

PROMOTE CHILD SAFETY IN THE WORKPLACE POLICY v2

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Introduction:

Children and young people have a fundamental right to be safe and to grow and develop in environments that are free from violence, exploitation and harm. The safety and protection of children requires a commitment from all levels of the community. At the same time, the community has clear expectations that children will be protected from all forms of harm including sexual, physical and psychological harm as well as ill-treatment and neglect. Marist Youth Care (Marist180) is supportive of these expectations and strives to promote the safety and protection of children.

In accordance with relevant state and territory legislation, Marist180 is required to ensure the safety of children and young people receiving its services by following legislative requirements for screening of employees, contractors, carers and volunteers who provide services to children and young people and addressing all allegations made by children and young people against Marist180 employees, contractors, carers and volunteers.

Statement of Principles:

- Marist180 is proactive in creating safe and supportive environments for children and young people. A safe environment is one where the risk of harm is minimised and clients, carers and employees feel safe and secure.
- Marist180 is committed to maintaining rigorous and consistent recruitment, screening, selection, induction and training processes to ensure that those

engaged in work with our clients are suitable for such work and pose no apparent risk to clients.

- Where concerns arise about alleged inappropriate behaviour by those engaged to work with our clients, Marist180 is committed to maintaining robust systems for identifying and responding to such complaints. In dealing with complaints against employees and carers Marist180 will uphold the principles of procedural fairness and any findings and actions will be based on a thorough and fair assessment of evidence.
- Marist180 is committed to ensuring that all staff, volunteers, clients and parents and carers are aware of this policy.

Scope of Policy:

This policy applies to all Marist180 employees who, under this policy, include all paid staff, contractors, carers and volunteers who are engaged by Marist180 in working with children and young people.

• Pre-employment screening

- All employees, carers and volunteers irrespective of which state or territory in which Marist180 operates, are required to undertake a National Criminal History Record Check. In addition, all employees, carers and volunteers are required to undertake pre-employment screening. The pre-employment screening requirements may vary depending on the particular state or territory in which the Marist180 program operates. This is set out in Table 1 below.
- Applicants for paid and voluntary work with Marist180 will be advised in advance by the appropriate agency representative that working with Marist180 will require pre-employment screening checks to be conducted.
- In circumstances where a position must be filled urgently, employment may be offered to the applicant conditional upon successful finalisation of the pre-employment screening. In such circumstances additional supervision should be provided or unsupervised access to children and young people should be restricted until completion of the screening process.
- If pre-employment screening indicates that the applicant is not suitable for child-related work, the relevant agency representative must discuss this outcome with the Executive Manager, People Strategies. The Executive Manager should note 'People convicted and imprisoned for murder, the indecent or sexual assault of a child, child pornography or incest with a child victim will never be able to appeal to the NSW Civil and Administrative Tribunal (NCAT) to overturn a ban on them working with children.
- Persons subject to a control order, for example good behaviour bond or home detention, cannot appeal to NCAT against a refusal decision for the duration of the order.

- If the pre-employment screening indicates that a person is suitable for child-related work, the recruitment process may proceed. An employee deemed suitable for child-related work will be required to undertake periodic checks to ensure their ongoing suitability for working with children and young people. Table 1 below sets out the relevant validity periods in the different states and territories in which Marist180 operates.

Table 1: Pre-employment screening requirements

State	Screening Program	Validity	Who	Responsible authority
NSW	NSW Working With Children Check	5 years	Employees and carers/ volunteers aged 18 years and over. Adults living in the household of an authorised carer.	NSW Office for the Children’s Guardian
ACT	ACT Working With Vulnerable People Background Check	3 years	Employees and volunteers aged 16 years and over	Office of Regulatory Services, Justice and Community Safety Directorate
SA	Child-related Employment Screening	3 years	Employees, volunteers, agents, contractors and subcontractors	Department of Communities and Social Inclusion
VIC	Working With Children Check	5 years	Employees and Volunteers aged 16 years and over	Department of Justice
WA	Working With Children Check	3 years	Employees and only volunteers aged 18 years and over	Department for Child Protection and Family Support
QLD	Working With Children Check (“Blue Card”)	2 years	Employees and only volunteers aged 18 years and over	Public Safety Business Agency

• Recruitment and selection

- Marist180 recognises that rigorous recruitment interviews and reference checking processes prior to employment are important in determining an applicant’s suitability for child-related work. Marist180 requires all interviews and reference checking processes to include questions designed to assess an applicant’s suitability for working with children. The Recruitment and Screening procedures contain sample questions for interviewing and conducting referee checks and must be consulted in any recruitment process.

