

	POLICY CL-0069.A
 MACQUARIE University	RESPONDING TO ALLEGATIONS AGAINST STAFF

Rationale	Campus Life believes it is important to have adequate systems in place to protect children in our care and to ensure that the rights and responsibilities of staff are recognized and understood.
Aim	<p>Children will have access to a safe and caring environment and be protected from harm or risk of harm.</p> <p>Employees will have access to a transparent and fair process if a complaint is made against them.</p> <p>All parties will be educated about their roles in keeping children safe including awareness of signs of abuse and current reporting procedures.</p> <p>All legal obligations in regards to keeping children safe will be fully met.</p>
Scope	This Policy applies to all staff of Campus Life (U@MQ Limited).
Definitions	<p>The definition of ‘a child at-risk of significant harm’ is (as per the Children and Young Persons (Care and Protection) Act 1998- Section 23):</p> <p><i>(1) 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 any one or more of the following circumstances:</i></p> <p><i>(a) the child’s or young person’s basic physical or psychological needs are not being met or are at risk of not being met,</i></p> <p><i>(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,</i></p> <p><i>(b1) in the case of a child or young person who is required to attend school in accordance with the Education Act 1990—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 in accordance with that Act,</i></p> <p><i>(c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,</i></p> <p><i>(d) 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,</i></p> <p><i>(e) 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,</i></p> <p><i>(f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical,</i></p>

the risk factors that gave rise to the report.

Note. Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

(2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions.

The definition of ‘**significant harm**’ according to NSW government through ‘Keep Them Safe’ (2010) and retrieved from:

http://www.keepthemsafe.nsw.gov.au/reporting_concerns/significant_harm_policy_definition is:

“... Something which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent. What is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse effect on the child or young person's safety, welfare or wellbeing.

In the case of an unborn child, what is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse effect on the child after the child's birth.

"Significance" can result from a single act or omission or an accumulation of acts or omissions.”

Child-related employment is defined under the *Child Protection (Working With Children) Act 2012* if the worker is in face to face contact with children in a range of sectors including early education and child care. In addition, persons in roles including an approved provider or manager of an education and care service and a certified supervisor of an education and care service are considered to be in child-related employment.

Reportable Conduct

Concerns related to child protection involving a Campus Life staff member employed in a child-related role (refer to definition above) are referred to as an allegation of Reportable Conduct and are handled in accordance with requirements of the *NSW Ombudsman Act* and the *NSW Commission for Children and Young People Act*.

Reportable Conduct under the Ombudsman Act 1974 refers to the following:

- Any sexual offence or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material [within the meaning of Division 15A of Part 3 of the Crimes Act 1900]); or
- Any assault, ill treatment or neglect of a child; or
- Any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to the following:

- Conduct that is reasonable for the purposes of the discipline,

	<p>management or care of children, having regard to the age, maturity, health or other characteristics of the children, and to any relevant codes of conduct or professional standards;</p> <ul style="list-style-type: none"> • The use of physical force that, in all the circumstances, is trivial or negligible. Reportable conduct applies only if the physical force is going to be investigated and the result of the investigation recorded under workplace employment procedures; or • Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under Section 25CA. <p><i>NOTE: Examples of conduct that would not constitute reportable conduct include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.</i></p> <p>A parent is someone who has legal responsibility for a child. This may be a natural parent (through birth) or a legal guardian (legally appointed) but does not include a parent who is prohibited by a court order from having contact with the child.</p>
<p>Key Strategies</p>	<p>Responsibilities of Campus Life At all times, Campus Life will ensure that legislative obligations are met, appropriate risk management action is taken, and the rights of the employee are upheld.</p> <p>Children's Services staff are considered to be employed in <i>child-related work</i> and all additional reporting requirements are clearly identified in this document.</p> <p>Campus Life will record and respond to all allegations, as required by law and reflective of best practice.</p> <p>Process once an allegation is made The relevant Business Unit Manager must be immediately informed of any allegation made against a Campus Life staff member in the team.</p> <p>The following actions are taken when responding to all allegations against Campus Life employees. The relevant Business Unit Manager with the Human Resources Manager will:</p> <ul style="list-style-type: none"> • Clarify the issues involved • Inform the GM/HOO (as applicable) and CEO • Conduct an initial risk assessment to determine whether there is any immediate risk of harm to the child or children and whether any action should be taken to reduce that risk. This might include, for example, providing more direct supervision, moving the employee to a position with non-child contact, or suspending the employee with pay. • Assess other risks including

