

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING : 23 February 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE15/069) - Child Safeguard Program - Programme 3.1 Compliance, Detention and Status Resolution (Administered)

Senator Hanson-Young, Sarah (L&CA 112) asked:

As an additional measure, we have implemented a child safeguarding protocol of one of our service providers, Save the Children, who obviously have some expertise in this regard. They have helped us draft a protocol that all workers on Nauru abide by. The training and qualifications, including these, are reviewed monthly on a sample basis through the service contracts.

Senator HANSON-YOUNG: Could I ask you to table a copy of that protocol.

Mr Painting: We will take that on notice, but yes.

CHAIR: When was the protocol completed?

Mr Painting: I could not be specific. It was in the life of this contract, so in the last year or thereabouts. But we will certainly get it.

CHAIR: Could you on notice indicate to me whether that was part of the original arrangement made by the then Prime Minister with the government of PNG and Nauru when this arrangement was first entered into?

Mr Painting: I see. I am quite confident that was not the case, but we will find it exactly.

Senator O'SULLIVAN: Could you take on notice what protocols were in place at the time, if any, with respect to this same issue?

Mr Painting: Certainly.

Senator HANSON-YOUNG: Is that the only check or training program that exists for them, as opposed to Australian staff? Has anybody been found to be in breach of that protocol?

Mr Painting: I would have to take that on notice to be certain.

Answer:

The current Child Safeguarding Protocol (the Protocol) was approved on 21 November 2013. A copy of the Protocol is available at Attachment A.

The Protocol was created as part of the requirements under the contract with Save the Children Australia (SCA) and was not part of the Memorandum of Understanding (MOU) with the Papua New Guinea (PNG) or Nauru governments.

PNG has its own child protection legislation. There are currently no transferees under the age of 18 on PNG.

The Government of Nauru does not have child protection legislation or statutory requirements for working with children checks. However, in the case of any Nauru locally engaged personnel, a Government of Nauru police check is completed.

As the lead service provider for child protection, SCA assisted the department in the development of the Protocol. The Protocol has been developed to assist in managing the needs and vulnerabilities of children and young people at the Nauru RPC. The Protocol forms part of the Regional Processing Centre guidelines and is in addition to the incident reporting guidelines.

A breach of the Protocol results from an incident or allegation involving a child not being reported in line with the Protocol and potentially the incident reporting guidelines. As a breach of the Protocol is administrative in nature and reporting in relation to the Protocol is the sole responsibility of SCA, a breach of the Protocol is measured in the monthly performance management process. There have been four reported breaches of the Protocol since inception of the Protocol in 21 November 2013.

Regional Processing Centre Guidelines

Service Provider – Child Safeguarding Protocol and Code of Conduct

INTRODUCTION

Children and young people at the Regional Processing Centre (RPC) can experience complex emotions whilst in the centre, which may result in stress, trauma, anxiety or other psychological conditions. Recognising that children and young people (being any person under the age of 18 years, whether accompanied or unaccompanied by a parent or guardian) require an extra level of care and support due to their increased vulnerability, the Department has engaged Save the Children Australia (SCA) to provide child welfare support services at the RPC.

SCA has developed this Child Safeguarding Protocol (Protocol) to address the specific needs and vulnerabilities of children and young people at the RPC and to minimise risk to the Department and to service providers by implementing best practice for working with vulnerable children and young people. This Protocol is intended to operate as part of the RPC Guidelines.

This Protocol and the attached Code of Conduct (Code) (as set out in Appendix 1) is designed to ensure that a child safe environment is maintained at all times at the RPC. Maintaining a child safe environment reduces the risk of harm to children and young people at the RPC and protects service provider personnel whose positions involve contact with children.

The Code provides service provider personnel with clear guidelines on working safely and positively with children and young people, and helps to avoid misunderstandings. Signing of the Code is a mandatory condition of employment or engagement at the RPC.

