Justice Health and
Forensic Mental Health Network

Justice Health NSW Policy

Child Protection

Issue Date: 07 December 2023

Together for
Healthier Tomorrows

Child Protection

Policy Number 5.015

Policy Function Safe Practice and Environment

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Risk Rating High

Summary This policy provides staff with guidance and direction to protect the safety and wellbeing of children in accordance with Ministry of Health policy PD2013_007 Child Wellbeing and Child Protection Policies and Procedures for NSW Health.

Responsible Officer Director, People and Culture

Applies to
☒ Administration Centres
☒ Community Sites and programs
☒ Health Centres - Adult Correctional Centres or Police Cells
☒ Health Centres - Youth Justice Centres
☒ Long Bay Hospital
☒ Forensic Hospital

CM Reference POLJH/5015

Change summary
- Inclusion of NSW Health PD2018_032 *Managing Complaints and Concerns about Clinicians Policy*
- Inclusion of Justice Health NSW *Managing Complaints and Concerns about Clinicians Procedure*
- Inclusion of Ombudsman's Act
- Inclusion of Private Operator

Authorised by Chair, Policy Steering Committee

Revision History

#	Issue Date	Number and Name	Change Summary
7	December 2023	5.015 Child Protection	• Inclusion of NSW Health PD2018_032 *Managing Complaints and Concerns about Clinicians Policy* • Inclusion of Justice Health NSW *Managing Complaints and Concerns about Clinicians Procedure*

			• Inclusion of Ombudsman's Act • Inclusion of Private Operator
6	December 2019	5.015 Child Protection	• Additional information regarding mandatory requirements • Updated of Helpline phone number • Update regarding Ministry of Health Policy Directives and Legislation
5	December 2017	5.015 Child Protection	• Additional information pertaining to the application of Chapter 16A. • Addition of PD2016_025 *Child Related Allegations, Charges or Convictions Against NSW Health Staff Policy*. • Addition of information pertaining to allegations made against JJNSW staff members.
4	October 2013	5.015 Child Protection	• Updated to be implementation guide for PD2013_007 • Use of the Mandatory Reporters Guide to guide decision making about the level of risk to a child or young person and what actions should be taken, sucj as a report being made to the Child Protection Helpline. • Utilising Child Wellbeing Units for support and assistance in determining the level of risk of harm and responding to the needs of a vulnerable child or young person.
3	May 2008	5.015 Child Protection	• Minor updates
2	June 2005	5.015 Child Protection	• Minor updates
1	September 2004	5.015 Child Protection	• New policy

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Printed copies of this document, or parts thereof, must not be relied on as a current reference document.

Always refer to the electronic copy for the latest version.

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1. Preface

Justice Health and Forensic Mental Health Network (Justice Health NSW) is committed to supporting the NSW Government's coordinated and comprehensive response to promote the care and protection of children and young people. This is achieved through a comprehensive communication, training and education strategy.

Health workers have a professional and legal responsibility to promote the health, safety, welfare and wellbeing of children and young people and to work collaboratively with interagency partners in the shared care system of child protection in NSW. These responsibilities apply whether workers are providing health care directly to children and young people or to adults who are pregnant, parents or carers.

This implementation guide provides staff with guidance and direction to protect the safety, welfare and wellbeing of children and young people in accordance with Ministry of Health policy PD2013_007 *Child Wellbeing and Child Protection Policies and Procedures for NSW Health*. It informs Justice Health NSW staff about the tools and resources available and the interagency arrangements in place to assist them to meet their responsibilities and provide a consistent NSW Health response to child protection and wellbeing.

