

## Criminal Allegations, Charges and Convictions Against Employees

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**Summary** This policy directive sets out the mandatory requirements for responding to any allegation, charge or conviction against a Health Service employee where it involves a criminal matter.

**Replaces Doc. No.** Child Abuse Allegations - Ombudsman Amendment (Child Protection and Community Services) Act 1998 [PD2005\_574]

**Author Branch** Corporate Governance and Risk Management

**Branch contact** Andrew Graham 9391 9394

**Applies to** Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, NSW Ambulance Service, NSW Dept of Health, Public Health Units, Public Hospitals

**Audience** All staff

**Distributed to** Public Health System, Community Health Centres, Dental Schools and Clinics, Health Associations Unions, NSW Ambulance Service, NSW Department of Health, Public Health Units, Public Hospitals

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**Director-General**

**Compliance with this policy directive is mandatory.**



**CRIMINAL ALLEGATIONS, CHARGES AND  
CONVICTIONS AGAINST EMPLOYEES.**

**April 2006**

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## **1 Introduction**

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### **1.1 Purpose and scope of the Policy Directive**

This Policy Directive applies to the Department of Health, Area Health Services, Statutory Health Corporations, declared and non-declared Affiliated Health Organisations, and the Ambulance Service of NSW, collectively referred to as “Health Services” for the purposes of this Directive.

The Directive outlines requirements for Health Services in handling and responding to criminal allegations, charges and convictions made against persons working in the Health Service (including contractors, sub-contractors, volunteers and trainees) and employees of the Government of New South Wales (NSW Health Service) for whom they have delegated employment responsibilities, collectively referred to as “employees” for the purposes of this Directive.

### **1.2 Related NSW Health Policy Directives**

Health Services should assess allegations of any nature against employees, irrespective of whether they relate to clinical or non-clinical matters, as to whether or not they involve possible criminal conduct.

Where an allegation involves the conduct of a health practitioner or health service provider, the NSW Health Policy Directive concerning the management of a complaint or concern about a clinician (*Complaint or concern about a clinician – principles for action PD2005\_007*) should be consulted and appropriate action should be taken to inform registration authorities and other bodies, as relevant.

Some criminal conduct may also be corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*. Where corrupt conduct is reasonably suspected, this should be reported to the Chief Executive of a Health Service (via a manager or person with audit responsibilities within the Health Service). Policy Directive 2005\_173, *Corrupt Conduct - Reporting Possible Corrupt Conduct to the Independent Commission Against Corruption*, should be consulted in conjunction with this Policy Directive in such cases.

The *Protected Disclosures Act 1994* offers protection for public officials who make a protected disclosure concerning possible corrupt conduct, maladministration and serious and substantial waste. The relevant NSW Health policy directives (PD2005\_135 & PD2005\_263) should be read and applied in conjunction with this Policy Directive.

This Policy Directive should also be read in conjunction with relevant Policy Directives concerning employment screening (PD2005\_177, PD2005\_193 and PD2005\_196).

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## 2 Glossary

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The following are definitions for some terms used in this Directive:

**CCYP:** Commission for Children and Young People.

**Chief Executive:** The principal officer of a Health Service.

**Child:** A person under the age of 18. (*Ombudsman Act 1974, Section 25A(1)*)

**Child-related employment:** Employment of the following kind [selected with possible relevance to Health Services] that primarily involves direct contact with children where that contact is not directly supervised:

- Employment in wards of public or private hospitals in which children are patients;
- Employment involving the direct provision of child health services;
- Employment involving the provision of counselling or other support services to children;
- Employment in detention centres (within the meaning of the *Children (Detention Centres) Act 1987*);
- Employment in schools or other educational institutions (not being universities);
- Employment in pre-schools, kindergartens and child care centres (including residential child care centres);
- Employment in refuges used by children;
- Employment at overnight camps for children;
- Employment involving the provision of child protection services;
- Employment in entertainment venues where the clientele is primarily children. (*Child Protection (Prohibited Employment) Act 1998, Section 3*)

**Employee:** A person engaged in employment by or in connection with a Health Service.

**Employment:** Employment means:

- Performance of work under a contract of employment or as the holder of a remunerated position;
- Performance of work as a self-employed person or as a sub-contractor;
- Performance of work as a volunteer for an organisation;
- Undertaking practical training as part of an educational or vocational course;
- or**
- Performance of work as a minister of religion or other member of a religious organisation. (*Commission for Children and Young People Act 1998, Section 33(1)*)

**Employment Screening and Review Unit (ESRU):** The Unit within the Department of Health that provides Health Services with advice and support in responding to child-related and criminal allegations, charges and convictions, and which monitors performance in responding to such matters. The Unit also coordinates employment screening for the NSW Health system.