The Child Safety Incident Reporting Process in the Protocol (set out in Appendix 2) outlines obligations and responsibilities for reporting and management of incidents that concern a child's safety or welfare. The Reporting Process prescribes direct reporting of all child safety concerns to the SCA Child Safeguarding and Protection Manager, who will handle the incident in accordance with the Incident Reporting Guidelines.

Scope

The Protocol should be followed by all service providers. The Code and the Child Safety Incident Reporting Process must each be signed by all service provider personnel. People visiting the RPC for **less than one day** (i.e. senior service provider personnel visiting for compliance purposes) are not

required to sign the Protocol, however they must be escorted at all times and their visitor's pass must be clearly displayed.

It is a requirement that the Child Safe Screening and Recruitment Procedures (set out in Appendix 3 to this Protocol) are followed by service providers when employing personnel who may have regular and ongoing contact with children. It includes rigorous screening of personnel to minimise the risk of a person who poses a risk to children being employed in relevant positions and to reduce the risk of inappropriate behaviour by personnel.

Summary of requirements for service providers and personnel:

1. All RPC personnel to sign the Code of Conduct (at Appendix 1).
2. All RPC personnel to comply with the Child Safety Incident Reporting Process (at Appendix 2).
3. Child Safe Screening and Recruitment Procedures followed by service providers when recruiting for positions involving regular and ongoing contact with children (at Appendix 3).

PROCEDURES

What should be reported?

- Any observation, suspicion or concern about the behaviour, actions or words of personnel at the RPC that indicates or may indicate that a child or young person is being abused or harmed (i.e. physical, emotional or sexual abuse, bullying, exploitation or violence).
- Suspicion that a child or young person is being abused or harmed by their parent or guardian or another transferee including by another child or young person.
- Inappropriate communications (written or verbal) between asylum seekers.
- A child or young person tells you that they are being abused or harmed.
- You witness a child or young person being harmed, or suspect they may be at risk of immediate danger.
- You suspect or have been informed that a child or young person is self-harming or has suicidal intent.
- Inappropriate behaviour witnessed between a staff member and minor. Parents/guardians are at risk of, or engaging in family violence and are unable to protect their child/ren.
- You suspect a child or young person has been emotionally harmed after witnessing a traumatic event such as a riot or hunger strike.
- The compound is at risk of an emergency (i.e. riot).
- You have identified that parents/guardians are unable to carry out their parental responsibilities due to the parent/guardian experiencing a mental or physical health emergency.
- Any other concern you have for the safety or welfare of a child or young person.

How to report child safety incidents

The Child Safety Incident Reporting Process outlines obligations and responsibilities for reporting and managing any concerns regarding the safety or welfare of children. It also protects personnel from unfair processes should an allegation about them be made.

All child safety incident reports should first be made to the SCA Child Safeguarding and Protection Manager. The exception to this is where the child is seriously injured or in immediate danger of being seriously injured. The SCA Child Safeguarding and Protection Manager will be responsible for assessing the report and managing it in accordance with the RPC Guidelines.

SCA and the Department will also involve police or other authorities as required, with the assistance of the witnessing or reporting personnel.

The official step-by-step Reporting Process can be found at Appendix 2. All personnel are required to follow this Reporting Process when raising a concern about the safety or wellbeing of a child or young person. It is mandatory for all personnel to immediately report any concerns (irrespective of how minor the incident is perceived to be) in accordance with this Reporting Process.

Unaccompanied Minors (UAMs)

UAMs at the RPC are provided 24-hour care and support by SCA Carers. SCA personnel may also be delegated powers and functions by the legal guardian of all UAMs, the Nauruan Justice Minister.

Service provider personnel should deal with incident reports that involve a UAM in accordance with the Reporting Process. The SCA Child Safeguarding and Protection Manager will liaise with the child or young person's Carer, the Justice Minister and/or his delegate as appropriate.