- Risk to the employee who is the subject of the allegations
- Possible risk to other staff
- Risk to the organisation itself
- Notify appropriate statutory and regulatory authorities
- Plan the scope of the investigation including who will be the primary investigator
- Gather information from relevant sources
- Inform the employee that a complaint has been made and, at an appropriate time, provide the employee with details of the allegation to enable them to provide a response either in writing or at interview
- Analyse all relevant information before making a finding
- Prepare an investigation report documenting reasons for decisions and recommendations regarding findings
- Forward the report inclusive of recommendations to the CEO for the final decision
- *Children's Services only* - Where the allegation falls under Reportable Conduct, once the final decision is reached the report is submitted to the Ombudsman as applicable

Where there is actual or perceived conflict of interest of both the Business Unit Manager and the Human Resources Manager, the CEO will appoint an impartial person, who may or may not be a Campus Life employee, with sufficient skills and experience to undertake the investigation.

Procedural Fairness

Principles of procedural fairness (or 'natural justice' as it is otherwise known) will be strictly followed. The process will be transparent, accountable and treated as highly confidential in order to protect the alleged victim, the person making the allegation and the employee.

Employees are entitled to have:

1. A fair hearing
2. An impartial decision
3. A decision based on evidence

Findings

Findings that are available to be made in relation to each allegation are as follows:

- Sustained (i.e. a finding that the conduct occurred),or
- Not sustained – insufficient evidence (i.e. there is insufficient evidence available to reasonable establish that the alleged conduct did occur), or

- Not sustained – lack of evidence of weight (i.e. there is no evidence of weight that the reportable conduct occurred), or
- False (i.e. where there is clear evidence to show the conduct did not occur), or
- *Applicable only to Children’s Services* - Not reportable conduct (i.e. where inquiries show the conduct was not reportable conduct).

Findings made in relation to allegations must be supported by evidence and the civil standard of proof applies, that is, upon the ‘balance of probabilities’. This means that it must be more likely than not that the allegation is true in order to sustain an allegation. However, if the consequences of making a finding against the employee are serious (e.g. dismissal) then the standard of proof required would necessarily be higher.

Outcomes of an Investigation

Possible outcomes of an investigation may be:

- No adverse outcome – resolution of the issue
- Informal performance discussion
- Performance improvement plan
- Disciplinary action, including caution, formal warning or termination
- Internal risk management actions such as systems improvement and/or professional development for staff
- Children’s Services specific:
 - Notification to the NSW Ombudsman
 - Notification to the NSW Commission for Children and Young People

Role of the Ombudsman – *Applicable only to Children’s Services*

The Ombudsman Act 1974 requires Campus Life Children’s Services to notify the Ombudsman of any reportable allegation or reportable conviction against its employees. The allegation may refer to conduct occurring in or outside of the Campus Life Children’s Services workplace.

A ‘reportable allegation’ means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

A ‘reportable conviction’ means a criminal conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.

The role of the Ombudsman is to provide oversight to ensure there are adequate systems in place to provide a safe environment for children. This

includes ensuring there are adequate systems in place for handling and responding to allegations of a child protection nature against employees. The Ombudsman may therefore scrutinise Campus Life Children's Services systems and how investigations are managed, and/or monitor the progress of an investigation, and/or conduct a direct investigation into any reportable allegation or conviction if it so decides.

The Ombudsman can audit Campus Life Children's Services systems at any time.

The Ombudsman's notification scheme is 'allegation-based'. Campus Life must therefore determine on face value if the allegation involves reportable conduct or misconduct that may involve reportable conduct and is therefore notifiable to the Ombudsman, or if it involves conduct that is required to be investigated but is exempt from notification to the Ombudsman.

Commission for Children and Young People (CCYP) – *Applicable only to Children's Services*

Campus Life Children's Services must notify the CCYP of all completed 'relevant employment proceedings' involving its employees.

A relevant employment proceeding is a completed disciplinary proceeding where the employer has found reportable conduct has occurred or some evidence that it occurred (i.e. a 'sustained' finding or a 'not sustained – insufficient evidence' finding).

The CCYP maintains a register of persons who have been the subject of employment proceedings. This may trigger a background check and risk assessment as per the Working With Children Check relating to that person if s/he applies for child-related employment in another organisation in the future.

