

Art Gallery of New South Wales
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Art Gallery of New South Wales

Child Protection Policy

February 2003

Ministry for the Arts – Child Protection Policy 2002

CONTENTS

Forward

1.0 Purpose of Policy

2.0 Principles Underpinning the Policy

3.0 Policy Statement

4.0 Appendix

4.1 Legislative Basis for the Policy

4.2 NSW Interagency Guidelines for Child Protection Intervention

4.3 Code of Conduct for Child Protection in the Workplace

4.4 Responding to a Child's Disclosure of Abuse or Neglect - Guidelines

4.5 Key identified positions within the organisation

4.5.1 Child-related employment positions

4.5.2 Positions that must report incidences where children are at *risk of harm*

4.5.3 Positions to which the following is reported:

- *risk of harm* to a child; and
- an allegation against an employee

FORWARD

The NSW Government is strongly committed to the protection of children and young people and has introduced new child protection legislation to demonstrate that commitment. The legislation includes new responsibilities for organisations who have unsupervised contact with children and young people and extends to entertainment and educational institutions.

As an arts/cultural collecting and educational institution, the Art Gallery of NSW provides important educational and entertainment services to children and young people. Providing an environment which supports the safety, welfare and well-being of children and young people during their visit to our organisation is now not only a moral obligation, but also a requirement under the new legislation.

The Gallery's *Child Protection Policy* and *Child Protection Procedures* have been established to assist in meeting our commitment and obligations to protect children and young people during their visit to and contact with the Art Gallery.

The new legislation places a number of responsibilities upon this organisation. For the most part, only people in positions (paid or unpaid) which have direct contact with children, are affected. However, the Art Gallery also has management responsibilities in relation to investigation and reporting incidents considered to indicate a risk of harm to children and allegations against employees. The affected positions and an outline of their responsibilities under the legislation are provided at Appendix 4.5 of this policy. The Art Gallery's *Child Protection Procedures* should be consulted for guidance on implementing these responsibilities.

While other staff within the Art Gallery may not have direct contact with children or young people at work in normal circumstances, they are expected to be aware of the Gallery's *Child Protection Policy* and observe the Code of Conduct and principles for child protection should it be necessary.

It is important to note that this *Child Protection Policy* and the *Child Protection Procedures* have an interrelationship with other key policies of the Art Gallery, including our Code of Conduct and our Workplace Relations Policy and procedures. It may be necessary from time-to-time to refer to these other policies and procedures to ensure all people are treated with respect and fairness while safeguarding children and young people.

I am proud to lead an organisation which has an excellent record in providing services to children and young people and I trust that this policy and the *Child Protection Procedures* will serve to strengthen the organisation's commitment to protecting children and young people.

Edmund Capon
Director
Art Gallery of NSW
17 February 2003

1.0 PURPOSE OF POLICY

1.1 To ensure that the Art Gallery meets its responsibilities for the safety, welfare and well-being of children and young people.

1.2 To guide all staff in appropriate conduct for contact with children and young

people in the workplace.

1.3 To ensure that recruitment procedures and disciplinary procedures are compliant with the requirements under the *NSW Child Protection (Prohibited Employment) Act 1998*, *NSW Commission for Children and Young People Act 1998*, and *NSW Ombudsman Amendment (Child Protection and Community Services) Act 1998*.

1.4 To provide clarity for relevant staff around their legal responsibilities as mandatory reporters of risk of harm to children and young people under section 27 of the *Children and Young Persons (Care and Protection) Act 1998*.

1.5 To direct staff regarding procedures for reporting risk of harm to children and young people.

1.6 To provide relevant staff with information and guidance regarding exercising the judgements involved with reporting risk of harm to children and young people.

2.0 PRINCIPLES UNDERPINNING THE POLICY

2.1 The Art Gallery has educational and recreational activities important to children and young people.

2.2 Children and young people are valued visitors to the Gallery and have a right to feel safe and protected from all forms of abuse and neglect during their visit to our organisation.

