BERMAGUI PRESCHOOL

2.15 Protected Disclosure (Whistleblower)

This policy was approved by the Nominated Supervisor in consultation with staff and families.

Date Approved: July 2026 **Review Date:** July 2029

Aim

This Protected Disclosure Policy supports a child-safe, ethical and accountable service culture by providing clear, safe and confidential mechanisms for raising concerns about misconduct, breaches of law, or risks to children.

Introduction

Under Section 300E of the National Law (NSW), every approved provider and service is required to:

- have a protected disclosures policy that clearly explains how disclosures are managed
- provide regular training to staff on the importance of protected disclosures and the protections available to those who make them.

This reform will help staff understand their responsibilities and feel supported to raise concerns safely. “Protected disclosures” is a reform requiring action by services and providers, designed to ensure concerns about child safety or misconduct can be raised without fear of reprisal, including termination, demotion, harassment, pay reduction, denial of promotion or creating a hostile work environment

Strategies

This policy has been developed to:

- meet current and upcoming NSW legislative requirements, including reforms commencing 24 April 2026
- comply with whistleblower protection laws under the Corporations Act 2001 (Cth)
- support the paramountcy of children’s safety and wellbeing in governance, leadership and practice
- promote a culture of integrity, accountability and transparency, where all stakeholders feel safe and supported to speak up about wrongdoing

A protected disclosure occurs when a person connected with the service reports information, they have reasonable grounds to suspect shows:

- misconduct
- breaches of the National Law
- failures in child-safety systems or mandatory reporting
- conduct that may endanger children
- unsafe practices, inappropriate conduct towards children, or failure to comply with regulatory obligations

A disclosure plays an essential role in identifying harm early and supporting effective governance in services working with children

An eligible whistleblower may be a current or former:

- Approved Provider
- Nominated Supervisor or educator
- employee, contractor, consultant or volunteer
- student or trainee
- spouse, relative or dependant of any of the above
- parent, carer or community member connected to the service (where relevant to service operations).

Definition of a Protected Disclosure

A disclosure to these people qualifies as a protected disclosure if you honestly and reasonably believe it shows:

- A breach of the Education and Care Services National Law
- A risk to the safety, health or well-being of children
- Conduct that indicates wrongdoing, misconduct, or systemic failure within the service that may impact children's safety or regulatory compliance.

What is *not* a Protected Disclosure

A protected disclosure does not generally include personal work-related grievances that relate only to an individual's employment (e.g. interpersonal conflict, dissatisfaction with pay or promotion), unless the matter has broader implications for child safety, compliance or involves detrimental action relating to a protected disclosure.

Important note: Mandatory reporting

Note: This policy does not replace mandatory reporting obligations.

- Educators and staff must report suspected Risk of Significant Harm directly to NSW child-protection authorities.
- Making a mandatory report is lawful and protected.

Protected disclosure protections apply in addition to, not instead of, child-protection reporting requirements. Mandatory reporting must occur immediately and must not be delayed while a disclosure is assessed or managed internally.

Under the Children and Young Persons (Care and Protection) Act (NSW), the person who makes a report

(a) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and

(b) no liability for defamation is incurred because of the report, and

(c) the making of the report does not constitute a ground for civil or criminal liability against the person making the report.

Making a protected disclosure

Disclosures may be made verbally or in writing and may be anonymous.

When making a protected disclosure:

- clearly identify the wrongdoing with factual details, including dates, locations and individuals involved.
- explain why the disclosure is required
- provide supporting evidence
- act promptly
- include dates, times, locations, individuals involved and any witnesses where possible to support effective assessment and response.

To attract legal protection, disclosures should be made to an authorised recipient, such as

- the approved provider
- the nominated supervisor (if authorised)
- or directly to the Regulatory Authority where appropriate or where the person does not feel safe reporting internally.

Protected Disclosure Management

Step 1: Triage

Identify the concern and ensure immediate child safety. Document all actions taken at this stage, including immediate risk controls implemented to ensure child safety. In NSW ECEC, the first and overriding question is always: Is a child's safety, health or wellbeing at risk right now?

- If there is immediate danger, emergency responses apply
- If the concern involves abuse, neglect, grooming or serious harm, report to the relevant external authorities, regardless of internal processes.

This child-safety obligation exists alongside whistleblower protections and cannot be delayed while a complaint is "worked through internally.

Step 2: Decide if it is a protected disclosure

Determine whether it constitutes a *protected disclosure* rather than a routine grievance. In NSW, a disclosure is protected if the person honestly and reasonably believes it shows:

- a breach of the Education and Care Services National Law or Regulations; or
- a risk to the safety, health or well-being of children.

It does not usually qualify if it is only a personal employment grievance with no broader child-safety or compliance implications. If not a protected disclosure, the matter must still be managed under the service's relevant policies (e.g. complaints, grievance, misconduct procedures).

Step 3: Reporting pathways

If it is safe to do so, the disclosure can be raised internally with:

- the approved provider
- the nominated supervisor or service director
- another manager of the service or provider.

Disclosures can be made internally or externally to the Regulatory Authority at any time.

Step 4: Confidentiality and protection

Once a protected disclosure is made:

- the identity of the discloser must be kept confidential.
- information that could reasonably identify them must be carefully controlled.
- limit the number of people aware of the disclosure and ensure secure handling of all documentation and communication.

This is especially important in ECEC settings, where small teams and specific roles can facilitate identification. Confidentiality applies to managers, providers, and anyone involved in handling the disclosure.