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**Health Service:** The Department of Health, Area Health Services, Statutory Health Corporations, declared and non-declared Affiliated Health Organisations, and the Ambulance Service of NSW.

**Procedural Fairness:** In terms of investigations and risk assessments, procedural fairness involves informing the employee of the substance, with as much detail as possible, of the allegation(s) made against them; providing the employee opportunity to put forward their case; making reasonable inquiries during the investigation stage; considering all relevant evidence, ensuring that there is no conflict of interest; acting fairly and without bias; conducting investigations and risk assessments without undue delay; and, maintaining good records in relation to these matters.

**Relevant employment proceedings:** Disciplinary proceedings (in NSW or elsewhere) against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, being proceedings involving:

- (a) Reportable conduct by the employee, or
- (b) An act of violence committed by the employee in the course of employment and in the presence of a child,

Unless there is a finding that the allegation in such proceedings was not reportable conduct, was false, was vexatious, or was misconceived (*Commission for Children and Young People Act 1998, Section 33(1) and Section 39(1) – Commission for Children and Young People Regulation 2000, Clause 8*).

**Support Person:** A person nominated by an employee to support them during any investigation or inquiry into the employee. The support person's role is to offer support to the employee and does not include direct involvement in the investigation or inquiry, other than when the employee requests the support person attend meetings and interviews. The support person in these circumstances may advise the employee in respect to answering questions and discussing issues, however may not interrupt or bring into consideration issues on behalf of the employee.

Where an employee has limited communication skills, the support person may be nominated to talk on the employee's behalf.

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## **3 Responding to an allegation or other information about criminal conduct by an employee**

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### **3.1 Introduction**

In accordance with the NSW Health Code of Conduct, all Health Service employees are required to report to their supervisor or an appropriate senior manager any behaviour or circumstance that lead them to suspect improper or criminal conduct by another employee. Such allegations or information may also be received from patients, members of the public or from the public or from NSW Police.

Under the *Public Sector Employment and Management (General) Regulation 1996* an officer of the Department of Health who is charged with having committed, or is convicted of, a serious offence is required to immediately report that fact to the Director-General (clause 100A). A serious offence is an offence that may be punishable by imprisonment for 12 months or more.

Under the *Health Services Act 1997*, a member of the NSW Health Service or a visiting practitioner of a Health Service who is charged with having committed, or is convicted of, a serious sex or violence offence, must report the fact in writing to the Chief Executive of the Health Service within 7 days of the charge or conviction.

Serious sex or violence offences are offences committed in any jurisdiction that involve sexual activity, acts of indecency, physical violence or the threat of physical violence that, if they were or if they had been committed in NSW, may be punishable by imprisonment for 12 months or more.

Health Services must assess all allegations, irrespective of whether they relate to clinical or non-clinical matters and irrespective of the time that they occurred, as to whether or not they involve possible criminal conduct. All allegations that involve possible criminal conduct must be reported to NSW Police.

This section of the Policy Directive outlines the responsibilities of Health Services when an allegation is made or any information, including a charge or conviction, is received by an employee of a Health Service that may involve criminal conduct by a Health Service employee. This extends to conduct or alleged conduct prior to the Health Service's employment of a person and to conduct of alleged conduct outside the course of employment.

**Any allegation, charge or conviction that involves a person under the age of 18 at the time of the allegation should be managed in accordance with NSW Health Policy Directive PD2006\_025 *Child related allegations, charges and convictions*.**

### **3.2 Health Service Responsibilities**

Health Services must have in place procedures to ensure that Chief Executives are notified of any allegations or other information, including charges and convictions, about possible criminal conduct against an employee.

