



Library Council of New South Wales

Children's Policy Guidelines for NSW Public Libraries

## Disclaimer

The intent of these Guidelines is to provide an overview of legislative provisions that impact the provision of library services to children. The Guidelines include recommended clauses that NSW public libraries may wish to consider when implementing their own children's policy. Reference to, and explanations of, legislation and regulatory issues are indicative only: the Guidelines do not purport to summarise all relevant legislation, or provide a complete explanation of any particular matter. NSW public libraries should, if necessary, obtain independent legal advice as to how these provisions may apply in a particular factual circumstance.

The Library Council of NSW issues guidelines for local authorities operating NSW public libraries under section 10(5) of the *Library Act 1939*.

## Document History and Version Control

Version	Date approved	Approved by	Brief description
1.0	26 November 2004	Library Council of NSW	First release
2.0	July 2008	Library Council of NSW	Second release. Major revision
3.0	16 September 2013	Public Libraries Consultative Committee	Third release. Updated in line with changes in legislation.
4.0	4 December 2018	Public Libraries Consultative Committee	Fourth release. Updated in line with changes in legislation.

These guidelines are designed to assist public libraries to better manage the provision of services to children and young people through the implementation of clear policies. The aim of these guidelines is to encourage uniformity and consistency in policy formation across NSW public libraries.

In the current environment such topics as child protection, parental responsibility and the role of agencies that provide services to children have prompted many public libraries to re-examine their policies and services.

These guidelines are framed with reference to the *Library Act 1939* (NSW) and the *Library Regulation 2018* (NSW).

## **1. GENERAL PRINCIPLES**

Young people are core clients of NSW public libraries. Public libraries offer a wide variety of services to young people, including:

- fiction and non-fiction collections in a range of formats
- early literacy programs (for example storytime and related activities)
- access to the internet
- information services such as reference assistance and homework help
- public space
- events and performances
- games

As these services evolve, it is important to convey clear and consistent messages about the role and scope of public libraries in children's lives.

### **1.1 NSW library legislation**

NSW public libraries operate under the *Library Act 1939* and the *Library Regulation 2018*. Clause 14 of the *Library Regulation 2018* defines the proper use of a library and, by extension, the scope of a library's services:

A person must not, without the consent of the governing body for the library, use any library for any other purpose than reading, consulting or borrowing the library material of the library or any other library service or information service.

The local authority may consent to other uses of library facilities.

## 1.2 Scope of public library service to young people

Public libraries provide the community with access to information and recreational materials through a variety of services and resources. Libraries support young people through the provision of collections and programs that foster an appreciation of literature and promote the development of information literacy skills.

While this philosophical underpinning enables public libraries to offer a broad range of services to young people, it also serves to define the categories of services offered. These categories are information and reader services, education and literacy support, access to public space and recreation. Public libraries do not include services provided professionally by other agencies, for example child care and formal education.

## 2. LIBRARY POLICY FOR YOUNG PEOPLE

It is recommended that a young people's policy include the following:

- Welcome statement
- Service statement
- Parental responsibility statements
- Child-safe principles<sup>1</sup>

### 2.1 Welcome statement

Young people are core public library clients in their own right, and are potentially the future adult users, and supporters, of public libraries. Therefore it is important that the messages conveyed to young users are positive and welcoming.

The policy should begin with a statement that makes it clear that young people are welcome in the library.

#### *Recommended clause*

*XYZ Library is committed to serving the information and recreation needs of young people. The library strives to provide a welcoming environment, and provides targeted resources and programs to meet the needs of young people.*

### 2.2 Service statement

The service statement defines the scope of available services, and clearly sets out what young people and parents can expect from the library. Services may include:

- fiction, non-fiction and recreational books
- magazines
- computer games for in-library use (subject to observing copyright)
- CDs
- DVDs

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<sup>1</sup> Office of the Children's Guardian [www.kidsguardian.nsw.gov.au/](http://www.kidsguardian.nsw.gov.au/)

- computer and internet access
- assistance from staff in accessing collections and information
- homework help
- ebooks and eresources including streaming services
- internet training
- literacy programs
- space for activities or study.