2. Policy Content

2.1 Mandatory Requirements

- All Justice Health NSW and private operator staff have a responsibility to protect the health, safety, welfare and wellbeing of children and young people with whom they have contact in accordance with NSW Health policy directives PD2013_007 *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* and PD2025_021 *Managing Misconduct, Serious Performance and Child Related Concerns*.
- Staff should be aware of their legal responsibilities in relation to mandatory reporting as identified in the *Children and Young Persons (Care and Protection) Act 1998* (hereafter referred to as the *Care Act*).
- Staff should also be aware of the key principles for child protection intervention that are set out in the *Child Wellbeing and Child Protection – NSW Interagency Guidelines*.
- In accordance with Chapter 16A of the *Care Act* Justice Health NSW is to collaborate and communicate with interagency partners and comply with information exchange provisions to promote the safety, welfare and wellbeing of children and young people, including taking reasonable steps to coordinate the provision of services with other agencies.
- On commencement of employment, all staff must sign a Declaration of Association form and have a criminal record check, as per Justice Health NSW recruitment procedure. All staff working with children or young people also require a NSW Government "Working with Children Check". See Section 3.1 for further details.
- All Justice Health NSW and private operator staff must complete the online, mandatory Child Wellbeing and Child Protection training via My Health Learning. All staff working directly with children and/or young people must participate in mandatory face to face Child

Protection: Identify & Respond to Children & Young People at Risk training This training must be completed every five years.

2.2 Implementation – Roles & Responsibilities

The Chief Executive is required to:

Ensure that NSW Health policy PD2013_007 *Child Wellbeing and Child Protection Policies and Procedures for NSW Health*, the associated Child Wellbeing and Child Protection Fact Sheet for NSW Health Workers and the NSW Health policy PD2025_021 *Managing Misconduct, Serious Performance and Child Related Concerns* are understood and implemented by staff.

Managers/Supervisors are required to:

- Support staff in complying with the mandatory reporting requirements contained within section 27 of the *Care Act*.
- Support staff in sharing of information with other health workers or prescribed bodies regarding the safety, welfare and wellbeing of young people in accordance with Chapter 16A provisions of the *Care Act*. The information shared must be relevant, factual and accurate pertaining to the safety, welfare and wellbeing of children and young people.
- Support staff attendance at mandatory and other child protection training.

Staff and private operators are responsible for:

- Assessing the level of risk to a child, young person or unborn child as a Mandatory Reporter, using the online NSW Mandatory Reporter Guide (MRG). See Section 3.3.1 for further details.
- Contacting the NSW Child Wellbeing Unit to discuss and seek advice on whether concerns need to be reported to the Child Protection Helpline and on other appropriate interventions, referrals or services in response to the concerns. See Section 3.3.2 for further details.
- Dependant on the outcomes of the MRG, making reports to the NSW Child Protection Helpline as well as receiving, responding and following up on Child Protection Helpline feedback on child protection reports. See Section 3.3.2 for further details.
- Participating in case coordination and case management interagency meetings and service responses consistent with the worker's professional roles and responsibilities.
- Documenting reporting of children and young people suspected at risk of harm and associated information as well as details of reports made on the client's health record.
- Notifying their line manager, supervisor or other delegated position if they become aware of any child related allegations, charges or convictions involving a NSW Health staff member.

3. Procedure Content

3.1 Working with Children Checks

Under the Child Protection (Working with Children) Act 2012 and the Child Protection (Working with Children) Regulation 2013, a Working with Children Check (WWCC) is a requirement for anyone in child-related work in NSW.

All staff working in Adolescent Health, Adolescent Mental Health or the Forensic Hospital must have a valid WWCC clearance before commencing work and must maintain a valid WWCC clearance to continue working in these areas.

Refer to the current NSW Health Policy on PD2019_003 *Working with Children Checks and Other Police Checks* for further information about who is required to have a WWCC to work in NSW Health and action to take if a staff member fails to maintain a valid WWCC clearance.

3.2 Child Protection Training

Justice Health NSW and private operators are responsible for providing mandatory child protection training to all staff that commence employment with Justice Health NSW, and more extensive training to those in child related work.

Child protection training (two hours online) is a requirement for private operators and all staff commencing employment with Justice Health NSW. This training will provide staff and private operators with information around child protection legislation, responsibilities and policies.