Staff who have been the subject of a reportable conduct investigation will be advised of any decision regarding notification to CCYP by Campus Life Children's Services at the conclusion of an investigation.

Notification to Statutory and Regulatory Authorities

Where applicable the following notification timeframes to statutory and regulatory authorities will be adhered to:

- ACECQA (Children's Services only) – within 24 hours
- NSW Ombudsman (Children's Services only) – within 30 days
- Community Services, Child Protection Helpline – immediately or within 24 hours if child is at risk of significant harm
- NSW Police – if urgent, immediately, otherwise as soon as practicable if no imminent danger to life or property

All documentation relating to the investigation of allegations against employees is regarded as highly confidential and is kept separately from

the employee's staff record by the Human Resources Manager under secure and restricted access.

Support

Support and professional counselling may be organised for children, the subject of an allegation, family members and, if appropriate, any witnesses.

Rights of Parents

Parents will be advised as soon as possible that their child is the subject of an allegation about the conduct of an employee, unless to do so would be likely to compromise the investigation.

In addition, the parents will be updated at key milestones of the investigation, such as when the finding is determined and the final outcome.

Where a decision is made that an investigation might be compromised by the involvement of the parent or carer, the reasons for such a decision should be documented. In respect to Children's Services investigations only, this information should be forwarded as part of the final report to the Ombudsman.

Permission to interview a child should be obtained from their parent or carer prior to any interview and an offer of support during the investigative process should be made. Seeking permission from parents also applies where evidence needs to be obtained from a child who may be called upon to give evidence as a witness to an incident.

Empowering Children

Campus Life encourages the active participation of children in our organisation. Where possible staff listen to the views of children, respect what they say and involve them in decision making that involves them. Children are therefore more empowered within the environment with the intent that they will feel more comfortable to speak up.

Guidelines for expected behaviours will apply to both adults and children and be visible and easy to interpret. For example, the child care centre may have a guideline such as "We are kind to each other and will tell other adults if anyone is unkind to us."

Professional Standards

Staff are not permitted to undertake paid or unpaid work, including babysitting and transportation of children, for families of children enrolled in/attending any of the Campus Life Services where the staff is not a member of the child's immediate family.

It is strongly advised that staff do not link with/friend/follow parents or other immediate family of children enrolled in the Centre via social mediums such as Facebook, Instagram unless it is a specific requirement of the staff member's role and is approved in writing by the Business Unit Manager. This is in order to ensure that professional relationships are upheld at all

	<p>times.</p> <p>General Daily operations will incorporate practices designed to protect children and minimise opportunities for unprofessional and inappropriate behaviour by staff. This may include strategies such as</p> <ul style="list-style-type: none"> • minimising opportunities for staff to be alone, or out of visual contact from other staff/general public, with children and young people • ensuring the physical layout/design does not result in 'hidden' spaces • educating staff about what constitutes appropriate interactions with children and young people
Evaluation	This policy ensures a clear and transparent process for management of child protection related complaints involving allegations against staff.
References	<p>Children and Young Persons (Care and Protection) Act 1998- Section 23 Retrieved from: http://www.legislation.nsw.gov.au/fullhtml/inforce/act+157+1998+FIRST+0+N#ch.3-pt.2-sec.23</p> <p>Child Protection (Working With Children) Regulation 2013 http://www.austlii.edu.au/au/legis/nsw/num_reg/cpwca2012cpwcr20132013156l26a2013951.pdf</p> <p>Ombudsman Act 1974, Part 3A; January 2014 http://www.legislation.nsw.gov.au/maintop/view/inforce/act+68+1974+cd+0+N</p> <p>KU Children's Services Responding to Child Protection Concerns involving KU Employees – NSW, April 2013</p> <p>Willoughby City Council Child Protection Reporting Guidelines, July 2010 University of Wollongong Kids' Uni Child Protection Policy, March 2013</p>

Date Approved	29 August 2014
Signature	
Approval Authority	CEO of U@MQ Limited
Date of Commencement	29 August 2014
Amendment Dates	
Date for Next Review	29 August 2015
Related Policies, Work Instructions, Forms or Manuals	CL-0004 Campus Life Staff Code of Conduct CL-0023 Performance & Disciplinary Action CL-0041 Grievance & Dispute Resolution Policy CS-0021 Children's Services -Keeping Children Safe Policy

	CS-0023 Children's Services Feedback and Complaints Policy CS-0011 Children's Services Code of Conduct for Staff
Policies/Rules Superseded by this Policy	