

Managing physical contact with youth members

“WHEN TO TOUCH AND NOT TOUCH”

In 2004 the ‘New South Wales Commission for Children and Young People’ issued guidelines dealing with the ‘Working With Children Checks’. In particular, Section 5.1 dealt with the reportable and non reportable offences, providing guidelines as to what was considered appropriate in dealing with children and young people.

These guidelines tend to mirror the attitude that Scouting in NSW has promoted for some years. Edited extracts of the Commissions guidelines appear on the next two pages.

It is important to note that the authorities prefer reports to go through the agencies and organisations. This enables the reporting body, when appropriate, to take whatever proactive steps it deems necessary to protect members. Our NSW State Office has an established relationship with the respective authorities.

There are five main points to understand in using this guide.

1. These guidelines are not to be read in isolation but in conjunction with our existing policies and the Leader Support Guide ‘Avoiding Abuse in Scouting’ available on our website. www.nsw.scouts.com.au
2. The greatest protection offered is by having two deep leadership. There are cases where well meaning people have reported leaders, direct to the police, for what they think is a reportable offence. Where there has been two deep leadership the complaint is usually quickly resolved, where there has been only one leader the journey to finding a resolution is often long and protracted.

Where a second leader is unavailable a parent roster also serves as additional protection should a youth member have to suddenly be taken to hospital. Life threatening asthma attacks and the like are becoming more frequent.

3. Our Code of Conduct, which can be found on the back page of this Guide and on the back of your Leader Appointment, provides clear requirements for appropriate leadership in Scouting.,
4. Ensure you are never alone with a youth member. Remember “Always in sight but out of hearing”..
5. Report all suspicions and allegations to the CEO at NSW State Office. Infringements of the Code of Conduct should also be reported to State Office. This enables us to take proactive steps to protect youth members and to gain an understanding of how any assessment is to progress. *(If you have difficulty in contacting State Office please ask your Regional Commissioner or Group Leader to report.)*

THE QUESTION ON YOUR MIND SHOULD ALWAYS BE:

Would a reasonable person see this as being reasonable in the circumstances?

**Condensed Extracts From
The NSW Commission for Children & Young People
The Working with Children Check Guidelines 2004**

5.1.1 What is reportable conduct?

Reportable conduct means:

- (a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence); or
- (b) any assault, ill treatment or neglect of a child; or
- (c) any behaviour that causes psychological harm to a child;

whether or not, in any case, with the consent of the child (Section 33, Commission for Children and Young People Act 1998).

Reportable conduct may include any of the following behaviour:

► **Physical assault**

Using common law principles, physical assault must include all three of the following elements:

- It is an act committed on or towards a child;

and

- It involves either the application of force to a child or an act that causes a child to think that immediate force will be used on them;

and

- It is either hostile or reckless (a reckless act is one where the person foresees the likelihood of inflicting injury or fear and ignores the risk).

Actual physical harm does not have to occur in order for an assault to have taken place, i.e. the child does not have to be injured.

Physical contact which is an inevitable part of everyday life does not amount to an assault. See the list at 5.1.2 for some examples of such contact.

► **Sexual assault**

Sexual assault refers to a sexual offence against, with or in the presence of a child. It includes the involvement of children in sexual acts or acts of indecency and any sexual threat imposed on a child.

► **Neglect**

Neglect occurs when a child is harmed by the failure of a person whose job includes care responsibilities towards a child, to provide basic physical and emotional necessities of life, including failure of the person to provide or arrange for the provision of adequate and proper food, nursing, clothing, medical attention or lodging for a child in that person's care.

► **Behaviour that causes psychological harm**

Psychologically harmful behaviour is behaviour that results in significant emotional harm or trauma to a child. There is a causal link between the inappropriate behaviour and the harm.

REMEMBER...
TWO DEEP LEADERSHIP AT ALL TIMES
PROTECTS LEADERS AND YOUTH MEMBERS

5.1.2 What kinds of behaviours fall outside the definition of reportable conduct?

The Commission for Children and Young People Act 1998 provides that reportable conduct does not include:

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 professional standards.