In responding to allegations against an employee that involve possible criminal conduct and charges that have been laid against an employee Health Services must:

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- Conduct an immediate risk assessment to determine whether there is any risk to patients or employees and whether the employee subject to the allegation or charge requires relocation, supervision or suspension<sup>1</sup>.
- If the matter occurred outside the workplace, determine whether the allegation, charge or conviction is relevant to the work of the employee.
- Refer the matter to NSW Police for investigation or liaise with NSW Police in the case where the Health Service has become aware of a charge against an employee.
- Where an allegation or charge involves a serious offence, submit a Reportable Incident Brief to the Director General immediately and in any case within 24 hours of the Chief Executive becoming aware of an allegation or charge.
- Ensure that an appropriate Health Service investigation is undertaken by a suitably qualified person in a transparent, accountable and confidential manner and that any investigations are appropriately recorded.
- Provide copies of the final investigation report to ESRU within 7 days of completion of the investigation.
- Keep appropriate records of any investigation and subsequent decision making.
- Undertake disciplinary action based on the findings of the investigation in accordance with relevant NSW Health Policy Directives.

In responding to all criminal convictions, the Department of Health requires Health Services to:

- Where the conviction is for a serious offence, submit a Reportable Incident Brief to the Director General immediately and in any case within 24 hours of the Chief Executive becoming aware of the conviction.
- Undertake a risk assessment to determine whether the employee requires a change in duties, relocation, supervision or suspension or other disciplinary action.
- Where the conviction relates to a serious sex or violence offence, suspend the employee pending a risk assessment and decision with respect to disciplinary action.
- Ensure employee's are given a reasonable opportunity to make written submissions concerning convictions and the proposed disciplinary action to be taken.
- Undertake disciplinary action based on the findings of a risk assessment and any submission by the employee in accordance with relevant NSW Health Policy Directives.
- Keep appropriate records of any risk assessment and decision.

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<sup>1</sup> At any point during either a risk assessment or investigation where there is a reasonable belief that conduct has occurred that would constitute a serious sex or violence offence, the employee should be suspended pending investigation and a decision with respect to disciplinary action.

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## **4 Procedures for responding to allegations involving possible criminal conduct and to information about criminal charges**

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### **4.1 Recording the details of the allegation or charge**

Where an allegation or charge has not been received in writing, the allegation or charge should be recorded to clarify what is being alleged or what charges have been laid. The words used by the person making the allegations or providing the information should be recorded in verbatim if possible, and clarified with the person making the allegation or providing the information.

If it is necessary to seek clarification of a verbal allegation, ensure that the person making the allegation explains events in their own words. Avoid asking leading questions, as this may compromise future criminal investigations.

If there are any concerns about the immediate safety of staff, patients or clients, the person taking the allegations should contact Police (000) and security staff.

### **4.2 Notifying Chief Executive**

In all circumstances where an allegation involves a matter of possible criminal conduct or information is obtained identifying that a criminal charge has been laid against an employee, the Chief Executive must be notified immediately. An appropriate initial response is extremely important in order to:

- Protect vulnerable clients/patients from potential harm
- Protect employees from malicious gossip or unfounded accusations
- Demonstrate that such allegations are treated seriously

Where an allegation concerns senior staff members, a Chief Executive or an employee of another Health Service, ESRU should be notified immediately. ESRU will assist in determining the appropriate course of action, including assessing the ongoing risk to patients, clients and other staff, assessing whether any external agencies may need to be notified, and whether an external investigator should undertake an investigation.

### **4.3 Assessing the risk to patients, clients and staff**

Upon receipt of the allegation or charge against an employee, the Chief Executive must ensure that the allegation or charge is assessed in terms of the ongoing risk to patients, clients, employees or the Health Service's operations.

The process of risk assessment should continue throughout the investigation of an allegation or charge and at the conclusion of the process when a decision is made concerning any disciplinary action against the employee.

Note that where a conviction was prior to the commencement of employment and it has previously been assessed as not posing an unacceptable risk as part of the employment screening process, it should not be investigated again. ESRU should be consulted where this may be the case.

All allegations and charges against an employee should be assessed as to whether they are relevant to the conduct of the employee's work. Where it is considered that the allegation or charge is not relevant to the employee's work, and would not be considered in determining disciplinary action, an investigation should not proceed.

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Where an investigation does not proceed due to it being determined as not being relevant to the employee's work, the decision not to proceed should be documented accordingly.

The Chief Executive or an appropriately delegated officer must decide whether the employee/volunteer should be placed under **direct supervision** or **re-located immediately** on a "without prejudice" basis to a work area where there is no direct contact with patients/clients, having regard to the nature of the alleged conduct. If this is not possible, and if necessary to protect the safety of others, the employee should be **suspended** with pay, pending an investigation of the allegation. This will involve an assessment of the present duties of the employee and the risk posed to other patients, clients or employees of the Health Service.

If the suspension involves a visiting practitioner, the Health Service should refer to the contract with the practitioner.