SCA will ensure that all reports of child safety incidents are handled in accordance with the following principles:

- All concerns raised will be taken seriously. All parties will be treated fairly and the principles of natural justice will be a prime consideration.
- All reports will be handled professionally, confidentially and expediently. All reports made in good faith will be viewed as being made in the best interests of the child regardless of the outcomes of any investigation.
- The interests of anyone reporting child abuse in good faith are protected. Any personnel who intentionally make false and malicious allegations may face disciplinary action from the employing service provider.
- The rights and welfare of the child is of prime importance. Every effort must be made to protect the rights and safety of the child throughout the investigation.
- The rights and welfare of any accused person will also be upheld during the investigation process.
- Storage of reports will be securely filed.

In following the Reporting Process there is no expectation that personnel need to be child safety experts or make a conclusive judgement about a situation before making a report. It is important that an incident is reported regardless of whether it appears to be a minor, major or critical incident. The SCA Child Safeguarding and Protection Manager will make an assessment of the report and escalate or manage the incident accordingly. You do not need obtain evidence or investigate the incident.

GENERAL

Child Protection Principles

All service providers must demonstrate a commitment to child protection that is based on the following principles:

- Promoting and protecting the best interests of children at all times.
- Zero tolerance of child abuse – mandatory reporting of confirmed or suspected child abuse.
- Child protection as a shared responsibility between all service providers.
- No discrimination by service providers based on ethnicity, gender, disability or status as accompanied or unaccompanied by a guardian.

Application of laws

All personnel must comply with relevant Australian and Nauruan laws (a list of local laws can be found here http://ronlaw.gov.nr/nauru_ipms/index.php). Compliance with local laws may be required when responding to an incident concerning children in conjunction with the Child Safety Incident Reporting Process contained in this Protocol.

Australian law may also be applicable to service provider personnel at the RPC. Australians can be prosecuted for (without limitation):

- sexual activity with persons under 16 years while overseas;
- exploiting a position of trust or authority or taking advantage of a child's mental impairment to commit sexual abuse overseas; and
- offences relating to child pornography.

Various international instruments exist in regard to protection of children. The most relevant is the United National Convention on the Rights of the Child (UNCRC), which both Nauru and Australia have ratified.

- Article 19 of the United Nations Convention on the Rights of the Child (UNCRC) requires:
[s]tate parties [to] take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Child Safeguarding Protocol Implementation Strategy

The Protocol and the Code will be implemented at the RPC through:

- The SCA Child Safeguarding and Protection Manager enhancing awareness of child protection issues among personnel through the provision of technical advice and working collaboratively with other service providers.
- Child Safeguarding Training for all personnel provided onsite including clear step-by-step processes for reporting.
- All service providers ensure their personnel have signed the Code and comply with the Child Safety Incident Reporting Process contained in the Protocol. Each service provider should maintain a record of signatories to the Code. People visiting the RPC for **less than one day** (i.e. senior service provider personnel visiting the RPC) are not required to sign the Protocol however they must be escorted while at the RPC and their visitor's pass must be clearly displayed.
- Requirement that each service provider adheres to the Child Safe Screening and Recruitment Procedures for relevant positions.

DEFINITIONS

Carer: An SCA employee who is delegated guardianship powers and/or functions by the Nauruan Justice Minister in respect of UAMs in their care.

Child Abuse: the deliberate act of ill treatment that can harm or is likely to cause harm to a child's safety, wellbeing, dignity and development. Abuse includes all forms of physical, sexual, psychological or emotional ill treatment.

CSPM: The Child Safeguarding and Protection Manager is SCA's child protection expert and provides in-house technical advice, support to all programs, service providers, staff and associates, and advocacy for children and young people.

Exploitation: refers to the use of children for someone else's advantage, gratification or profit often resulting in unjust, cruel and harmful treatment of the child. These activities are to the detriment of the child's physical or mental health, education, moral or social-emotional development. Also, Commercial Sexual Exploitation of Children where a child is sexually abused in return for cash or 'in kind' favours or goods.

UAM: Unaccompanied Minor – a person under the age of 18 years who when brought to Nauru was not accompanied by his or her parent or legal guardian.

This document is managed by the child welfare support service provider in consultation with other service providers.