*Recommended clause*

The *XYZ Library's* services to young people include:

- fiction, non-fiction and recreational books
- magazines
- computer games for in-library use (subject to observing copyright)
- CDs
- DVDs
- computer and internet access
- assistance from staff in accessing collections and information
- homework help
- ebooks and eresources including streaming services
- internet training
- literacy programs
- space for activities or study

### **2.3 Parental responsibility statement**

This part of the policy defines the responsibilities of parents/guardians with regard to their child's use of a public library. Topics to be covered in this part include information on:

- access to resources
- unattended children

### **3. ACCESS TO RESOURCES IN A LIBRARY'S GENERAL COLLECTION**

Library staff guide and assist young people in finding and accessing resources appropriate to particular interests and inquiries.

The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) sets up a national scheme for the classification of publications, films and computer games.<sup>2</sup> A library's general collection may contain publications that have been classified 'Unrestricted', and films and computer games classified 'G (General)', 'PG (Parental Guidance)' or 'M (Mature)', in accordance with this Act. This material is available to

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<sup>2</sup> Appendix 2 Extract from the *Classification (Publications, Films and Computer Games) Act 1995* (Cth)

all library users, including young people, without restriction. The library has no censorship role in its choice of the library resources that form the collection.<sup>3</sup>

However, some parents/guardians may wish to regulate their children's access to these publications, films or computer games, based on the family's values or beliefs. In these circumstances, responsibility for monitoring or supervising the child's use of the general collection remains with the parent/guardian.

### **3.1 Access to restricted materials**

Public libraries observe the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (NSW), which restricts the extent to which certain publications, films and computer games may be made available to the public, with particular restrictions for young people (under the age of 18).

Libraries should adopt and implement appropriate display, screening, accessing and borrowing procedures to ensure young people's access to publications, films (including DVDs and videos) and computer games conforms with the restrictions of the *Classification (Publication, Films and Computer Games) Enforcement Act 1995* (NSW).

Section 53 of this Act has specific requirements for public libraries and staff in respect of any MA material (a film or computer game classified MA 15+) or restricted material (a film or computer game classified R 18+ and a publication classified Category 1 restricted or Category 2 restricted)<sup>4</sup>.

- the display or perusal of MA material and restricted material, and access to this material by members of the public must be restricted in an appropriate manner;
- MA material and restricted material must not be screened or demonstrated in the library in the presence of members of the public;
- a young person (under the age of 18) must not be permitted to borrow or access restricted material; and
- a young person (under the age of 15) must not be permitted to borrow or access MA material without parental or guardian consent.

Certain streaming services offered by libraries may include access to MA and restricted material. Where this is the case, the library must implement appropriate measures to ensure that members under the age of 18 are not permitted to borrow or access restricted material, and that members under the age of 15 are not permitted to borrow or access MA material without parental or guardian consent.

Music recordings are not covered by the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (NSW). However under the Australian

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<sup>3</sup> Appendix 1 Professional Values

<sup>4</sup> Appendix 3 Extract from public library exemption under the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (NSW).

Recording Industry Association (ARIA) Code of Practice,<sup>5</sup> music with explicit language or other content is classified Level 1, 2 or 3 depending on the nature of content. Level 3 items are 'not to be sold to persons under 18 years of age'.

### **3.2 Access to electronic resources**

Public libraries promote and support public access to information. Library staff should assist clients in the use of electronic resources including the internet, recommend websites on particular subjects, and select appropriate websites for inclusion in the library's electronic collections.

Parents/guardians of young people are solely responsible for the young person's access to and use of the library's internet facilities, including access to sites, their subject matter and content. Parents/guardians must ensure that their children's use of the Library's Internet facilities accords with the library's internet policy.

It is recommended that libraries have a policy on Internet access based on the Internet Policy Guidelines for NSW Public Libraries<sup>6</sup>. Recommendations under part 5.1 (Young people using the internet) of these Guidelines are particularly important.

It is recommended that young people's use of the Library's internet facilities should be authorised by parents/guardians. Provision should be made for this authorisation on the library's junior membership forms. The clause should state that the parent/guardian will ensure the child abides by the library's internet policy.

Some exceptions to the parent/guardian consent may need to be made at the local level, for example, where a minor lives independently. However, if a library proposes that a young person sign an authorisation for use of internet facilities, the library should be aware that, under the *Minors (Property and Contracts) Act 1970* (NSW), a young person's consent to any disclaimer will only be presumed binding if it is for his or her benefit and the young person understands what he or she is doing.

