7.5 IMPLEMENTING CHILD PROTECTION LEGISLATION - GUIDELINES FOR SUPERVISORS

OMBDUSMAN’S AMENDMENT (CHILD PROTECTION AND COMMUNITY SERVICES) ACT

INTRODUCTION
Recent changes to state child protection legislation impose new obligations on NSW Universities. The Ombudsman’s Amendment (Child Protection and Community Services) Act 1998 requires UTS to report allegations or convictions of child abuse against employees to the NSW Ombudsman.

UTS must report to the NSW Ombudsman allegations or convictions against their employees that relate to the conduct of employees in the course of their employment with the University. Convictions or allegations of abuse which occur outside of employment do not have to be reported.

This legislation has been developed as a result of the 1997 Royal Commission into the NSW Police Service. The Commission identified the potential conflict of interest arising from agencies responsible for the provision of services to children dealing with allegations of child abuse against their own employees. This legislation aims to protect the interests of both children and employees.

Although UTS does not primarily provide services to children there are a small percentage of UTS students under the age of eighteen who are subject to the legislation. UTS staff also routinely visit other organisations such as hospitals and schools, where they may be involved with children in the course of their employment. UTS also provides internet access to staff. A risk exists that staff may use this technology to access and/or download child pornography or to make inappropriate contact with young persons or children via e-mail or chat rooms, which is defined as child abuse under the Act.

RESPONSIBILITIES OF ALL STAFF
The Code of Conduct policy clarifies the conduct expected of UTS staff and provides for action to be taken for any breaches, including breaches of legislation. If you become aware of an allegation or conviction of child abuse involving a UTS staff member in the course of their employment at UTS you are required by the Child Protection Act to report that allegation. This obligation applies to all staff, not just supervisors.

RESPONSIBILITIES OF SUPERVISORS
Supervisors must report any allegations of child abuse immediately to the Director, Human Resources. You must report allegations even if you think that the allegation is trivial, minor or obviously untrue.

As a supervisor you may become aware of allegations of, or convictions for, child abuse when:
- a staff member reports or discloses the alleged misconduct of another staff member
- students/parents/others make allegations about an employee
- self-reporting (employees are obliged to disclose any child abuse convictions/allegations occurring as part of their employment)

CONFIDENTIALITY MUST BE MAINTAINED
Supervisors must remove or minimise any risk to children or students whilst protecting the rights of the employee involved. The details of any investigation must be kept confidential. This means that no one may reveal or discuss an allegation, or any details of an investigation, to any person other than the Director of Human Resources, the nominated investigators, police,
community services staff or the Ombudsman’s child protection team.

ALL ALLEGATIONS WILL BE INVESTIGATED
Under the provisions of the new legislation, UTS will investigate all allegations of child abuse involving an employee in the course of their employment with UTS. Action taken, as well as information from any investigation, will be reported to the Ombudsman. UTS will refer allegations of a serious nature to police or community services for investigation and advice.

Investigation procedures for allegations of child abuse parallel the guidelines and procedures developed at UTS for serious instances of sexual harassment (refer to the Handling Staff Grievances Guidelines) and would normally be conducted by nominated investigators. It is not expected that such investigations be conducted by supervisors or managers.

DEFINITIONS UNDER THE ACT
In the Act child means a person under the age of 18.
In the Act child abuse means:
1) assault (including sexual assault) of a child, or
2) ill treatment or neglect of a child, or
3) exposing or subjecting a child to behaviour that psychologically harms the child, whether or not, in any case, with the consent of the child.

Within the definitions, an allegation of child abuse also includes an allegation of misconduct that may involve child abuse. For example, this would cover allegations involving the possession of child pornography.

The definition of employee under the Act includes:
1) any employee of the University, and
2) any individual engaged by the University to provide services to children including; contractors, sub-contractors, volunteers, work experience participants including work experience employers providing work experience to our students or work experience students placed within the University working with children
3) student placements.

To determine if a person is engaged by the University as outlined in il above, for the purpose of the Act, the following considerations should be taken into account.

- Does UTS provide the person with work that involves the provision of services to children?
- Does UTS provide the person with general directions (ie a brief) about the services we want them to provide?
- Is UTS able to terminate their contract or involvement if their work is unsatisfactory?

If UTS can answer “yes” to the above questions, then the person is “engaged” by UTS and is an employee for the purposes of the Act. The University’s own definition of employee as per the human resources policy manual does not cover all these groups.

Allegation is not defined in the legislation and the term is given the ordinary meaning of the word. Meanings from the Macquarie Dictionary include:

- a mere assertion made without proof
- a declaration
- an assertion made by a party which they undertake to prove.

In addition, the Ombudsman’s Child Protection Team advises that an allegation has three components and that all three must be present, as follows.

- The person who is the subject of the allegation must be identifiable and be a current employee. This does not mean identifiable by name, by description is sufficient.
- An alleged offence or description of abusive behaviour or misconduct that may involve child abuse.
- The alleged victim must be identifiable. At the time of the alleged offence or behaviour, they must have been under the age of 18 years.

An allegation may be written, verbal or anonymous.

There does not have to be any substantiation of the accusation or evidence given for it to be reported to the Ombudsman’s Office. All allegations must be reported even where the University may consider the allegation trivial, false or unsubstantiated. This is necessary because some minor matters may uncover other more serious misconduct and also so that an investigation of malicious or false allegations may help in dealing with similar subsequent
allegations and the employee who has been falsely accused may be vindicated of the accusations made against them.

**THE WORKING WITH CHILDREN CHECK INCORPORATING THE PROVISIONS OF THE CHILD PROTECTION (PROHIBITED EMPLOYMENT) ACT AND THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT.**

The Child Protection (Prohibited Employment) Act and the Commission for Children and Young People Act are the legislation that comprise the Working With Children Check. The new laws, which are effective from 1 July 2000, aim to help prevent unsuitable people from working with children and young people. These laws outline specific duties for employers in child-related workplaces such as schools and child care centres. Universities are specifically excluded from the provisions of the check. However, all employers, not just those in child-related employment must:

- notify the Commission for Children and Young People of any relevant disciplinary proceedings that have been completed against an employee within the last five years
- provide upon request, appropriate information to any screening agency relating to employees who have been subject to completed disciplinary proceedings.

UTS staff who supervise or teach students, provide services or research within child related workplaces such as hospitals and schools may be required by those organisations to complete a Prohibited Employee Declaration or undergo the Working with Children Check.

**HOW DOES THIS LEGISLATION APPLY TO UTS?**

For Universities this means that, as they do not routinely provide services to children, they do not have to check employees prior to employment or those currently employed. However, any employee who has had relevant disciplinary proceedings completed (all matters involving child abuse, sexual misconduct and acts of violence that involve children, are directed at children or take place in the presence of children, and are committed by the employee in the course of their employment) must be notified to the Commission. At UTS the process involves the completion of relevant forms to the Commission by the nominated investigator and notification to the employee informing him/her of the Act and registration with the Commission.

An example of a notifiable situation at UTS would be an employee involved in obtaining child pornography from the internet. The provisions of the Ombudsman’s Amendment Act apply from the time any allegation is raised. When and if the offence has been proven and disciplinary proceedings completed, the Working with Children Check notification would apply.

Further information can be obtained by contacting:

Policy and Planning Branch
Human Resources Unit
9514 1161

* Completed disciplinary proceedings also include processes where an employee resigns prior to finalisation of the disciplinary process.