APPENDIX 1: WORKING WITH CHILDREN CODE OF CONDUCT

I, (insert name) acknowledge that I have read and understand the Working with Children Code of Conduct, and agree that whilst employed/engaged by (insert name of service provider) at the Nauru Regional Processing Centre, I will:

- treat all children and young people with respect regardless of race, colour, sex, language, disability, religion, political or other opinion, national, ethnic or social origin, property, birth, status as accompanied or unaccompanied or other status;
- provide an inclusive and safe environment for all children, young people and parents/guardians;
- talk to children about their contact with staff or others and encourage them to raise any concerns;
- not use physical or humiliating punishment on children or young people;
- immediately report concerns or allegations for the safety or wellbeing of a child or young person, or breach of this Protocol and Code of Conduct in accordance with the Child Safety Incident Reporting Process;
- observe and comply with the laws of Nauru;
- ensure that, whenever possible, another adult is present when I am working with children or in contact with children and young people unless it is in the defined context of providing a specific service (e.g. health consultation);
- speak with my Manager about any concerns I have of my involvement in any situation where my words, actions or behaviour may be misinterpreted;
- immediately disclose all charges, convictions and other outcomes of an offence which occurred before or occurs during my employment/engagement with my employer that relates to child exploitation or abuse; and
- use any computers, mobile phones, video cameras, cameras or social media appropriately, and never to exploit or harass children or young people or access child exploitation materials through any medium.

I will not:

- use language that is offensive, discriminatory, demeaning, shaming, culturally inappropriate, abusive or of a sexual nature when speaking with or in the presence of a child or young person;
- engage in behaviour to shame, humiliate, belittle or degrade a child or young person or otherwise emotionally or psychologically abuse a child or young person;
- act in a sexually provocative manner or engage children in any form of sexual activity, including paying for sexual services regardless of the age of majority/consent or custom locally. I understand that mistaken belief in the age of a child is not an adequate defence;
- physically abuse a child or young person;
- use social media to contact, access, solicit or befriend a child or young person at the RPC and not place images of those children or young people on personal social media sites;
- hold, kiss, cuddle or touch a child or young person in an abusive, unnecessary or culturally insensitive way;
- condone or participate in behaviour with children or young people which is illegal or abusive;

- discriminate against or act in favour of particular children or young people to the exclusion of others;
- hire children for domestic or other labour which is inappropriate given their age or developmental stage, which interferes with their time available for education and recreational activities, or which places them at significant risk of injury;
- do things for children of a personal nature that they can do for themselves such as toileting or changing their clothes;
- sleep in close proximity to children or young people that I am working with or in contact with unless it is absolutely necessary and in which case I will keep my Manager informed and ensure another adult is present;
- make physical contact with a child or young person against their will, except when as part of an approved physical restraint procedure in order to protect the child or young person from harm;
- take a child outside of the RPC without permission from a guardian and designated authority;
- offer or purchase contraband including pornography, alcohol, drugs or tobacco for children or young people;
- offer any gifts, inducements or money to a child or young person without the permission of the relevant service provider or designated person, as well as the permission of the parent or guardian;
- exchange personal information with children or young people unless it is in the context of carrying out a specified service; and
- speak with or engage with any media outlet about any child or young person's story nor provide names without the consent of the parent or guardian, the relevant service provider and relevant host government officials.

This is not an exhaustive or exclusive list. Personnel should at all times avoid actions or behaviour that may allow behaviour to be misrepresented, constitute poor practice or potentially abusive behaviour.

Any breach of the Working with Children Code of Conduct may result in performance management or disciplinary action including immediate suspension from service pending an investigation. The service provider will be responsible for investigation in conjunction with the designated Child Safeguarding and Protection Manager, Program Manager, host government and the Department, and will either take appropriate disciplinary action, dismiss the employee, or show reason why the employee should remain in service.

Working with Children Statement

I confirm that I have read and understood the Working with Children Code of Conduct and Child Safety Incident Reporting Process. I agree to comply with the Code of Conduct and Reporting Process.