All Justice Health NSW Adolescent Health staff are to attend the one day course: “Child Protection: Identify and Respond to Children and Young People at Risk” every five years to maintain competency.

Staff and private operators working directly with children and young people, or with adults who have children in their care require more detailed training; the one day face to face course: “Child Protection: Identify and Respond to Children and Young People at Risk” must be undertaken by Adolescent Health and Forensic Hospital staff. This training is coordinated by the Education and Training Unit.

The NSW Health and Education Centre against Violence (ECAV) offer similar comprehensive training around child protection, and this is recognised as prior learning within Justice Health NSW. Staff and private operators must provide evidence that this prior learning has occurred within the last five years.

3.3 Reporting

In the course of their work, Justice Health NSW staff and private operators may see or hear something about a child, young person or adult patient that raises concerns about the possible safety, welfare and wellbeing of a child or young person.

3.3.1 Mandatory Reporting of child or young person at risk of significant harm

The mandatory reporting provisions in section 27 of the *Care Act* apply to a person who, in the course of their professional work or employment delivers health care to children, and persons who have direct responsibility for, or direct supervision of, the provision of healthcare to children.

Section 27 requires that a person who has reasonable grounds arising from that person’s work or role, to suspect that a child is at risk of significant harm, has a duty to report the

name, or a description of the child and the grounds for suspecting that the child is at "risk of significant harm."

In line with section 23 of the *Care Act*, a child or young person is at 'risk of significant harm' if 'current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent' of the following factors:

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met;
- the parents or other caregivers have not arranged or are unable or unwilling to arrange for the child or young person to receive necessary medical care;
- in the case of a child required to attend school, the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education;
- the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated;
- the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm;
- a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm;
- the child was the subject of a pre-natal report under the *Care Act* and the birth mother of the child did not engage successfully with support services to eliminate or minimise to the lowest level reasonably practical, the risk factors that gave risk to the report.

Section 7, 'Recognising Child Abuse and Neglect' of PD2013_007 *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* provides additional guidance on recognising if a child/young person is at risk of significant harm from abuse or neglect.

For the reporting of child related allegations and convictions please refer to section 3.6 of this Policy.

3.3.2 Mandatory Reporter Guide to assist in determining risk

When a Justice Health NSW staff member or private operator has concerns about the safety, welfare or wellbeing of a child/young person or class of children/young people, they are to use the *Mandatory Reporter Guide* (MRG) which is available at https://reporter.childstory.nsw.gov.au/s/ or under 'Child Protection Online Mandatory Reporting' on the 'Useful Links' page of Justice Health NSW's intranet.

The MRG is a structured decision making tool to assist in determining the level of risk to a child, young person or unborn child and what action should be taken. The MRG will assist the health worker to determine: that the concern is identified as being a suspected risk of significant harm and a report should be made to the **Child Protection Helpline on 132 111** or via eReporting directly through the Reporter website.

Where the child or young person is not at risk of significant harm but risks are present, the **Health Child Wellbeing Unit (CWU)** should be contacted on **1300 480 420**.

Where the child or young person is not at risk of significant harm and low risk is present, staff should document their concerns in the health record, and liaise with other interagency partners involved in the child/young person's care. Referrals should be made to appropriate services that can support the child/young person or their family, such as a referral to Families NSW or Family Referral Services.

It should be noted that the MRG does not replace critical thinking or prohibit a Mandatory Reporter from a course of action they believe is appropriate. In a situation where the outcome of the MRG is not to report, but the staff member's professional judgement is that a report is required at that time, the staff member should consult with CWU prior to making a report to the Child Protection Helpline.

The MRG outcome and any additional supports identified by the staff member that may be required or to which the child/young person is referred should be documented within the health record. The MRG Decision Report must be printed and scanned into JHeHS under 'Clinical Correspondence'.

