7.6 IMPLEMENTING CHILD PROTECTION LEGISLATION

OMBUDSMAN’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 staff to the NSW Ombudsman.

UTS must report to the NSW Ombudsman allegations or convictions against their staff that relate to the conduct of staff 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 staff. This legislation aims to protect the interests of children and staff.

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 fellow 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.

HOW TO REPORT ALLEGED CHILD ABUSE RELATING TO A UTS STAFF MEMBER
You must report any allegations or instances of child abuse immediately to your supervisor or the Director, Human Resources. You may make your report verbally or in writing. You may make your report anonymously. You must report allegations even if you think that the allegation is trivial, minor or obviously untrue.

ALL ALLEGATIONS WILL BE INVESTIGATED
Under the provisions of the new legislation UTS will investigate all allegations of child abuse involving a staff member 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 Handling Staff Grievances guidelines) and would normally be conducted by nominated investigators. It is not expected that such investigations be conducted by your supervisor or manager.
CONFIDENTIALITY MUST BE MAINTAINED
The details of any allegation and subsequent investigation must be kept confidential. This means that you may not 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.

DEFINITIONS UNDER THE ACT
In the Act child means a person under the age of 18.

In the Act child abuse means:
- assault (including sexual assault) of a child, or
- ill treatment or neglect of a child, or
- 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:
- any staff member of the University, and
- any person working in a voluntary or honorary appointment for the University.

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.

An allegation has three components and all three must be present, as follows.
- The person who is the subject of the allegation must be identifiable and be a current staff member. 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.

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 staff member 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 staff members in child related workplaces such as schools hospitals and child care centres. Universities are generally excluded from the provisions of the check. However, all staff, 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 a staff member 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 schools or hospitals may be required by those organisations to complete a Prohibited Employee Declaration.

HOW DOES THIS LEGISLATION APPLY TO UTS?
For UTS this means we may have to check some staff prior to employment and those currently employed in child-related employment. We must also notify the Commission of any staff member who has had relevant (child abuse) disciplinary proceedings
Completed disciplinary proceedings also include processes where a staff member resigns prior to finalisation of the disciplinary process. The nominated investigator will notify the Commission and the staff member, informing him/her of the Act and registration with the Commission.

An example of a notifiable situation at UTS would be a staff member 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.