2.3 All forms of child abuse and neglect cause harm to children.

2.4 Protection of children and young people is the role of adults in the community.

2.5 Professionals working with children have particular legal and ethical responsibilities to support the safety, welfare and well-being of children and young people.

2.6 Whilst there are key government agencies with statutory responsibility for child protection, all agencies working with children need to work co-operatively for the safety, welfare and well-being of children and young people.

2.7 Agencies working with children have a responsibility to ensure their operations and processes support the protection of children and young people.

2.8 The response to allegations or convictions of child abuse made against an employee (paid and unpaid) will respect the employee's right to natural justice and due process and will be compliant with other relevant policy and procedures including the grievance procedures, harassment procedures and the code of conduct.

3.0 POLICY STATEMENT

3.1 The Art Gallery of NSW is committed to promoting the safety, welfare and well-being of children and young people to whom the organisation provides a service or with whom the organisation has contact.

3.2 All staff are required to provide services and conduct duties in a manner that respects the right of all children to safety and protection from all forms of abuse and neglect and that complies with the Code of Conduct for Child Protection in the Workplace (see 4.3 in the Appendix).

3.3 The safety, welfare and well-being of the child or young person is the paramount consideration in service delivery to any consumers aged under 18 years.

3.4 Recruitment and selection processes for all child-related employment positions will be managed in accordance with the law.

3.5 Risk of harm to children will be reported in accordance with the law.

3.6 Allegations or convictions of child abuse made against employees will be reported and responded to in accordance with the law.

3.7 Records kept in relation to child protection matters will be maintained in separate secure storage, access to such records will be strictly limited and controlled and confidentiality of parties involved will be maintained in accordance with the law.

3.8 The Art Gallery of NSW will ensure that all employees and volunteers are provided with the Child Protection Policy and in addition, employees and volunteers in identified key positions will be provided with the Child Protection Procedures and appropriate training and guidance to be aware of their reporting obligations under NSW legislation. Employees and volunteers in key identified positions will also be expected to certify that they understand their reporting obligations as outlined in the Child Protection Procedures.

4.0 APPENDICES

4.1 Legislative Basis for the Policy

4.2 NSW Interagency Guidelines for Child Protection Intervention

4.3 Code of Conduct for Child Protection in the Workplace

4.4 Responding to a Child's Disclosure of Abuse or Neglect - Guidelines

4.5 Key identified positions within the organisation

4.5.1 Child-related employment positions

4.5.2 Positions that must report incidences where children are at *risk of harm*

4.5.4 Positions to which the following is reported:

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Appendix 4.1

4.1 LEGISLATIVE BASIS FOR THE POLICY

There are a number of pieces of NSW legislation which impact upon the child

protection responsibilities of the organisation and which form the basis of this Child Protection Policy.

In December 1998, the NSW Parliament passed four statutes, which together form what is commonly referred to as the child protection legislative reform package.

The package which comprehensively addresses child protection issues is comprised of the following four pieces of legislation:

Children and Young Persons (Care and Protection) Act 1998

Child Protection (Prohibited Employment) Act 1998

Commission for Children and Young People Act 1998

Ombudsman Amendment (Child Protection and Community Services) Act 1998

The following summary provides a basic description of the four pieces of legislation.

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

This piece of legislation provides for the care and protection of, and the provision of services to children and young persons and their carers. It is the Act which authorises the Department of Community Services and its officers to intervene and provide the necessary services and assistance to ensure the safety, welfare and well-being of children and young persons. The Act has been proclaimed progressively. All sections of the Act relevant to this policy are proclaimed.

4.1.2 Child Protection (Prohibited Employment) Act 1998

This piece of legislation makes it an offence for a person convicted of a serious sex offence (a prohibited person) or a registrable person under the Child Protection (Offenders Registration) Act 2000, to apply for or undertake or remain in, child-related employment. It does not apply if an order from the Industrial Relations Commission or the Administrative Decisions Tribunal, declares that the Act does not apply to a particular person.