• Dealing with complaints

- Working with children requires a high level of trust and due to its nature such work is subject to certain scrutiny. Marist180 has a robust framework in place for responding to any allegations, information, complaints or concerns about the conduct of an employee involving a client, which may impact on their suitability for working in child-related work.
- In this policy 'employee' means any paid employee, contractor, carer or volunteer. In addition, the term 'allegation' includes any information, complaint or concern involving alleged inappropriate behaviour by a Marist180 employee towards any child or young person. The allegation may therefore relate to conduct towards a child that is not a client of Marist180 and may also have occurred in the workplace or outside of it.
- If an Marist180 employee is advised of an allegation involving alleged inappropriate behaviour by an Marist180 employee, a carer, a member of a carer's household or another child towards any child or young person they should advise their immediate supervisor as soon as practicable.
- Allegations must be investigated by Marist180 regardless of their level of seriousness. The extent of the investigation will be determined by the level of seriousness and risk involved in the matter at hand. Marist180 will make reasonable enquiries to determine appropriate action. Marist180 also has specific reporting requirements and obligations in the circumstances outlined in table 2 below.

Table 2: Legal reporting requirements

Area	Requirement
Conduct involving abuse or neglect causing possible risk of harm	If the alleged conduct is of such a nature that requires a mandatory report to be made to the relevant statutory child protection authority, such report should be made in accordance with the Marist180 Identify and Respond to Child Abuse and Neglect Policy and Procedures. The concerns must also be managed in accordance with the principles outlined in that policy.
Conduct involving Possible criminal behaviour	If the alleged conduct is of such a nature that it requires a report to be made to the police, such a report should be made as soon as possible to the local police.
Conduct involving 'reportable conduct' (NSW only)	In NSW only, if an employee or a carer is the subject of a reportable allegation or reportable conviction, the 'Head of Agency' must ensure that the Ombudsman is notified within 30 days. The Head of Agency is the CEO. A reportable allegation is an allegation involving 'reportable conduct' and a reportable conviction is a conviction (including a finding of guilt without the court proceeding to a conviction), of an offence involving reportable HYPERLINK

	<p>"http://www.austlii.edu.au/au/legis/nsw/consol_act/oa1974114/s25a.html#reportable_conduct" HYPERLINK</p> <p>Reportable conduct means;</p> <ul style="list-style-type: none"> • Any sexual offence, or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence); • Any assault, ill-treatment or neglect of a child; • Any behaviour that causes psychological harm to a child. <p>Reportable conduct does not extend to;</p> <ul style="list-style-type: none"> • conduct that is reasonable for the purposes of the discipline, 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, or; • the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures; • conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.
	<p>Refer to local Marist180 Managing Allegations Against Employee procedures for further practical definition and guidance regarding what constitutes reportable conduct.</p>
<p>Physical or sexual abuse by a foster carer or out of home carer (Vic only)</p>	<p>Out of Home Care Services must notify the Secretary of Department of Human Services within 7 days of becoming aware of allegations of physical or sexual abuse by a foster carer or an out of home carer employed by a registered Out of Home Care Service.</p>

- Where reports must be made to child protection authorities, the police or other agencies, Marist180 will ensure, prior to commencing its own investigation that such action will not interfere with any investigation or follow up being undertaken by such agencies.
- The Marist180 investigation will include:
 - Action taken to ensure the immediate safety of children and young people, taking into account risks to all affected parties, in particular children and young people. This may involve staff being directed to take leave, or changes to their duties. It may involve removing children from the home of a foster carer.
 - Action taken to ensure the confidentiality of the staff member or carer in the course of taking action, until the outcome of the investigation is determined.
 - Contact with child protection authorities and/or the police where required in which case children will not be interviewed by Marist180

- as part of the investigation until the child protection authority and/or police have completed their own responsibilities.
- Gathering of necessary information, which may include interviewing witnesses and obtaining relevant documentation.
 - Where appropriate, advice to parents or carers.
 - Support to children and young people, witnesses and others affected.
 - Support to the employee or carer and an opportunity for them to respond to the allegations.
 - Consideration of relevant information before making a finding, which is advised to the employee or carer, and where appropriate, to the child or young person and/or their family.
 - Review of policies, procedures and practices, and changes to address any systemic factors identified during the investigation.
- At the end of the investigation a report will be provided to the CEO, Marist180, with recommended findings and advice regarding action to be taken. Findings from an investigation may be;
 - sustained (i.e. a finding on the balance of probabilities that the conduct occurred), or;
 - not sustained – insufficient evidence (i.e. on the balance of probabilities there is some evidence of weight however there is insufficient evidence available to reasonably establish that the alleged conduct did occur), or ;
 - not sustained – lack of evidence of weight (i.e. where the evidence is of such poor probative value or lacking in weight, such as to warrant a finding that, on the balance of probabilities, the conduct did not occur);
 - false (i.e. where inquiries into the matter show that the conduct did not occur. Some of these matters may be vexatious, for example where inquiries into the matter show the allegation was made without substance and to cause distress to the person against whom the allegation was made).
 - In NSW, where the investigation involves an allegation of ‘reportable conduct’ the following additional finding may also be made;
 - not reportable conduct (i.e. where inquiries into the matter show the conduct was not reportable).
 - Outcomes of an investigation may be;
 - no further action;