At the same time, the law prohibits detrimental action or victimisation, such as dismissal, bullying, reduced shifts, intimidation or reputational harm against a person because they made (or were suspected of making) a protected disclosure.

Step 5: Risk assessment

The service or regulator must conduct a documented risk assessment to identify the seriousness of the allegations and risks to:

- children
- the discloser (e.g. retaliation or isolation)
- staff and witnesses
- the integrity of the investigation.

This may include deciding whether the matter must be notified to bodies such as:

- the Regulatory Authority
- Police
- the Department of Communities and Justice - NSW specific
- the Office of the Children's Guardian (for reportable conduct) – NSW specific

Multiple notifications may be required for the same issue, and one does not replace another.

Step 6: Communication with the discloser

Where it is safe and appropriate:

- the discloser should be told how the matter will be handled
- any limits on confidentiality should be explained
- provide updates at key stages where possible, including acknowledgement, investigation progress and outcomes (subject to confidentiality). Consent should be sought if revealing information is necessary to the investigation.

Ongoing communication helps maintain trust and reduces the risk that the individual feels silenced or unsafe.

Step 7: Action

Action does not always mean a formal investigation, but it must be meaningful. This may include:

- investigation by the Regulatory Authority.
- changes to supervision, staffing or practices.
- training, policy changes, or system improvements.
- internal investigation.
- referral to external authorities.
- formal disciplinary or enforcement action where required.

What matters is that the concern is taken seriously and addressed, not ignored or minimised.

Step 8: Ongoing protection and oversight

After action is taken:

- the service or regulator must continue to protect the discloser from victimisation.
- risks should be reviewed over time.
- records must be kept securely and confidentially.

Ongoing monitoring must include review of potential retaliation risks and implementation of additional safeguards where required.

Roles and Responsibilities

Service obligations

The service must:

- keep the whistleblower's identity confidential
- take all reasonable steps to prevent victimisation
- ensure disclosures are investigated appropriately.
- ensure disclosures are assessed, managed and responded to in accordance with the National Law and this policy, including determining whether the matter is a protected disclosure or should be managed under another process (e.g. complaints or grievance procedures).
- acknowledge receipt of disclosures and provide information about next steps, where practicable.

Breaches of confidentiality or retaliatory conduct may attract civil or criminal penalties.

Approved Provider

- Ensuring that this policy is available and accessible at the service at all times
- Ensure this policy is developed, implemented, and reviewed
- Maintain systems for protected disclosures
- Ensure systems and processes are in place to protect disclosers from victimisation
- Ensure compliance with NSW reforms and whistleblower laws;
- Promote a child-safe, transparent culture
- Provide ongoing and regular training opportunities
- Receive disclosures, and when a protected disclosure is received, follow the processes outlined in the protected disclosure policy
- Ensuring that the name and telephone number of the person to whom protective disclosures can be made are accessible
- Ensure systems are in place for receiving, recording and managing protected disclosures
- Ensure all disclosures are handled in accordance with National Law and this policy
- Ensure risk assessments are undertaken and appropriate action is taken
- Ensure training is provided at induction and regularly (every 12–24 months)
- Ensure accessibility of this policy to staff, families and stakeholders.

Nominated supervisor

- Ensure regular training is provided
- Manage systems to ensure training is ongoing and recorded
- Maintain policy and communicate changes
- Ensure policy is followed
- Support staff to understand the reporting obligations;
- Take immediate steps to manage child safety risks;
- Ensure confidentiality
- Ensure staff understand the importance of information from protective disclosures in the ongoing process of protecting children
- Escalate any disclosure in accordance with the protected disclosure policy
- Working co-operatively in any investigations
- Support implementation of protected disclosure processes and ensure staff understand reporting pathways
- Ensure records are maintained securely and confidentially.

Early childhood educators

- Act in children’s best interests
- Comply with mandatory reporting obligations
- Report all wrongdoing, misconduct or risks to children as soon as practicable. Raise concerns honestly and on reasonable grounds
- Maintain confidentiality
- Cooperate with an investigation
- Participate in training on protected disclosures and child safety obligations.

Families

Families play an important role in supporting a child safe environment and are encouraged to:

- raise concerns about child safety or misconduct
- access information about how to make a protected disclosure
- have confidence that disclosures will be handled appropriately, confidentially, and in accordance with this policy.

Relevant Legislation

- Education and Care Services National Law
- Education and Care Services National Regulations
- Children and Young Persons (Care and Protection) Act 1998 (NSW)
- Child Safe Standards
- Child Protection (Working with Children) Act 2012 (NSW)

Resources and References

- Department of Education
- CELA
- Education and Care Services National Law
- Education and Care Services National Regulations
- Children and Young Persons (Care and Protection) Act 1998 (NSW)
- Child Safe Standards
- Child Protection (Working with Children) Act 2012 (NSW)
- Reportable Conduct Scheme requirements
- United Nations Convention on the Rights of the Child

Policy Review

This policy will be reviewed:

- Every 3 years;
- Following legislative changes;
- Following an incident or concern;
- Following feedback from families, educators or regulatory authorities.

Related Policies

- Child Protection Policy
- Child Safe Environment Policy
- Code of Conduct
- Supervision Policy
- Incident, Injury, Trauma and Illness Policy
- Excursion Policy
- Record Keeping Policy
- Confidentiality Policy
- Staffing Arrangements Policy

Version History

V1.0 – First Published: July 2026