The Act lists some examples of conduct that would not constitute reportable conduct, namely:

- touching a non-intimate part of a child's body 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.

Further examples of behaviours that are not reportable conduct include:

- (a) providing appropriate medical care to a child who is hurt;
- (b) guiding a child by the shoulders, arms or hands;
- (c) not providing supervision where this was for good reason, and for a short period of time and where the risk of harm was reasonably perceived at the time to be low;
- (d) actions found to have been appropriate physical contact in classes such as sport, drama, dance etc.

5.1.4 What is 'sexual misconduct'?

Sexual misconduct is a term used to describe a range of behaviours or a pattern of behaviour aimed at the involvement of children in sexual acts.

Some of these behaviours may include:

- inappropriate conversations of a sexual nature;
- comments that express a desire to act in a sexual manner;
- unwarranted and inappropriate touching;
- sexual exhibitionism;
- personal correspondence (including electronic communication) with a child or young person in respect of the adult's sexual feelings for a child or young person;
- deliberate exposure of children and young people to sexual behaviour of others including display of pornography; and
- possession of child pornography in the workplace.

Sexual misconduct includes 'grooming behaviour', or patterns of behaviour aimed at engaging or 'grooming' a child as a precursor to sexual abuse. The grooming process can include:

- Persuading the child that a "special" relationship exists - spending inappropriate special time with the child, inappropriately giving gifts, showing special favours to them but not other children, allowing the child to overstep rules etc.;
- Testing of boundaries - undressing in front of the child, allowing the child to sit on the lap, talking about sex, 'accidental' touching of genitals etc.

These behaviours may not indicate risk if they occur in isolation, but if there is a pattern of behaviour occurring, it may indicate grooming.

For sexual misconduct to be reportable, the alleged conduct must have been committed against, with or in the presence of a child.

5.1.5 What is an 'act of violence'?

An act of violence is an act or series of related acts that has involved violent conduct.

For an act of violence to be reportable, the alleged conduct must have been committed in the course of employment and in the presence of a child.

CODE OF CONDUCT

This Code of Conduct is expected of all adults, uniformed and non-uniformed, who work within the Movement, recognising that at all times they should act responsibly and exercise a duty of care.

1. Adults in Scouting respect the dignity of themselves and others.
2. Adults in Scouting demonstrate a high degree of individual responsibility, recognising that at all times their words and actions are an example to other members of the Movement.
3. Adults in Scouting act at all times in accordance with Scouting Principles, thereby setting a suitable example for all.
4. Adults in Scouting do not use the Movement to promote their own beliefs, behaviours or practices where these are not compatible with Scouting Principles.
5. Adults in Scouting act with consideration and good judgement in all interpersonal relationships both inside and outside Scouting.
6. Adults in Scouting respect everyone's right to personal privacy at all times. They take special care where sleeping, changing of clothing, bathing and ablutions are associated with any Scouting activity
7. Adults in Scouting avoid unaccompanied and unobserved activities with youth members wherever possible.
8. Adults in Scouting, for their own protection, should avoid potentially compromising situations by ensuring, where reasonably possible, that at least two adults are in attendance whilst supervising and/or accompanying youth members. It is recognised that, in certain circumstances, it may be necessary for a Leader or adult, whilst acting responsibly and exercising their duty of care, to be alone with a youth member.
9. Adults in Scouting realise that bullying, physical or verbal abuse, neglect or any other type of abuse, is unacceptable conduct by any member of the Movement.
10. Adults in Scouting must report any conduct seen or heard that does not comply with this Code of Conduct.
(In NSW all such reporting should be made to the CEO at Branch HQ)

REPORT ALL SUSPICIONS AND ALLEGATIONS TO THE CHIEF EXECUTIVE AT BRANCH HEADQUARTERS.

The Association as a "reporter" is able to meet the requirements necessary to facilitate a speedy and fair inquiry by the authorities. In addition we are usually kept informed as to the progress of a case.

Where necessary we are able to institute expeditiously procedures and actions to maximise the protection of our youth members.

This is not possible when a complaint is made direct to the authorities by individuals.

(if unable to contact Branch then ask your Regional Commissioner or G/L to make the report for you)