I understand that a breach of the Code of Conduct may provide grounds for my employment at the RPC to be terminated. I also understand that an action that breaches of the Code of Conduct may also result in criminal prosecution.

I understand that it is my responsibility as a person engaged in service at the RPC to use common sense and avoid actions or behaviours that are abusive or exploitative of children or young people, or which could be construed as such.

I confirm my willingness to participate in RPC training modules on child protection.

Full Name:

Position and Organisation:

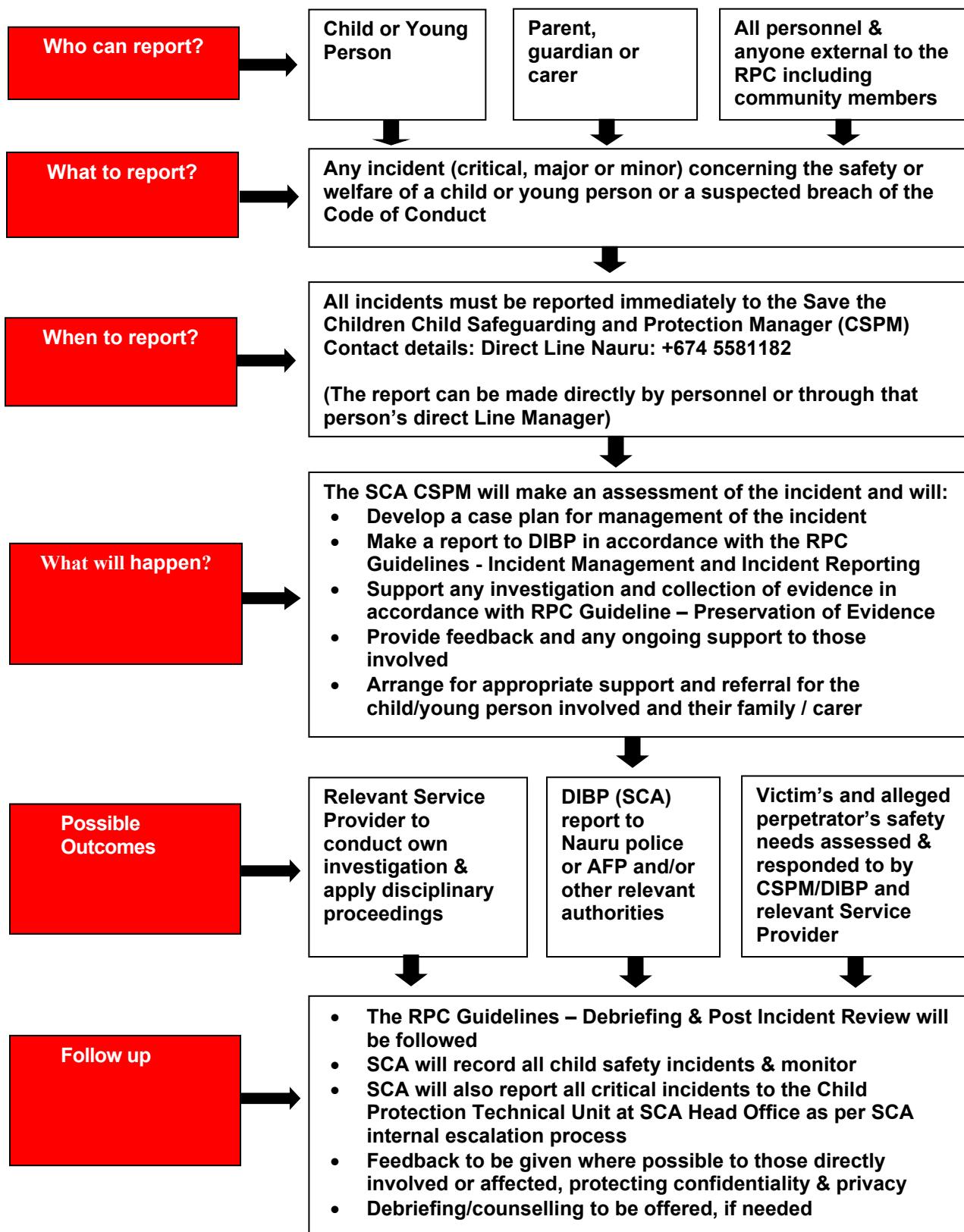
Signed:

Date:/...../.....