Note that the MRG does not currently address suspected risk of significant harm that is the result of excessive use of force (for example, where suspected excessive use of force by a Youth Justice Officer has resulted in a physical injury to a young person). If a Justice Health NSW staff member has concerns for the safety, welfare or wellbeing of a child or young person due to a potential use of excessive force, they should contact the Health Child Wellbeing Unit (CWU) on 1300 480 420 for further advice.

3.3.3 Child Protection Helpline

The MRG will advise the staff member if a report should be made to the **Child Protection Helpline on 132 111**.

In general, the Child Protection Helpline should be contacted within 24 hours when concerns constitute suspected risk of significant harm, but if the staff member believes the child/young person is at immediate risk of significant harm, the Child Protection Helpline should be contacted for immediate intervention.

Further information about legal provisions, information required when making a report, and details of what should be documented in the progress notes of the health record when making a report to the Child Protection Helpline can be found in Chapter 9 'Responding to Children and Young People at Risk of Significant Harm' in PD2013_007 *Child Wellbeing and Child Protection Policies and Procedures for NSW Health*.

3.3.4 Child Wellbeing Units

Child Wellbeing Units (CWUs) operate in the three government agencies responsible for the largest number of child protection reports: NSW Health, NSW Police Force, and Department of Education. CWUs help staff to collaborate in assessing the level of risk, detecting patterns of neglect and/or cumulative harm, intervening early before matters escalate, and building a case for statutory intervention when early intervention and prevention are no longer a safe option for a child or young person.

When the MRG outcome/decision point is to contact the CWU, workers are to contact the Health CWU as soon as possible but no longer than the next business day on **1300 480**

420. The CWU will discuss and record the concerns, and will follow CWU protocol to assist in determining what actions might need to be taken.

3.3.5 Documentation

A report to the Child Protection Helpline or the Health CWU, as well as any concerns regarding a child/young person's wellbeing must be documented in the client's health record. Documentation of a report should be made as a separate entry in the progress notes of the health record. In relation to young people in custody, this should be in addition to any notes written on the Adolescent Health Initial Assessment Form in JHeHS) 'Young Person at Risk Assessment' section where a risk of significant harm may first be identified.

Actions a health worker has taken to identify and respond to wellbeing concerns should be documented in the health record including:

- The identified risk factors for the child or young person;
- The identified preventative factors that mitigate against risk;
- Whether the staff member undertook the MRG and subsequently contacted the Child Protection Helpline, CWU or another relevant service or has made an eReport;
- The date and time the report was made;
- The name of the worker spoken to at the Child Protection Helpline, CWU or other service;
- The nature of concerns reported;
- Any reference number provided;
- The response of the worker spoken to;
- Any outcomes from the discussion, and
- Any future actions required.

Documentation can be in the form of:

- A printout of the summary page or the decision report from the online MRG; or
- A printout of the full eReport.

All reported injuries to a young person in custody are to be investigated and a Serious Incident Report is to be completed, with the CWU compliance documented and forwarded to the Nurse Manager Adolescent Health with 48 hours.

The NSW Department of Communities and Justice (DCJ) (formally NSW Department of Family and Community Services (FaCS)) confirmation letter that will be sent to the mandatory reporter should also be placed in JHeHS under 'Clinical Correspondence'.

3.4 Information Sharing

Chapter 16A of the *Care Act* provides a framework for agencies working with children and families to provide, receive or request information that promotes or is relevant to a child or young person's safety, welfare and/or wellbeing. Information can be provided to another agency with or without a request being made.

The exchange of information under Chapter 16A must be between organisations that are prescribed bodies. It cannot be used to obtain information from a person unless that person is part of an organisation.

3.4.1 Prescribed Body

A prescribed body is any organisation specified in section 248(6) of the *Care Act* or in clause 5 of the *Children and Young Persons (Care and Protection) Regulation 2012*. Generally prescribed bodies include:

- NSW Police Force
- a State government department or a public authority
- a government school or a registered non-government school or a TAFE
- a public health organisation or a private health facility
- an accredited adoption service provider
- a registered community housing provider
- the Family Court of Australia and the Federal Magistrates Court of Australia
- any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children.