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<sup>5</sup> [www.aria.com.au/pages/codeofpractice.htm](http://www.aria.com.au/pages/codeofpractice.htm)

<sup>6</sup> [www.sl.nsw.gov.au/public-library-services/library-council-guidelines](http://www.sl.nsw.gov.au/public-library-services/library-council-guidelines)

*Recommended clause*

**Access to resources**

The XYZ library's general collection may contain publications that have been classified 'Unrestricted' and films and computer games that have been classified 'G' (General), 'PG' (Parental Guidance) or 'M' (Mature) in accordance with the *Classification (Publications, Films and Computer Games) Act 1995 (Cth)*. This material is available to all persons, including young persons, without restriction.

<If applicable> XYZ library also offers access to films via streaming services, which may include films that have been classified 'MA' and 'R'. Members under the age of 18 are not permitted to access films with an 'R' rating, and members under the age of 15 may only access films rated 'MA' with the consent of their parent or guardian.

Parents/guardians are responsible for ensuring that their child's selection and use of materials in the library's general collection accords with any restrictions the family may wish to set. XYZ library encourages parents/guardians to consult with their child to develop clear rules regarding access to resources that accord with the family's personal values and beliefs.

The library promotes and supports young people's access to information, including electronic information through its internet facilities. library staff are available to assist young people in the use of the Internet, and to recommend websites on particular subjects. A number of appropriate websites have been selected for inclusion in the library's electronic collections.

**4. UNATTENDED CHILDREN**

Public libraries offer a range of services that support the information, literacy, education and recreational needs of young people. Libraries do not, however, provide care facilities for children as part of that service. Libraries are not to be used by parents, guardians or carers as an alternative to children's services that provide licensed care facilities, such as care by an agency or a day care facility. Parents, guardians or carers that attempt to do so are potentially putting their child at risk of harm. Libraries do not have the facilities or appropriate licences to attend to children who are sick, injured or hungry.

Clause 14 of the Library Regulation 2018 (NSW) defines the proper use of a library. It is an offence to use a library for any other purpose.

*Part 3, Clause 14*

*14 Proper use of a library*

*A person must not, without the consent of the governing body for the library, use a library for a purpose other than reading, consulting or borrowing the library material of the library or for any other library service or information service.*

*Maximum penalty: 2 penalty units.*

Unsupervised children can be at risk in any public place, including public libraries. Library staff do not supervise children in the library so there is a risk that unattended children may leave the library at any time, hurt themselves, or be approached by strangers. Libraries are busy public places, open to all, and staff cannot judge which members of the public present a possible danger to children. If library staff have concerns about the presence or conduct towards children of a particular person in the library, the appropriate course is to contact the NSW Police to report these concerns and seek assistance as necessary.

Young children left alone in a library can become distressed, bored or disruptive. Library users, including young people, who disturb other library users may be removed from the library under clause 17 of the Library Regulation 2018 (NSW).<sup>7</sup> It is advised that libraries put in place procedures for removing disruptive young people. Such procedures may include contacting the child's parents or coming to an arrangement with a local occasional child care centre, family support agency, youth service or the police to supervise the child until a parent, guardian or carer can be contacted.

Staff should be aware of the duty of care which they may owe in respect of children removed from libraries. See Appendix 6 for an extract from the *Civil Liability Act 2002* (NSW).

A child left unattended in a public library may be classed as a child or young person at risk of harm in accordance with section 23 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).<sup>8</sup> If a staff member has reasonable grounds to suspect this is the case, he or she may make a report to the Secretary of the Department of Family & Community Services under section 24 of this Act.<sup>9</sup> The NSW Interagency Guidelines<sup>10</sup> provide information on the application of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), and outline how agencies identify children at risk of harm, as well as the reporting responsibilities of agencies.