A copy of this Statement must be kept on file by the person's employer.



APPENDIX 2: REPORTING PROCESS AND CONTACTS



APPENDIX 3: CHILD SAFE SCREENING & RECRUITMENT PROCEDURES

The following procedures are best practice in child safe screening and recruitment to ensure service providers do not employ or retain people who pose a risk to children. It is recommended that all service providers meet these standards in child safe screening and recruitment for positions that involve regular and ongoing contact with children.

- National criminal record checks (police checks) conducted prior to commencement of employment at the RPC.
- Working with Children Checks are conducted where available (for Australian personnel residing in a state or territory where Working with Children Checks are performed, and UK and NZ citizens as appropriate).
- For personnel from countries where a police/working with children check is not available, the Declaration of Criminal Record is completed (set out in Annexure 4).
- Child protection interview questions (set out in Appendix 3).
- Child protection reference check questions (set out in Appendix 3).
- Two verbal reference checks - including question relating to the applicant's general conduct. One reference must be from the person's current or most recent employer.
- All personnel sign the Code prior to engagement.
- Complete the Child Protection training module and record attendance (to be facilitated by SCA at the RPC).

Suggested child safe interview and reference check questions

The following are a number of example interview and reference questions that should be included as part of the recruitment process for positions which may involve contact with children. Questions should be structured to elicit the following from the applicant:

- their attitude and values in regard to children and young people;
- their motivation for wanting to work with children and young people residing (if relevant);
- illustrations of their past behaviour as it provides an indication of future behaviour.

Suggested Interview Questions

- Are you willing to sign the Working with Children Code of Conduct?
- Have you ever reported a matter concerning a colleague or supervisor? How did you handle it?
- If you were aware of a child protection concern or breach by a colleague of the Code of Conduct within the context of your work how would you respond?
- A child has become quite friendly with you in the family centre. One day they approach you and ask you if they can tell you a secret. What do you do in this scenario?
- Two children are pushing and shoving each other. How do you handle this situation?
- A number of children are running around unsupervised in the kitchen area and helping themselves to food. What do you do to manage this situation?
- Have you ever been subject to investigations in relation to inappropriate conduct towards a minor?

Suggested Reference Check Questions

- What is your relationship with the applicant?
- Have you managed/supervised this person directly? How did they respond to direction/feedback?
- Explain the nature of the position to the referee and the work they will be doing that places them in direct contact with children.
- Tell me about the applicant's work with children? Have you directly observed this work? Do you have any concerns in relation to the applicant's work with children? If so please explain.
- Describe the applicant's ability to work with and relate to others?
- Would you employ this person again?

APPENDIX 4: DECLARATION OF CRIMINAL RECORD**Declaration of Criminal Record Form**

This form should be supplied to all staff with their contract and collected prior to the new staff member commencing work with SCA. This form DOES NOT replace a Police Check and a full Police Check should be undertaken for all staff members.

Applicant's Name:	Role applying for:		
Have you ever been charged or convicted of any offence?	1.1.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please provide details:			

Please note: if you are applying for a position where you will have regular contact with children, (this may be frequent or infrequent), you are required to give details of all convictions or criminal offences and cautions, bindovers or pending prosecutions.

Have you ever been dismissed from employment or had any disciplinary action taken against you which may be related to work with a child/children under 18 years of age?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please provide details:		
Have you received any formal reprimands, final warnings, or cautions from the police?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please provide details:		
Is there any other information which may be relevant to your application e.g. pending prosecutions	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please provide details:		
Signature:	Date:	
Actioned by HR:	Date:	