- disciplinary action against employees, suspension, caution or termination, bearing in mind that termination of employment or formal warnings need to be supported by a thorough investigation of the allegation against the employee. This information can be used if the employee challenges this decision through industrial/legal pathways. It is a good practice to involve the employee representative(s) in all of the processes, this could be the relevant union.
- suspension or withdrawal of authorisation for carers, or amendment of the terms of authorisation;
- action to reduce or eliminate future risk of inappropriate behaviour, such as training, amendments to policies and procedures.

The following additional outcomes may apply in different jurisdictions:

Jurisdiction	Outcome
NSW	<p><u>Final report to NSW Ombudsman</u> A final report will be submitted to the Office of the NSW Ombudsman. The NSW Ombudsman will then assess whether the process was procedurally fair and the findings and outcome were appropriate.</p>
	<p><u>Notification to Office of the Children’s Guardian</u> Marist180 will consider whether it has a legal obligation to notify the employee or carers details to the Office of the Children’s Guardian where there has been a finding of sexual misconduct or serious physical assault. Such findings will trigger a risk assessment in relation to the employee or carer’s suitability to work with children as part of the Working With Children Check process.</p> <p>The NSW Children’s Guardian Carers Register will be updated with relevant information.</p> <p>Refer to local Marist180 Managing Allegations Against Employee procedures for further practical definition and guidance regarding what constitutes reportable conduct.</p>
Victoria	<p><u>Suitability Panel, Department of Human Services</u></p> <p>If allegations of sexual abuse or physical abuse have been investigated by the Suitability Panel of the Department of Human Services and the alleged abuse is found to have occurred, then the Suitability Panel may find that a person poses an unacceptable risk of harm to children and that person’s registration as a carer will be removed.</p> <p>The Working With Children Check process will consider the outcome of Suitability Panel hearings.</p>
Queensland	<p><u>Public Safety Business Agency</u></p>

	Disciplinary information from professional organisations associated with teachers, childcare service providers, foster carers, nurses, midwives and certain health practitioners is considered in the screening process carried out by the Public Safety Business Agency.
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- All documents relating to allegations will be kept confidentially and centrally at Marist180 separate to employee personnel records. A flag will be located in the employee/carers file to indicate the presence of such an investigation.
- Employees and parents/carers of children and young people affected by the employee's behaviour have the right to complain to the CEO, Marist180, if they are unhappy with the conduct of the investigation. In NSW if the allegation involves reportable conduct, a complaint regarding the investigation may also be made to the NSW Ombudsman. Nothing prevents an employee or anyone else aggrieved by the process from seeking redress through legal channels.

• **Communication and training**

- All employees are expected to follow the Marist180 Code of Conduct which sets out the expectations for employees in terms of their interactions with children and young people.
- All new employees and volunteers will receive a copy of the Code of Conduct, this Policy and associated procedures.
- All children and young people and their families joining Marist180 programs will receive an information sheet outlining their rights and the process to follow should safety or professional conduct concerns arise.
- Marist180 will hold regular information sessions for employees and clients regarding the expectations for their behaviour in creating and maintaining a safe workplace for Marist180 clients.

Related Policies, Procedures and Legislation

Related Documentation	<ul style="list-style-type: none"> • Marist180 Child Protection Framework • Marist180 Child Protection Policy • Marist180 Identify and Respond to Child Abuse and Neglect Policy • Marist180 Child Protection Records and Information Exchange Policy and Procedures • Marist180 Managing allegations against employees procedures • Marist180 – Code of Conduct • Marist180 Child Safety Processes and Practices
	<ul style="list-style-type: none"> • NSW Ombudsman's Act 1974 • NSW Child Protection (Working with Children) Act 2012

Relevant Legislation	<ul style="list-style-type: none"> • NSW Child Protection (Working with Children) Amended Act 2016 • Child Protection (Working with Children) Regulation 2013 • Working with Vulnerable People (Background Checking) Act 2011 (ACT) • Working with Children Act 2005 (Vic.) • Working with Children (Criminal Record Checking) Act 2004 (WA) • Commission for Children and Young People and Child Guardian Act 2000 (QLD) • Working with Children (Risk Management and Screening) Act 2000 (QLD)
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