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<sup>7</sup> Appendix 4 Extract from the *Library Regulations 2018* (NSW) clause 17

<sup>8</sup> Appendix 5 Extract from the *Children and Young Persons (Care and Protection) Act 1998* (NSW)

<sup>9</sup> Appendix 5 Extract from the *Children and Young Persons (Care and Protection) Act 1998* (NSW)

<sup>10</sup> NSW Interagency Guidelines: Guidance for government and non-government agencies delivering child wellbeing and child protection services in NSW [www.facs.nsw.gov.au](http://www.facs.nsw.gov.au)

In some circumstances, such as where a staff member delivers services to children, they may make a report to the Secretary under section 27 of this Act (this only applies to children under the age of 16).<sup>11</sup>

Parents who leave a child unattended in a public library are exposing their child to potential harm, and may themselves be committing an offence under section 228 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW)<sup>12</sup>. Libraries should develop procedures for contacting a parent or carer who has left a child unsupervised in the library for a long period of time, to inform the parent of the library's policies regarding unattended children. If the parent/carer continues to ignore this policy or cannot be contacted, and a staff member has reasonable grounds to suspect the child is, accordingly, at risk of significant harm in accordance with section 23 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), the situation may be reported to the Secretary of the Department of Family & Community Services.

#### **4.1 Unattended children — age**

A number of public libraries specify an age below which a parent, guardian, carer or responsible older sibling must accompany young children using the library. While it is up to the individual library to determine, libraries commonly specify that supervision is required for children under 8, 10 or 12 years of age.

NSW legislation does not specify a minimum age at which children may be left unattended in public places. The *Children and Young Persons (Care and Protection) Act 1998* (NSW) is concerned with protection of children in particular circumstances, rather than with age alone. This approach is practical for public libraries. For example, a 7-year-old child who uses the library constructively on his own for an hour after school while waiting for a parent may not present an issue. On the other hand, a 10-year-old child who is left at the library every day of the summer holidays from opening time until closing time is potentially at risk of harm, and represents an unreasonable burden for the public library.

Libraries may set their own minimum age policy if desired, as a guide for parents, guardians, carers and staff.

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<sup>11</sup> Appendix 5 Extract from the *Children and Young Persons (Care and Protection) Act 1998* (NSW)

<sup>12</sup> Appendix 5 Extract from the *Children and Young Persons (Care and Protection) Act 1998* (NSW)

*Recommended clause*

**Unattended children**

Unsupervised children can be at risk in any public place, including public libraries. XYZ library's staff do not supervise children in the library, and there is a risk that unattended children may leave the library at any time, hurt themselves, or be approached by strangers.

Children left unattended in a public library may be classed as a child or young person at risk of harm under section 23 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and may be reported as such to the Secretary of the Department of Family & Community Services. Parents who leave a child unattended in a public library are exposing their child to potential harm, and may be committing an offence under section 228 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

Young children left alone in a library can become distressed, bored or disruptive. Young people who disturb other library users may be removed from the library under clause 17 of the *Library Regulation 2018* (NSW).

## 4.2 Child safe principles

The Office of the Children's Guardian promotes child-safe policies and practices by encouraging organisations to become child safe.

A *Child Safe* organisation:

- develops Child Safe policies
- has a Child Safe code of conduct
- ensures effective staff recruitment and training
- understands privacy considerations
- has a plan for managing risk
- encourages children and young people to participate
- effectively deals with concerns or complaints about behaviours towards a child
- attends Child Safe Organisation training

The Office of the Children's Guardian has resources available on their website to support libraries in identifying risks and strategies.<sup>13</sup>

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<sup>13</sup> [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)

### **4.3 Reporting incidents**

Any person can make a report of harm or risk of harm to a child or young person under section 24 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW). Some have a legal obligation to do so under section 27 of that Act in respect of children under 16 — these are known as mandatory reporters. If library staff deliver education, training or other services to children, section 27 may apply.

In the event of a complaint being made it should be reported to the Secretary, through the NSW Department of Family & Community Services. Further information is available in the *NSW Interagency Guidelines* which provide guidance for government and non-government agencies delivering child wellbeing and child protection services in NSW.<sup>14</sup>

### **4.4 Working with children checks**

Work in public libraries may be identified as ‘child related employment’. In general, library staff who work face-to-face with children will need a check under the *Child Protection (Working with Children) Act 2012* (NSW). Staff who only have incidental contact with children will not.<sup>15</sup>

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<sup>14</sup> [www.facs.nsw.gov.au](http://www.facs.nsw.gov.au)

<sup>15</sup> Local authorities are advised to contact the Office of the Children’s Guardian [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)

## Appendix 1: Professional values

The Library Council of NSW *Access to Information in New South Wales Public Libraries Guideline*<sup>16</sup> states that public libraries have ‘a role as an unbiased source of information and ideas, including online content. It must accept responsibility for providing free access to materials and information presenting, as far as possible, all points of view on current and historical issues, including controversial issues’.

