

CIRCULAR

File No 99/220

Circular No 99/65

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Contact Mr J Greville (02) 9219-7484
Staff Records Management Unit

OMBUDSMAN AMENDMENT (CHILD PROTECTION AND COMMUNITY SERVICES) ACT 1998 - ALLEGATIONS OF CHILD ABUSE

INTRODUCTION

The *Ombudsman Amendment (Child Protection and Community Services) Act 1998* commenced operation on May 7, 1999. The Act requires the Ombudsman to oversee and monitor investigations into allegations of child abuse against employees of the Departments of Community Services, Corrective Services, Education and Training, Health, Juvenile Justice and Sport and Recreation, as well as area health services, non-government schools, child care services and substitute residential child care services.

Notification of suspected child abuse and neglect has been the subject of previous Departmental circulars, viz 97/58 (Incidents Reportable to the Department of Health), 97/135 (Notification of Suspected Child Abuse) (copy attached) and 97/80 and the requirements of these policies continue to apply. Departmental circular 97/80 deals specifically with the vetting and management of allegations of improper conduct by employees and continues to apply, however, the content of this circular will be incorporated in the rewrite of 97/80 presently being undertaken.

The *Ombudsman Regulation 1999* extends the application of the Act to those statutory health corporations and affiliated health organisations covered by Schedules 2 & 3 of the *Health Services Act 1997*. In addition, all other public authorities fall within coverage of the Act if the alleged child abuse occurred in the course of the person's employment with the authority. The Ambulance Service of NSW is to comply with the requirements of this Circular.

Distributed in accordance with circular list(s):

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The term designated agency **in this** circular means any of the following:

- Department of Health
- an area health service within the meaning of the Health Services Act 1997
- a statutory health corporation within the meaning of the Health Services Act 1997
- an affiliated health organisation within the meaning of the Health Services Act 1997
- an agency providing substitute residential care for children
- the NSW Ambulance Service

Advice and support in respect to the requirements of *the Ombudsman Amendment (Child Protection and Community Services) Act*, can be obtained by contacting the Ombudsman's Office Child Protection Team on telephone number (02) 9286 1000 or the NSW Department of Health Staff Records Management Unit on telephone number (02) 9219 7494.

Copies of the NSW Ombudsman document "Child Protection: Your New Responsibilities" have been forwarded to each health service. This document contains procedures and definitions on such things as what is an "allegation" of child abuse and is to be implemented in conjunction with the provisions of this circular.

What are the major functions of the Act?

The major functions and obligations created by the Act are:

- the Ombudsman is to keep under scrutiny the systems for preventing child abuse by employees of designated agencies, and for the handling of or response to child abuse allegations or convictions;
- heads of designated agencies have to notify the Ombudsman as soon as practicable of any child abuse allegation or conviction made against an employee of the agency;
- the Ombudsman can oversee or monitor the conduct of the investigation into such an allegation or conviction, whether it is conducted by the designated agency, or by another agency;
- the Ombudsman is required to determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation;
- the Ombudsman can directly investigate a child abuse allegation or conviction against an employee of a designated agency, or the handling of or response to such a matter;
- the Ombudsman is to be provided with any information requested by the Ombudsman.

Who is considered to be the head of an agency and what obligations are placed on that person under the Act?

In s.25A of the *Ombudsman Act*, **head of an agency** means:

The chief executive officer or other principal officer of the agency

The *Ombudsman Act* places certain obligations upon the head of a designated agency. The head of an agency is required:

- to establish systems for preventing child abuse by employees of the agency, and to handle and respond to allegations of child abuse made against an employee of the agency;
- to provide, as the Ombudsman requires, information about the nature and operation of the systems for preventing child abuse by employees of the agency, and for handling and responding to child abuse allegations and convictions involving those employees;
- to make arrangements within the agency to require all its employees to notify the head of the agency of any child abuse allegation or conviction of which they become aware;
- to notify the Ombudsman of any child abuse allegation or conviction against an employee of the agency of which the head of the agency becomes aware. Such notification is to be made as soon as practicable, **and in any event, within 30 days** of the head of the agency becoming aware of the allegation or conviction, or within such further period as may be agreed to by the Ombudsman;
- a copy of a pro forma "Notification Form" is attached. This notification form is primarily intended to determine the nature of the allegation, and to obtain details about what you have done to date in relation to the allegation. The investigation of a child abuse allegation needs to be conducted carefully and sensitively. It is important to understand that the oversight role of the Ombudsman does not mean that you have to undertake your own investigation in situations where you normally would not. You may already have procedures in place for handling allegations of child abuse made against staff. Where you are following these procedures in relation to the subject of this notification, make this clear at the appropriate question;
- to notify the Ombudsman whether or not the agency proposes to take any disciplinary or other action in relation to the employee the subject of the allegation or conviction, and the reasons why it intends to take or not to take any such action. Such notification is to be made as soon as practicable;
- to notify the Ombudsman of any written submissions made to the head of the agency concerning any 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. Such notification is to be made as soon as practicable;

- to provide the Ombudsman with such documentary and other information as the Ombudsman may from time to time request to assist in the Ombudsman's monitoring of an investigation conducted by or on behalf of the agency into a child abuse allegation or conviction (s.25E(3));
- to provide the Ombudsman with:
 - a) a copy of any report prepared by, or provided to the head of the agency as to the progress or results of the investigation, and copies of all statements taken in the course of the investigation and of all other documents on which the report is based that are available, and
 - b) such comments on the report and statements as the head of the agency thinks fit, and
 - c) advice as to the action that has been taken or is proposed to be taken with respect to the child abuse allegation or conviction the subject of the investigation,

as soon as practicable after being satisfied that an investigation into a child abuse allegation or conviction conducted by or on behalf of the agency has been concluded;
- to provide such additional information as the Ombudsman considers necessary to enable the Ombudsman to determine whether the child abuse allegation or conviction was properly investigated and whether appropriate action was taken as a result of the investigation;
- to defer an investigation into a child abuse allegation or conviction if the Ombudsman notifies the head that the Ombudsman intends to investigate the matter and that the investigation by the agency should be deferred;
- at the conclusion of an investigation by the Ombudsman, or on a decision by the Ombudsman to refer the matter back to the agency, to receive from the Ombudsman any recommendations for action to be taken with respect to the matter, together with information relating to the recommendations;
- as noted above, the Ombudsman can require an agency to provide information as to the nature and operation of systems relied on by the agency to prevent child abuse by employees. As such agencies should have systems in place, based on the guidelines for management of allegations against employees contained in circular 97/135.

Reporting by other investigative agency

If the Head of an agency is provided with advice from another investigative agency that an employee of the agency is under investigation for alleged child abuse, the Head of the agency should let that investigative agency know that the Head of the agency is obliged by law to advise the Ombudsman of such an allegation.

Who is considered to be an employee of the agency?

In s.25(1) of the *Ombudsman Act* **employee of an agency** includes:

a) any employee of the agency, whether or not employed in connection with any work or activities of the agency that relates to children, and

any individual engaged by the agency to provide services to children (including in the capacity of a volunteer).

The definition of employee covers paid employees of a designated agency, regardless of whether their position requires them to work with children, as well as any other person working for the agency who works directly with children.

Persons who might be “engaged” by the agency to work with children **include** the following:

- contractors (such as Visiting Medical Officers)
- sub-contractors
- foster carers
- volunteers
- work experience participants, being either any work experience employer providing supervision to or working directly with students, or work experience students placed in a designated agency to work with children; and
- student placements.

Any employee who becomes aware of a child abuse allegation or conviction is to immediately notify the head of the health service who will make arrangements to notify the Ombudsman’s Office and the Staff Records Management Unit.

What should the head of the agency do if an allegation of child abuse is received?

The NSW Ombudsman recognises that there are a variety of approaches to dealing with allegations of child abuse against employees of an agency.