Under this Act:

- Employers must ask existing employees, both paid and unpaid, and preferred applicants for employment to declare if they are a prohibited person or not.
- All employees in child-related employment (paid or unpaid) must inform their employer if they are a "prohibited person"(someone who has been convicted of a serious sexual offence or who has had a finding for a charge of a serious sexual offence proven in court even if a conviction was not recorded) or remove themselves from child-related employment.

The Act took effect from 3 July 2000. Under the provisions of this Act any person working in child-related employment must disclose to their employer whether or not they have been convicted of a serious sex offence (other than where there is an exemption order in force declaring that this Act does not apply to the person in respect of the offence).

4.1.3 Commission for Children and Young People Act 1998

This Act, which established the Commission for Children and Young People, in part came into effect on 31 May 1999. Part 7 of the Act, dealing with employment screening for child-related employment, commenced on 3 July 2000. The Part 7 provisions require employers who engage persons in various fields of child-related employment to:

- check such prospective employees for:
 - relevant criminal records
 - relevant disciplinary proceedings
 - apprehended violence orders issued against them; and
 - previous employment or activities of the prospective employee; and
- make an assessment of the risk to children, arising from anything disclosed by any or all of the foregoing checks.

This screening is mandatory for persons applying to:

- work in paid child-related employment
- perform child-related work, services or duties as a minister of religion or as a member of a religious organisation, or
- work involving the fostering of children.

The checks that an employer must make are conducted through one of the six screening agencies approved by the Commission for conducting the initial record data checks. The screening agency for the Art Gallery of NSW checks is the NSW Department of Education and Training Screening Unit.

The employment screening provisions of this Act, together with the disclosure provisions of the Child Protection (Prohibited Employment) Act 1998, constitute the Working with Children Check.

Failure to comply with these provisions may result in criminal prosecution, imprisonment and/or financial penalties.

4.1.4 Ombudsman Amendment (Child Protection and Community Services) Act 1998

In 1997, Justice Wood released his final report from the Royal Commission into the NSW Police Service. The report recommended the introduction of a wide range of new child protection initiatives. Consequently new legislation has been introduced and the *Ombudsman Act 1974* was amended.

Under the amendment to the Ombudsman Act:

- Heads of agencies (including public authorities such as the Art Gallery) are required to report to the Ombudsman, within 30 days of becoming aware, any allegations or convictions of child abuse made against employees (paid or unpaid employees, whether or not they are employed to work directly with children).
- Heads of agencies are required to conduct investigations (which can include preliminary inquiries or other inquiries and assessment) into child abuse

allegations or convictions and to take appropriate actions as a result.

- Employees (paid and unpaid) are required to inform the head of the agency of any child abuse allegation or conviction against an employee, which occurs within or outside the workplace. Note for public authorities such as the Art Gallery it is only necessary to notify the Ombudsman of child abuse allegations or convictions which occur within the workplace.
- The Ombudsman is required to scrutinise the systems agencies have to prevent abuse of children and for responding to allegations or convictions of child abuse; monitor agency investigations and investigate complaints regarding agency handling of a response to an allegation or conviction of child abuse.

Appendix 4.2

4.2 NSW INTERAGENCY GUIDELINES FOR CHILD PROTECTION 2000

The *NSW Interagency Guidelines for Child Protection Intervention 2000* sets out the coordinated roles and responsibilities of the government and non-government agencies in NSW that play a key role in the child protection response (the Guidelines are accessible through the website of the NSW Commission for Children and Young People at www.kids.nsw.gov.au under *Resources and Publications*). Whilst the Ministry for the Arts' organisations are not referred to in this document staff in management positions within the arts organisations should be aware of the content of the *Interagency Guidelines for Child Protection Intervention* to understand the role of the key organisations in the network dealing with child protection in NSW. This will also allow managers to recognise the boundaries of the role of their own organisation in dealing with child protection issues.

The following excerpt from the *NSW Interagency Guidelines for Child Protection Intervention* sets out the broad policy position of the NSW Government in relation to child protection.

This Child Protection Policy is compatible with the *NSW Interagency Guidelines for Child Protection Intervention*.