The ALIA Statement on Free Access to Information<sup>17</sup> states that ‘freedom can be protected in a democratic society only if individuals have access to information and ideas’.

This statement also addresses censorship. Libraries should resist ‘attempts by individuals or groups within their communities to restrict access to information and ideas while at the same time recognising that powers of censorship are legally vested in state and federal governments’. Collection material should not be rejected on the grounds that its content is controversial or likely to offend some sections of the library’s community.

People engaged in library and information services operate under a code of professional ethics, articulated in the ALIA Statement on Professional Conduct<sup>18</sup>, and are committed to ‘intellectual freedom and the free flow of ideas and information’. All public library staff regardless of qualifications should follow this code.

The UNESCO Public Library Manifesto<sup>19</sup> which states that ‘constructive participation and the development of democracy depend on satisfactory education as well as on free and unlimited access to knowledge, thought, culture and information’.

Relevant articles from the United Nations Convention on the Rights of the Child<sup>20</sup> might also be noted by public libraries, including:

Article 13: Outlines the child’s right to freedom of expression, to seek, receive and impart information and ideas.

Article 29: Outlines that children have the right to develop personality, talents, mental and physical abilities to their fullest potential.

Article 31: Recognises the right of children to leisure, play and recreational activities and the freedom to participate in cultural and artistic life.

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<sup>16</sup> [www.sl.nsw.gov.au/public-library-services/library-council-guidelines](http://www.sl.nsw.gov.au/public-library-services/library-council-guidelines)

<sup>17</sup> [www.alia.org.au/open-access-resources/policies-standards-and-guidelines](http://www.alia.org.au/open-access-resources/policies-standards-and-guidelines)

<sup>18</sup> [www.alia.org.au/open-access-resources/policies-standards-and-guidelines](http://www.alia.org.au/open-access-resources/policies-standards-and-guidelines)

<sup>19</sup> [www.ifla.org/publications/iflaunesco-public-library-manifesto-1994](http://www.ifla.org/publications/iflaunesco-public-library-manifesto-1994)

<sup>20</sup> [www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx)

## **Appendix 2: Extract from the *Classification (Publications, Films and Computer Games) Act 1995 (Cth)***

### **7 Types of classifications**

- (1) The following are the different types of classifications for publications in ascending order:

**Unrestricted**

**Category 1 restricted**

**Category 2 restricted**

**RC** Refused Classification.

- (2) The following are the different types of classifications for films in ascending order:

**G** General

**PG** Parental Guidance

**M** Mature

**MA 15+** Mature Accompanied

**R 18+** Restricted

**X 18+** Restricted

**RC** Refused Classification.

- (3) The following are the different types of classifications for computer games in ascending order:

**G** General

**PG** Parental Guidance

**M** Mature

**MA 15+** Mature Accompanied

**R 18+** Restricted

**RC** Refused Classification.

## Appendix 3: Extract from the *Classification (Publications, Films and Computer Games) Enforcement Act 1995 (NSW)*

### 53 Exemptions for public libraries

(1) In this section:

**MA material** means a film, or computer game, classified MA 15+.

**public library** means the State Library of New South Wales or a local library within the meaning of the Library Act 1939.

**restricted material** means:

- (a) a film or computer game, classified R 18+, and
  - (b) a publication classified Category 1 restricted or Category 2 restricted.
- (2) A public library, or any person employed in a public library, does not commit an offence under this Act in respect of any MA material or restricted material that is held in the library if the following requirements are complied with (whether by way of library rules or otherwise):
- (a) the display or perusal of MA material and restricted material, and access to such material by members of the public, must be restricted in an appropriate manner,
  - (b) MA material and restricted material must not be screened or demonstrated in the library in the presence of members of the public,
  - (c) minors must not be permitted to borrow restricted material,
  - (d) minors under 15 must not be permitted to borrow MA material without parental or guardian consent.
- (3) In order to comply with subsection (2) (c), it is sufficient that:
- (a) the person borrowing the restricted material from the library (the borrower) produced to the person responsible for lending the material documentary evidence that might reasonably be accepted as applying to the borrower and as showing that the borrower was 18 or older, or
  - (b) the person responsible for lending the material believed on reasonable grounds that the borrower was 18 or older.
- (4) In order to comply with subsection (2) (d), it is sufficient that:
- (a) the person borrowing the MA material from the library (the borrower) produced to the person responsible for lending the material documentary evidence that might reasonably be accepted as applying to the borrower and as showing that the borrower was 15 or older, or
  - (b) the person responsible for lending the material believed on reasonable grounds that the borrower was 15 or older (or that parental or guardian consent has been given).