- **In the first instance any allegation of child abuse by an employee is to be reported to the Police and the Department of Community Services where necessary.** The NSW Ombudsman or the Department of Health Staff Records Management Unit can be contacted for advice.
- Rely on expertise. Without appropriate skills or experience in conducting investigations you run the risk of compromising the investigation.
- Avoid contamination of evidence. If you have to speak to staff or children ensure that they understand they are not to discuss their statements with other staff or children.

See requirement of circulars 97/135, 97/58 and 97/80 re actions required and who can undertake investigations.

What else can the Ombudsman do in respect to a child abuse allegation or conviction?

S.25G of the *Ombudsman Act* states:

- 1) The Ombudsman may conduct an investigation concerning any child abuse allegation, or child abuse conviction, against an employee of a designated government or non-government agency of which the Ombudsman has been notified under this Part or otherwise becomes aware.
- 2) The Ombudsman may also conduct an investigation concerning any inappropriate handling of or response to any such child abuse allegation or child abuse conviction, whether on the Ombudsman's own initiative or in response to a complaint.
- 3) The Ombudsman may exercise any conciliation or other relevant powers under this Act in connection with an investigation by the Ombudsman.
- 4) The head of the agency is to defer an investigation into the matter if the Ombudsman notifies the head that the Ombudsman intends to investigate the matter under this Act and that the investigation by the agency should be deferred.
- 5) At the conclusion of an investigation by the Ombudsman, or on a decision by the Ombudsman to refer the matter back to the agency, the Ombudsman is to provide the agency with any recommendations for action to be taken with respect to the matter, together with any necessary information relating to the recommendations.

How do heads of agencies report allegations or convictions of child abuse?

Health services are required to complete and report any allegations or convictions of child abuse on the pro formas attached to this circular. The original of a completed pro forma is to be forwarded to the Ombudsman's Office with a copy being forwarded to the Department's Staff Records Management Unit. The Department's Staff Records Management Unit is developing an electronic notification and event management system (NEMS) which will assist health services in meeting their obligations pursuant to this policy. Staff from the Staff Records Management Unit will make arrangements with the principal officers of health services for future training.

Staff Records Management Unit can be contacted on a 24 hour basis on telephone number 9291 7494 or pager 016 632 313 and enquiries regarding this circular can be directed to the same telephone number.

Michael Reid
Director-General

CHILD PROTECTION NOTIFICATION FORM

Effective from May 7, 1999

IMPORTANT! PLEASE NOTE THE FOLLOWING:

1. For the purpose of this notification form, an **allegation** of child abuse against an employee of your agency also refers to a **conviction** for a child abuse offence against an employee of your agency.
2. Should you have any questions regarding the information required by this notification form, please contact a member of the **Child Protection Team at the NSW Ombudsman on (02) 9286 1000 or toll free 1800 45 1524.**
3. This notification form is primarily intended to determine the nature of the allegation, and to obtain details about what you have done to date in relation to the allegation. The investigation of a child abuse allegation needs to be conducted carefully and sensitively. It is important to understand that the oversight role of the Ombudsman does not mean that you have to undertake your own investigation in situations where you normally would not. You may already have procedures in place for handling allegations of child abuse made against staff. Where you are following these procedures in relation to the subject of this notification, make this clear at the appropriate question.

Where the form asks for details of witnesses or other evidence obtained, please do not regard this as indicating that you must undertake significant inquiries. These questions are asked merely to determine what, if any, inquiries have been conducted by your agency to this point.

It is important that any investigation conducted by you or somebody on your behalf does not have the potential to prejudice any criminal or care and protection proceedings relating to the allegation. **If you are unsure as to how extensive your inquiries should be, you should contact your local Department of Community Services Centre or the Child Protection Enforcement Agency on 9690 4199.**

4. Upon completion of the notification form, it must be placed in a sealed envelope marked "Strictly Confidential: For the attention of the Child Protection Team" and **hand delivered to the NSW Ombudsman, Level 3, 580 George Street, Sydney.** Alternative arrangements for the **secure** delivery of the notification form must be made and confirmed with the Child Protection Team prior to transmission.