If at any point in the assessment or investigation of an allegation there is a reasonable belief that conduct may have occurred that constitutes a serious sex or violence offence, the **employee should be suspended immediately** pending finalisation of the investigation and a decision concerning any disciplinary action to be taken.

A decision to take administrative action or make administrative changes in relation to the employee based on the risk assessment process is in no way an indication of the final disciplinary decision which will be based on the final investigation report. All decisions in relation to suspension should be reviewed at least every 30 days.

The protection of a Health Service's patients, clients and employees for which it is responsible is to be paramount. Appropriate counselling and medical services must be arranged immediately for the victim or any employee as appropriate.

At the stage of initial risk assessment, it is not appropriate to inform the employee of the full details of the allegation, as this may compromise criminal investigations or expose any victim or witness to additional risk. **In deciding when and what to inform the employee,** due consideration must be given to the potential ongoing risk to patients/clients and to ensuring the employee is accorded procedural fairness.

If the employee is to be placed on alternate or restricted duties, or is to be suspended, then the employee should be informed that an allegation has been made against them (without going into detail) and provided with an explanation about the process to be followed by the Health Service.

The circumstances in which full details can be disclosed to the employee are addressed later in this Directive.

#### **4.4 Notifying the Director-General and NSW Police**

Chief Executives are required to notify the Director General immediately upon becoming aware that an allegation of a serious criminal offence, that is one that would be punishable by imprisonment for 12 months or more, has been made against an employee and will be referred to NSW Police.

ESRU can provide advice as to whether the allegation is of a serious criminal nature and would be punishable by imprisonment for 12 months or more.

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All allegations that involve possible criminal conduct must be reported to NSW Police. Where NSW Police undertakes or is undertaking an investigation, an ongoing liaison should be maintained to ensure that investigations are coordinated and re-interviewing is minimised or prevented.

**Confidentiality** concerning any allegation is to be maintained to protect the privacy of the alleged victim and of the alleged offender and to ensure that any subsequent investigation is not compromised.

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## **5 Conducting an investigation into possible criminal conduct**

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### **5.1 Purpose of an investigation**

Once an initial risk assessment is completed, the Health Service has a duty to address any matter which may impact on patient care and safety, and as a result must investigate the allegation or charge, irrespective of whether it is being investigated by NSW Police or any other investigative body.

The investigation should be conducted to determine whether disciplinary action should be taken against the employee. If NSW Police advise that a charge has not been made, the investigation should still be undertaken.

It should be noted that the strict rules of evidence that apply in court do not apply to Health Service investigations of allegations against employees. The civil standard of proof, that is, the 'balance of probabilities' applies to this type of investigation. This means that the Chief Executive need only be satisfied that it is more likely than not that the allegation is true in order to sustain an allegation.

### **5.2 Appointing an investigator**

The investigation process must be conducted in accordance with the principles of procedural fairness and be transparent, accountable and treated as highly confidential.

An appropriately trained and experienced investigations officer must conduct any Health Service investigation. Actual or potential conflicts of interests must be considered when assigning an investigator, particularly in relation to the employee or the alleged victim. Cultural issues and special needs should also be considered.

It is preferable that investigators can show proof or evidence that they have experience or training in conducting investigations of a similar nature, and previous experience in health related investigations, including timeliness in conducting and reporting and procedural fairness.

All investigators used by Health Services should be able to provide at least two recent referees who are able to be contacted for a referee check.

Where a Health Service is unable to source an appropriate investigator, ESRU should be contacted for advice.

### **5.3 Informing the employee**

Any communication with the employee about the details of an allegation or charge that involves or may involve criminal conduct should only be made in consultation with NSW Police, to avoid contaminating their investigations. ESRU can facilitate communication with NSW Police.

Where NSW Police have requested non-disclosure and where action cannot be taken without jeopardising a Police investigation, ESRU should be consulted for advice.

The employee must be informed of the allegation or that the Health Service is aware of a charge, referring to the relevant conduct that has been alleged or the charge.

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This must be done in writing. The employee must also be informed of their right to make contact with a support person or organisation of their choosing, including the union, legal representative, staff counsellor or employee assistance program.

Due consideration must be given to the welfare of the employee during an investigation and counselling services offered where applicable. Likewise, a direction is to be given to the employee as to their maintenance of confidentiality, especially if there is more than one person the subject of an investigation.