Child Protection: The NSW Government Commitment *NSW Interagency Guidelines for Child Protection Intervention, 2000 edition, page 1*

The NSW Government believes that one of the primary concerns of any community should be the health and well-being of its children and young people. Children and young people should be able to grow up in an environment which enables them to develop physically, intellectually and socially in conditions of freedom and dignity.

The NSW Government is committed to a coordinated and comprehensive response to promote the protection of children and young people.

Effective care and protection incorporates community action to:

- Prevent and reduce the abuse and neglect of children or young people in the community
- Provide support to families experiencing difficulties
- Respond to reports of risk of harm so that the safety of children and young

people is effectively addressed and appropriate support is provided

- Ensure offenders are appropriately sanctioned

The Government recognises that there are common features that enable consistent procedures to be developed and implemented within a best practice framework. It also recognises that physical abuse, emotional abuse, neglect and child sexual assault will require different and specialised responses.

Appendix 4.3

4.3 Code of Conduct for Child Protection in the Workplace

Why is it important to adopt Code of Conduct for Child Protection in the Workplace?

All staff can contribute to the safety welfare and well-being of children by adopting work practices which respect children's right to safety, protection and personal space and which demonstrate responsible and respectful adult behaviour towards children.

Such conduct is important for two key reasons:

1. All staff in contact with children in the workplace are accountable for their own behaviour with children
2. Respectful behaviour towards children by any adults can assist those children in differentiating respectful behaviour from abusive behaviour and this is very important for prevention of or early intervention in child abuse.

What must staff do/not do in contact with children in the workplace?

The following is a list of expectations of all staff in contact with children in the work place:

- As a general guide avoid physical contact with children in the workplace unless there is a legitimate reason for such contact for the child's own safety and welfare (eg. administering first aid, removing a child from impending danger, holding the hand of a lost distressed toddler, comforting a highly distressed child in a disaster situation, supporting the arm of a child with a disability so they can touch an interactive display). Physical contact for the child's safety and welfare should only be to the extent required for the child's safety or welfare and no more.

- Staff may use non-invasive physical greetings commonly accepted in the community if this is initiated by the child (eg. shake hands, high five with hands). Young children or children with an intellectual disability may attempt to initiate more intimate greetings such as hugging but staff are to sensitively discourage this by comments such as "we don't know each other very well, how about we shake hands".

- Never use physical force or restraint on a child unless this is necessary for the child's immediate safety or to prevent immediate serious harm or is necessary in defence of your own immediate physical safety. In such emergencies physical force or restraint should only be to the extent necessary to prevent serious harm from occurring. If staff are confronted with a situation of an older child threatening to harm others or wielding a weapon staff are advised to seek immediate assistance (from security or Police) rather than attempt to disarm the child.

- Never use corporal punishment of any kind as a method of discipline or

behaviour management with any child.

- Avoid being alone with a child in any location that is not in visual contact by another adult unless there is a legitimate reason for doing so for the child's own safety and welfare. First aid should be administered in the presence of another adult (preferably one known to the child) unless it is an emergency and the delay in getting another adult would jeopardise the child's safety. Staff should not be alone with a child in a room with the door closed unless that room has a glass wall allowing visual contact by another adult.

- Never remove an item of clothing from a child's body unless this is necessary for the child's immediate safety to prevent serious harm (eg. to administer emergency first aid). The only exception to this is to assist young children in removing or replacing their shoes where they cannot do this for themselves and this is necessary to engage in an interactive activity program.

- In the presence of colleagues or consumers/customers including children avoid swearing and any language that is derogatory towards others (eg. language such as "rotten little shit" or "cheeky brat" or "slut" is not acceptable in the workplace)

What should staff do to contribute to the protection of children in the workplace?

Staff are required to contribute to the protection of children in the workplace by reporting inappropriate behaviour, misconduct and criminal activity involving children.

- Any staff member who becomes aware of an allegation or conviction of child abuse in the workplace against an employee (paid or unpaid) must promptly report this to the Human Resources Manager.

- Any staff member who witnesses or gets information about the misconduct of an employee (paid or unpaid) that may involve child abuse must promptly report this to the Human Resources Manager.