NSW Ombudsman
Level 3, 580 George St
Sydney NSW 2000

General enquiries:
02 9286 1000

**Toll free (outside Sydney
Metro Area): 1800 451 524**

Telephone typewriter (TTY):
92 9264 8050

E-mail:
nswombo@nswombudsman.nsw.gov.au

Website:
<http://www.nswombudsman.nsw.gov.au>

Part A: Details of agency

1.0 Name of agency: _____

1.1 Type of agency:

Designated government agency OR
 Public authority (other than a
designated government agency) OR

Designated non-government agency:
 Non-government school
 Child care centre
 Substitute residential care service

1.2 Nature of service provided by your agency (E.g. education, disability, respite care): _____

1.3 Head of agency: _____

1.4 Address: _____

1.5 Telephone number: _____

1.6 Facsimile number: _____

1.7 E-mail address (if applicable): _____

Signature: _____ **Date:** _____

If another officer of the agency is preferred as the contact for any further inquiries in relation to this notification from the Ombudsman, please provide their details below:

Name of officer: _____

Position: _____

Address: _____

Telephone number: _____

Facsimile number: _____

E-mail address (if applicable): _____

Part B – Details of the person against whom the allegation(s) has been made

2.0 Name of person against whom the allegation(s) has been made: _____

2.1 Are you aware if the person has used or is known by any other name?

Yes No

If yes, provide details of other names known to you:

2.2 Position title at time allegation(s) was made: _____

2.3 Position title at time the alleged event(s) are said to have occurred: _____

2.4 Work address: _____

2.5 Work phone: _____

2.6 Current employment status with agency (tick all applicable):

- | | | |
|-------------------------------------|---------------------------------------|------------------------------------|
| <input type="checkbox"/> Permanent | <input type="checkbox"/> Casual | <input type="checkbox"/> Part-time |
| <input type="checkbox"/> Contractor | <input type="checkbox"/> Foster Carer | <input type="checkbox"/> Volunteer |

2.7 Employment status with agency at time conduct was alleged to have occurred (tick all applicable):

- | | | |
|---|---------------------------------------|------------------------------------|
| <input type="checkbox"/> Permanent | <input type="checkbox"/> Casual | <input type="checkbox"/> Part-time |
| <input type="checkbox"/> Contractor | <input type="checkbox"/> Foster Carer | <input type="checkbox"/> Volunteer |
| <input type="checkbox"/> Was not employed at agency | | |

2.8 Date of birth (if known), or age (if date of birth not known): _____

2.9 Home address: _____

2.10 Home phone: _____

2.11 Previous employment (if known):

2.12 Is the person aware of the existence of the allegation(s)?

Yes No

2.13 If yes, provide details (E.g how and when were they made aware of the allegation(s); how much of the allegation were they made aware of; other relevant details):

If there are other employees from your agency involved in the conduct which is the subject of the allegation, please attach to this form additional pages answering the questions in this section, and mark the pages 'Part B'.

Part C – Details relating to the alleged victim(s)

3.0 Alleged victim's name: _____

3.1 Date of birth (if known), or age (if date of birth not known): _____

3.2 Home address: _____

3.3 Home phone: _____

3.4 Is the child:

Aboriginal

Torres Strait Islander

From a non-English
Speaking background

3.5 Does the child have a disability?

Yes No

If so, please provide details:

3.6 Are the parents/guardians/carers of the alleged victim aware of the allegation(s)?

Yes No

3.7 If yes, provide details (How were they made aware of the allegation(s); who made them aware of the allegation(s); other relevant details):

If there is insufficient space to complete this question, or there are further alleged victims, please attach to this form additional pages answering the questions on this page, and mark these pages 'Part C'.