## **Appendix 4: Removal under clause 17 of the *Library Regulation 2018* (NSW)**

The *Library Regulation 2018* (in force under the *Library Act 1939*) gives library staff the power to exclude library users who interfere with any other person's use of the library. Libraries should determine local standards for acceptable behaviour and appropriate exclusion periods consistent with the provisions in Part 3 of the Regulation. The maximum period of exclusion must be determined by the governing body of the Library. One year is a common maximum period for exclusion.

Clause 17 outlines the broad circumstances under which users may be directed to leave the library.

### **17 Library users may be directed to leave**

- (1) A library staff member may direct any person to leave the library, and not to re-enter the library for such period as the staff member directs, if the staff member is of the opinion that:
  - (a) the person has contravened any provision of this Part, or
  - (b) the person's condition, conduct, dress or manner is likely to give offence to any person in the library or to interfere with any other person's use of the library.
- (2) A person to whom such a direction is given must not fail to comply with the direction.

Maximum penalty: 2 penalty units.

- (3) The period for which a person may be excluded from the library by such a direction must not exceed the maximum period determined by the governing body of the library.

## **Appendix 5: Extracts from the *Children and Young Persons (Care and Protection) Act 1998 (NSW)***

The relevant provisions of the *Children and Young Persons (Care and Protection) Act* are set out below.

### **23 Child or young person at risk of significant harm**

- (1) For the purposes of this Part and Part 3, a child or young person is at risk of significant harm if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:
  - (a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
  - (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
  - (b1) in the case of a child or young person who is required to attend school in accordance with the Education Act 1990—the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
  - (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
  - (d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
  - (e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,
  - (f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

Note. Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

### **24 Report concerning child or young person at risk of significant harm**

A person who has reasonable grounds to suspect that a child or young person is, or that a class of children or young persons are, at risk of significant harm may make a report to the Secretary.

### **27 Mandatory reporting**

- (1) This section applies to:
  - (a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services,

- residential services, or law enforcement, wholly or partly, to children, and
- (b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children.
- (2) If:
- (a) a person to whom this section applies has reasonable grounds to suspect that a child is at risk of significant harm, and
  - (b) those grounds arise during the course of or from the person's work, it is the duty of the person to report, as soon as practicable, to the Secretary the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.
- (3) A person to whom this section applies satisfies his or her obligations under subsection (2) in relation to two or more children that constitute a particular class of children if the person reports that class of children to the Secretary together with:
- (a) a description that is sufficient to identify all the children who constitute the class, and
  - (b) the grounds for suspecting that the children of that class are at risk of significant harm.

### **228 Neglect of children and young persons**

A person, whether or not the parent of the child or young person, who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid or lodging for a child or young person in his or her care, is guilty of an offence.

Maximum penalty: 200 penalty units.

## **Appendix 6: Extract from the *Civil Liability Act 2002 (NSW)***

### **5B General principles**

- (1) A person is not negligent in failing to take precautions against a risk of harm unless:
  - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known), and
  - (b) the risk was not insignificant, and
  - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.
- (2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things):
  - (a) the probability that the harm would occur if care were not taken,
  - (b) the likely seriousness of the harm,
  - (c) the burden of taking precautions to avoid the risk of harm,
  - (d) the social utility of the activity that creates the risk of harm.

### **Part 5 of the Civil Liability Act provides as follows:**

#### **Part 5 Liability of public and other authorities**

public or other authority means:

- (d) a local council

#### **42 Principles concerning resources, responsibilities etc of public or other authorities**

The following principles apply in determining whether a public or other authority has a duty of care or has breached a duty of care in proceedings for civil liability to which this Part applies:

- (a) the functions required to be exercised by the authority are limited by the financial and other resources that are reasonably available to the authority for the purpose of exercising those functions,
- (b) the general allocation of those resources by the authority is not open to challenge,
- (c) the functions required to be exercised by the authority are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which the proceedings relate),
- (d) the authority may rely on evidence of its compliance with the general procedures and applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceedings relate.