The employee must be given the opportunity to discuss the circumstances surrounding the allegation with the HR Manager or a relevant senior line manager and be given a reasonable time to respond to the allegation, putting forward any matters they believe relevant, before any disciplinary action is taken.

Employees must be notified in writing of any interviews they need to attend relating to the investigation. Notice should be given within a reasonable timeframe and not less than 24 hours prior to the interview date and employees must be informed that they may bring a support person of their choosing to the interview, and that any failure to fully cooperate with the investigation may result in disciplinary action.

#### **5.4 Investigation Length**

Investigations must be completed in a timely manner and must not exceed more than six-months. If an investigation is delayed due to uncontrollable circumstances, such as awaiting a Police Investigation or Court Proceedings, notification must be sent to relevant persons, including the complainant, and the respondent when applicable, advising of these circumstances.

#### **5.5 Concluding the investigation and taking disciplinary action**

If, at the conclusion of the investigation, there is appropriate evidence to support the allegation, the Health Service must conduct a risk assessment to assist in determining the further action required. If the matter is considered sufficiently serious, the investigator may make a recommendation to take disciplinary action.

If the allegation is found to have been made in bad faith, a decision should be made regarding what action to take, if any, against the person making the allegation.

The employee should be notified in writing within 7 days of completion of the investigation and of the findings in relation to each allegation.

Where applicable, the employee should also be informed of the date it is estimated a decision will be made in relation to disciplinary action. An offer to discuss the findings should also be made to the employee in circumstances where a decision may be made to relocate the employee or impose conditions on their employment.

The employee must be given a reasonable opportunity to respond to these findings and to proposed disciplinary action.

Disciplinary action may include, but is not limited to, terminating the employee's employment or imposing conditions on the employee.

Disciplinary action must be undertaken in accordance with Policy Directive 2005\_225, *A Framework for Managing the Disciplinary Process in NSW Health* or, in

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the case of the Department of Health, in accordance with the Personnel Handbook for the NSW Public Service.

Note, where it is found that an act of violence was committed by the employee in the course of employment and in the presence of a child the matter must be reported to the Commission for Children and Young People. For further information regarding the reporting of these matters to CCYP refer to NSW Health Policy Directive PD2006\_025 *Child related allegations, charges and convictions.*

For all serious matters, the Director-General must be provided a final report indicating the findings of any investigation, proposed disciplinary actions, any circumstances put forward by the employee and the final action taken by the Health Service.

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## **6 Procedures for responding to a criminal conviction against an employee**

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### **6.1 Notifying Chief Executive**

In circumstances where an employee is made aware that another Health Service employee has been convicted of an offence, the Chief Executive must be notified immediately.

Where an employee is made aware that a senior staff member, Chief Executive, or an employee of another Health Service has been convicted of an offence, ESRU should be notified immediately. ESRU will assist in determining the appropriate course of action including assessing the ongoing risk to patients, clients and other staff, assessing whether any external agencies may need to be notified and whether an external investigator should undertake an investigation.

### **6.2 Assessing the risk to patients, clients and employees**

NSW Police should be contacted in the first instance to confirm the conviction. If the conviction is not confirmed, the information should be treated as an allegation and managed according to the previous section of this Policy Directive.

The Chief Executive or an appropriate delegate must decide whether the employee should be placed under **direct supervision** or **re-located immediately** on a “without prejudice” basis to a work area where there is no direct contact with patients/clients. If this is not possible, and if necessary to protect the safety of others, the employee should be **suspended** pending an assessment of the conviction and a decision about disciplinary action.

For any serious sex or violence conviction the employee should be **immediately suspended** pending an assessment of the conviction.

If the suspension involves a visiting practitioner, the Health Service should refer to the contract with the visiting practitioner.

The Chief Executive must ensure that the conviction is assessed in terms of the relevance of the conviction to the employee’s present duties and the risk posed to patients, clients and other employees of the Health Service. Discretion must be exercised in selecting the appropriate action and it should not be assumed that a particular serious offence will always attract the same punishment nor should it be assumed that all convictions will result in either disciplinary or remedial action.

The Chief Executive or appropriate delegate shall consider the following:

- Whether there is a relevant connection between the conviction and the officer’s position and duties.
- The employment history and general conduct of the officer.
- The effect of the conviction on the officer’s ability to undertake all or any of their range of duties.
- Whether orders of the Court prevents the officer attending for work.
- Issues taken into account in the judgement regarding mitigation or culpability which might be relevant to the officer’s position and duties.
- The effect of the proposed action on the employee.
- Mitigating or extenuating circumstances.