Part D – Nature of the allegation(s)

4.0 Provide details of the allegation(s). (Provide those details that were made known to you by the person advising you of the allegation, e.g. what behaviour or conduct has been alleged; when was it alleged to have occurred; where was it alleged to have occurred; other relevant detail(s):

If there is insufficient space to complete this question, please attach additional pages, marked 'Part D', to this form.

4.1 Does the allegation relate to any other notification(s) which you have previously made to the NSW Ombudsman?

Yes No

If yes, please provide the reference number(s) assigned by this Office to the previous matter(s):

5.0 Please detail how the allegation was brought to your attention. (Who made the initial allegation(s); to whom were the initial allegation(s) made; on what date were the allegation(s) made; what were the circumstances in which the allegation(s) were made):

6.0 Are you aware of any possible witnesses?

Yes No

6.1 If yes, provide names, and if known, details for making contact with them:

7.0 Are you aware of any other evidence having been obtained or collected at this time (E.g. statements)?

Yes No

7.1 If yes, provide details:

8.0 Are any other employees within the agency aware of the allegations?

Yes No

If yes, provide names of the employees. How did these employees become aware of the allegation(s)?

Part E – Action taken in respect of the allegation(s)

9.0 Has the Department of Community Services been made aware of the allegation(s)?

Yes No

9.1 If so, when was the notification made to the Department? _____

9.2 Who made the notification? What, if any, position do they hold in your agency?

9.3 How was the notification made? (E.g. telephone, facsimile, letter):

9.4 If known, to which Community Services Centre (CSC) was the notification made? If known, to which officer at the CSC was the notification made?

10.0 To the best of your knowledge, are the Police Service or a Joint Investigation Team aware of the allegation(s)?

Yes No

10.1 If known, which officer(s) are investigating the allegation?

11.0 Has counselling and/or support been offered to or arranged for the alleged victim?

Yes No

12.0 What action has been taken by you or your agency in respect of the person against whom the allegation(s) has been made pending the completion of inquiries? Why was this course of action chosen?

Part F – Action proposed to be taken in respect of the allegation(s)

13.0 If no action has yet been taken by you or your agency in respect of the person against whom the allegation(s) have been made, what action is proposed to be taken pending the completion of inquiries? Why has this course of action been chosen?

14.0 What other action do you propose to take in respect of the allegation(s)? Why do you propose to take this course of action?

Part G – Documentary material relating to this notification

15.0 Have any written submissions, either relating to the allegation(s) or the action taken in respect of the allegation(s), been provided to you or your agency by the person against whom the allegation(s) has been made?

Yes No

If so, please attach copies of those submissions.

16.0 Have you received or obtained any other relevant documentation to this point (E.g. transcripts or minutes of meetings and interviews with employee, other relevant persons; file note(s))?

Yes No

16.1 If yes, please list all such documents:

Please attach copies of these documents.

CHECKLIST

Prior to sending notification form, make sure each of the following sections have been completed:

Part A – Details of Agency

✓ Have you identified your agency, and provided the contact details for the head of the agency and any other contact officer?

Part B – Details of the person against whom the allegation(s) has been made

✓ Have you provided the personnel and other details relating to the person against whom the allegation(s) of child abuse has been made?

Part C – Details relating to the alleged victim(s)

✓ Have you provided details for the alleged victim(s)?

Part D – Nature of the allegation(s)

✓ Have you provided details of the allegation(s)?

✓ Have you provided details of any inquiries conducted by or on behalf of your agency to this point?

Part E – Action taken in respect of the allegation(s)

✓ Have you provided details of the action you have already taken in respect of the allegation(s)?

Part F – Action proposed to be taken in respect of the allegation(s)

✓ Have you provided details of any action you propose to take in respect of the person against whom the allegation(s) have been made?

✓ Have you provided details of any action you propose to take regarding investigations into the allegation(s) by or on behalf of your agency?

Part G – Documentary material relating to this notification

✓ Have you provided details, and attached copies, of any submissions made by the employee concerned?

✓ Have you provided details, and attached copies, of any other relevant documentary material in your possession?