child Protection – Types of Abuse and Neglect

- Dept for Communities – How do I Recognise When a Child is at Risk of Abuse or Neglect


- Dept for Child Protection – Making a Report to the Department

- Child Safety Australia – Child Abuse Indicators

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**Legislation/Local Law Requirements**

- Guide to the National Quality Standard Element 2.3.2
- Guide to the National Quality Standard element 2.3.4
- Education and Care Services National Law (WA) Act 2012 Part 6 Section 165
- Education and Care Services National Law (WA) Act 2012 Part 2 Division 4 Section 36
Children and Community Services Act 2004 Part 2 Div 3 Sec 12 (Aboriginal and Torres Strait Islander Child Placement Principle)

Children and Community Services Act 2004 Part 4 Div10 Sec129 (Protection from Liability for Giving Information)

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