3.4.2 Providing, Receiving and Requesting Information

Section 245C of the *Care Act* provides that an organisation that is a prescribed body may provide information relating to the safety, welfare or well-being of a child or young person to another prescribed body if the provider reasonably believes that the provision of the information would assist to:

- make a decision, assessment or plan relating to the safety, welfare or wellbeing of the child or young person, or
- initiate or conduct any investigation relating to the safety, welfare or wellbeing of the child or young person, or
- provide any service relating to the safety, welfare or wellbeing of the child or young person, or
- manage any risk to a child or young person that might arise in the recipient's capacity as an employer or designated agency.

Information should be provided only if the provider reasonably believes it may assist the receiving organisation for the purposes above. This means the person providing the information has well founded reasons for their belief.

Section 245C(2) provides that information may be provided with or without a request being made.

Chapter 16A requests can be made verbally or in writing depending on the clinical situation. Staff should use their professional judgement to determine whether a form is the preferred method for exchanging or providing information.

Staff exchanging or providing verbal information should have knowledge of the person about whom the information is to be exchanged or provided to ensure the information provided is relevant and understood in the current context of the child, young person and their family. Verbal information is most likely to be sought when the request is straightforward or needed urgently. A common example of verbal exchange would be at a case conference or telephone call about a shared client.

Written exchanges of information under Chapter 16A are encouraged where they occur outside the context of an existing professional relationship between agency representatives or where the information to be exchanged is complex. Written requests should be forwarded to the Health Information and Record Service (HIRS) Manager for processing. The required health information is collated and the information exchanged on the form SMR805.500 *Exchange of Information Chapter 16A*.

Information provided must not be used or disclosed for any purpose that is not associated with the safety, welfare or well-being of the child or young person in accordance with s245F.

3.4.3 Consent

Consent is not necessary for exchange of information under Chapter 16A provided that the information exchanged relates to the safety, welfare wellbeing of a child and fulfils the objects and principles of the legislation. Although consent is not necessary, it should be sought where possible, safe and appropriate.

3.4.4 Exemption

Chapter 16A does not impose any requirements on certain Commonwealth or interstate bodies in respect of the provision or exchange of information, however s248 may still provide a basis for exchange.

Under section 248 of the *Care Act*, the Secretary may furnish a prescribed body with information relating to the safety, welfare and well-being of a child or young person, or direct a prescribed body to furnish the Secretary with that information.

The prescribed body has a duty to comply promptly with the requirements of the direction.

For Justice Health NSW, section 248 requests for the provision or exchange of information are processed by the HIRS Medico-Legal team.

3.4.5 Further Resources on Information Sharing

It is important for staff and private operators to know when and how information can be shared under Chapter 16A and when seeking the consent of a child or young person or their family is advisable. Further information can be found in Section 6 'Information Sharing' of PD2013_007 *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* and the *Child Wellbeing and Child Wellbeing and Child Protection* – NSW Interagency Guidelines.

3.5 Responding to Young People with Diverse Needs

Staff and private operators should be sensitive when working with Aboriginal children and young people, particularly if there may be issues relating to family violence and/or concerns about Aboriginal children and young people who may be at risk of significant harm.

Working sensitively with culturally and linguistically diverse communities, including refugees, is a core responsibility of all health workers and staff should be aware of the multicultural health principles outlined in Section 4.2 of NSW Ministry of Health policy directive PD2019_018 *NSW Plan for Healthy Culturally and Linguistically Diverse Communities: 2019-2023*.

Further information can be found in Section 5, 'Responding to Children and Young People with Diverse Needs' of NSW Ministry of Health policy directive PD2013_007 *Child Wellbeing and Child Protection Policies and Procedures for NSW Health*.

3.6 Child Related Allegations, Charges and Convictions against a Staff Member

NSW Health PD2025_021 *Managing Misconduct, Serious Performance and Child Related Concerns* sets out the mandatory requirements for identifying and managing child related allegations, charges and convictions involving NSW Health staff.