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Note, if a conviction has been spent under the *Criminal Records Act 1991*, the Health Service cannot consider the conviction in determining employment decisions (except in the case of a Working With Children Check). NSW Police can confirm whether a conviction may have been spent under the *Criminal Records Act 1991*. For further advice, ESRU should be consulted.

### **6.3 Informing the employee**

The employee must be given the opportunity to discuss or make a submission regarding the circumstances surrounding the conviction at an interview before any action is taken against them.

Any interviews should take place at a time that is convenient for both the employee and the relevant delegated officer. The employee must be given a reasonable timeframe and not less than 24 hours written notice prior to attending the interview and must be informed that they may bring a support person of their choosing to the interview.

### **6.4 Concluding the matter and taking disciplinary action**

On completion of the risk assessment process, the employee must be notified in writing of any finding that is made, and when applicable, the date it is estimated a decision will be made in relation to any disciplinary action as appropriate. An offer to discuss the findings should be made to the employee in circumstances where a decision is made to relocate the employee or impose conditions on their employment.

Serious sex or violence offences are offences committed in any jurisdiction that involve sexual activity, acts of indecency, physical violence or the threat of physical violence that, if they were or if they had been committed in NSW, may be punishable by imprisonment for 12 months or more.

Section 118 of the *Health Services Act 1997* requires members of the NSW Health Service to be given a reasonable opportunity to make written submissions concerning convictions for serious sex or violence offences and the proposed disciplinary action to be taken (Chief Executives have delegated responsibility for all of the Director-General's functions under section 118).

Section 100 of the *Health Services Act* provides for similar arrangements before terminating visiting practitioners who have been convicted of a serious sex or violence offence, except that final responsibility for approving termination lies with the Department of Health's Director-General or Deputy Director-General, Health System Support.

Disciplinary action must be undertaken in accordance with Policy Directive 2005\_225, *A Framework for Managing the Disciplinary Process in NSW Health* or, in the case of the Department of Health, in accordance with the Personnel Handbook for the NSW Public Service.

Disciplinary action may include, but is not limited to, terminating the employee's employment, imposing conditions on the employee, or transferring the employee to a position that does not involve child-related employment (defined in the Glossary).

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Disciplinary action should also be informed by any restrictions on employment resulting from a conviction under the *Child Protection (Prohibited Employment) Act 1998*. That Act makes it an offence for a person who has been convicted of a serious sex offence (including an offence against an adult), or a person who is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*, to apply for, undertake or remain in child-related employment.

For further information on restrictions on employment resulting from a conviction under the *Child Protection (Prohibited Employment) Act 1998*, NSW Health Policy Directive PD2006\_025 *Child related allegations, charges and convictions* should be consulted.

Irrespective of the exercise of delegated functions, the Director General should be provided a report on the management of serious criminal convictions when disciplinary proceedings have concluded.

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## **7 Keeping Records**

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Whilst responding to allegations, charges and convictions of a criminal nature, adequate records must be kept and stored in a file which is readily located and separate to the employee's HR file. The following information must be documented for future audits and assessment:

- The allegation which was made, and who made the allegation.
- Any conviction which was advised, and who advised of the conviction.
- The initial response that was taken by the Health Service, such as any counselling that was offered to the alleged victim(s) and the employee who is the subject of the allegation.
- An investigation plan listing the steps that will be taken to undertake the investigation, possible witnesses to be interviewed and relevant documents which need to be considered.
- The initial risk assessment and any subsequent risk assessments.
- All interviews undertaken, including the initial questions that were asked and the responses.
- Any decision made during the investigation and at the conclusion of the investigation. Rational for these decisions must also be documented as well as the name and position of the person who made the decision.
- The investigation report.
- Any written submissions received from the employee in response to a conviction or the findings of an investigation, or to proposed disciplinary action.
- A signed and dated File Note must be kept of each telephone conversation, interview, notification sent and advice received during an internal investigation
- All e-mail correspondence

Good record keeping is imperative. Not only does it protect the investigator if challenged regarding process, it is important for future audits. Poor record keeping reflects on the decisions made by the Health Service and the process undertaken by the investigator.

The *Freedom of Information Act 1989* entitles any person to access documents held by their employer, whether public or private, pertaining to relevant employment proceedings taken against them (subject to relevant exemptions in that Act).

Such documents may also be subpoenaed and used in court proceedings.