- Any staff member who becomes aware that an employee (paid or unpaid) has behaved towards a child or children in ways that contravenes requirements in Code of Conduct for Child Protection in the Workplace must promptly raise this with the Human Resources Manager.

- Staff members who are mandatory reporters under the *Children and Young Persons (Care and Protection) Act* must report their current concerns for the safety welfare and well-being of a child if they suspect upon reasonable grounds that the child is at risk of harm. Such concerns are to be raised promptly with the Human Resources Manager who will make the report to the NSW Department of Community Services.

- If a staff member in a child-related employment position believes s/he is or may be a Prohibited Person (ie. has a conviction for a serious sex offence) s/he must immediately inform the Director. It is an offence for Prohibited Persons to apply for, commence or remain in child-related employment.

Any staff member who becomes aware that an employee (paid or unpaid) is a Prohibited Person (ie. has a conviction for a serious sex offence) must immediately inform the Human Resources Manager.

Appendix 4.4

4.4 Responding to a Child's Disclosure of Abuse or Neglect

Staff may find themselves in a range of situations where a child may disclose information about being abused or neglected. A young child may blurt something out in the context of a discussion, story or activity. An older child may seek out an adult who they perceive will be helpful and they may approach a staff member for this reason. In an emergency situation a child may simply approach any available adult.

Although this is not a common experience for staff, any adult working in contact with children should have basic knowledge about the most appropriate way to respond to a child's disclosure.

The following are the key points to remember if a child discloses information about being abused or neglected.

- Listen to the child attentively
- Do not ask probing questions
- Use a calm reassuring tone and talk at the child's level
- Believe the child
- Don't make promises you cannot keep (such as saying they will not have to go home or the police will fix it)
- Avoid expressing doubt, judgment or shock.

Convey the following messages to the child:

- it is not their fault, it is never the child's fault
- it was right to tell
- other children have been in this situation,
- they are not alone
- it is not OK for adults to harm children – no matter what.

Tell the child you will need to talk to other people whose job is to help children be safe. If the situation allows ask the child what they want to do while you ring up to get some help started for them.

Do not alert the alleged abuser about the disclosure.

Report the information immediately to the Human Resources Manager who will promptly make a report to the Department of Community Services Helpline.

Write down what the child told you as soon as you can (when you are away from the child), using the child's own words.

Appendix 4.5

4.5 Key Identified Positions within the Organisation

Overview

The child protection legislation places requirements upon organisations to identify positions to assist in the protection of children. There are essentially three key groups which need to be identified:

1. Child-related Employment positions
2. *Risk of Harm* Mandatory Reporters
3. Management Positions that Oversee and Implement the Organisation's Investigation and Reporting Responsibilities (as per the Child Protection

Procedures)

Details on the definitions of the above three categories and a list of the identified positions within this organisation are provided below.

4.5.1 Child-Related Employment Positions

All child-related employment positions (including unpaid employment positions) - as identified by the organisation. Those positions which have direct and unsupervised contact with children in an entertainment venue or an educational institution are considered to be child-related employment positions.

Identified child-related employment positions within this organisation are:

- Public Programmes Co-ordinators
- Casual Teacher Lecturers
- Head, Public Programmes
- Contractors (Performers and Children's Workshop Presenters)
- Deputy Manager, Security Services
- Senior Gallery Service Officers
- Gallery Service Officers
- Children's Volunteer Guide Co-ordinator
- Children's Volunteer Guides

4.5.2 Risk of Harm Mandatory Reporters

Risk of Harm Mandatory Reporters are employees in positions which provide education or children's services wholly or partly to children (under the age of 16) are required, at law, to report incidences where a child is at *risk of harm*.

Identified *risk of harm* mandatory reporters within this organisation are:

- Public Programmes Co-ordinators
- Casual Teacher Lecturers
- Head, Public Programmes
- Contractors (Performers and Children's Workshop Presenters)

4.5.3 Management Positions Responsible for Investigations and Reporting

The Director and the Human Resources Manager are responsible for implementing the organisation's investigation and reporting requirements (as per the Child Protection Procedures). All employees should be aware of the above key positions.