Staff and private operators must immediately notify their line manager if they become aware of any child related allegations, charges or convictions involving another staff member. Once any immediate risk has been managed, the Executive Director Clinical Operations must be notified via direct line management who will discuss the allegations and further reporting and/or investigation requirements with the Workforce Director to determine if the matter constitutes a child related allegation or conviction requiring notification to the Chief Executive and to the Ombudsman.

Early notification may also need to be made to the Child Protection Helpline and/or NSW Police.

See NSW Health PD2025_021 *Managing Misconduct, Serious Performance and Child Related Concerns* for guidance on managing allegations, charges and convictions against staff.

3.7 Allegations against a Youth Justice NSW Staff Member

Where a child/young person makes an allegation or raises concerns of misconduct against a Youth Justice NSW (YJNSW) staff member, an immediate notification must be made to the NUM (or delegate) who will promptly inform the Nurse Manager Adolescent Health and Maternity Services or the After Hours Nurse Manager.

The NUM (or delegate) is then responsible for reporting the allegation (verbally and then in writing) to the Centre Manager who will implement YJNSW internal processes for handling allegations whilst ensuring that safety mechanisms are put in place to protect the child/young person.

The Executive Director Clinical Operations must be notified via direct line management who will notify the Chief Executive of the allegations to determine if the matter constitutes a child related allegation or conviction requiring notification to the Chief Executive and to the Ombudsman. Notification to the NSW Health CWU is required, unless the matter is suspected risk of significant harm, then Mandatory Reporting is required to the Child Protection Helpline. All allegations and reports must be documented in the child/young person's health record.

4. Definitions

Child

For the purpose of mandatory reporting to the Helpline a child is a person who is under the age of 16 years, as per section 3 of the *Children and Young Persons (Care and Protection) Act 1998*. This includes a newborn child. Health workers should be aware that under other NSW legislation, a child is defined differently: For the purpose of workplace child protection, including child related allegations, charges and convictions, and the WWCC, a child is defined as a person under the age of 18 years.

Mandatory Reporter

A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children. This also includes managers of these services.

Must

Indicates a mandatory action to be complied with.

Private Operator

A correctional health centre that is managed under a Management Agreement between the Commissioner Corrective Services NSW and a Management Company under s.238 or sub management agreement under s.239 of the *Crimes (Administration of Sentences) Act 1999*.

Should

Indicates a recommended action to be complied with unless there are sound reasons for taking a different course of action.

Young Person

A person who is aged 16 years or above but who is under the age of 18 years, as per section 3 of the *Children and Young Persons (Care and Protection) Act 1998*.

5. Related Documents

Legislations	*Children and Young Persons (Care and Protection) Act 1998* *Crimes (Administration of Sentences) Act 1999* *Ombudsman's Act 1974*
Justice Health NSW Policies, Guidelines and Procedures	9.047 *Requesting and Disclosing Health Information*
Justice Health NSW Forms	

NSW Health Policy Directives and Guidelines	PD2013_007 *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* PD2019_003 *Working with Children Checks and Other Police Checks* PD2019_018 *NSW Plan for Healthy Culturally and Linguistically Diverse Communities: 2019-2023* PD2020_013 *Complaints Management* PD2025_021 *Managing Misconduct, Serious Performance and Child Related Concerns* PD2026_003 *Collecting and recording the Aboriginal and Torres Strait Islander status of clients* *Children and Young Persons (Care and Protection) Regulation 2012* SMR805.500 *Exchange of Information Chapter 16A* *Mandatory notifications – Addressing grievances and concerns* (Information Sheet 6)
Other documents and resources	*Child Wellbeing and Child Protection – NSW Interagency Guidelines* *The Case for Change: Integrated prevention and response to violence, abuse and neglect in NSW Health* *Working with Children Check Clearance* Office of The Children's Guardian *Mandatory Reporter Guide* (MRG) https://reporter.childstory.nsw.gov.au/s/