



**POLICY TITLE:** Child Protection Policy

**DATE APPROVED:** December 2017

**APPROVED BY:** Senior Management Team

**RELATED DOCUMENTS:** Staff Code of Conduct; Work Health and Safety Policy Statement; Student Bullying Policy; Cyber Policy for Staff; Excursion Policy; Volunteers Policy; Visitors Policy.

## 1. Introduction

### 1.1 General

- (a) The safety, welfare and well-being of our students is the paramount consideration in all actions and decisions taken by Kinross Wolaroi School (the School). The School is committed to creating an environment where children are safe.
- (b) Both you and the School have a range of different obligations relating to the safety, protection and welfare of students including:
  - (i) a duty of care to ensure that reasonable steps are taken to prevent harm to students;
  - (ii) obligations under child protection legislation; and
  - (iii) obligations under work health and safety legislation.
- (c) The purpose of this Policy is to summarise the obligations imposed by child protection legislation on the School and on employees, contractors and volunteers at the School and to provide guidelines as to how the School will deal with certain matters.
- (d) Child protection is a community responsibility. The School regards the preventative aspects of child protection as fundamentally important including community education, parent education and support.

### 1.2 Key legislation

- (a) There are three key pieces of specific child protection legislation in New South Wales:
  - (i) the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the **Care and Protection Act**);
  - (ii) the *Child Protection (Working With Children) Act 2012* (NSW) (the **WWC Act**); and
  - (iii) the *Childrens Guardian Act 2019* (NSW) (the **OCG Act**).
- (b) We deal with each below.
- (c) Of course, there may be circumstances where conduct is alleged which is also criminal conduct – and dealt with by the *Crimes Act 1900* (NSW). While this policy does not deal with that in detail, any such conduct should be reported immediately to the Principal.



### 1.3 Your obligations to report

- (a) While we set out below circumstances in which the legislation requires reporting of particular child protection issues, the School requires you to report any concern you may have about the safety, welfare or wellbeing of a child or young person to the Principal without delay.
- (b) If the allegation involves the Principal, you are required to report to the Chairman of the School Council.
- (c) This obligation is part of the School's overall commitment to the safety, welfare and well-being of children.

### 1.4 Other policies

Please note that there are a number of other School policies that relate to child protection which you need to be aware of and understand including (but not limited to):

- (a) the **Staff Code of Conduct** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the School;
- (b) the **Work Health and Safety Policy Statement** which includes the obligations imposed by work health and safety legislation on the school and workers;
- (c) the **Student Bullying Policy and Procedure** which deals with bullying;
- (d) the **Cyber Policy for Staff** which includes guidelines for the use of electronic communication with students, staff, parents and others;
- (e) the **Excursion Policy** which includes requirements relating to duty of care for students on excursions and working with children checks for parents and volunteers attending excursions;
- (f) the **Volunteers Policy and Procedure** which includes the requirements in relation to volunteers working with the School; and
- (g) the **Visitors Policy and Procedure** which includes the requirements in relation to visitors attending the School.

### 1.5 General

This Policy document is intended to be provided and made available to staff including employees and contractors during their employment or engagement with the school to ensure a clear understanding of their duties and obligations under the key items of child protection legislation in NSW. This Policy outlines the key concepts and definitions under the relevant legislation including mandatory reporters, reportable conduct, and risk management. It also sets out expected standards of behaviour in relation to employees and contractors and their relationships with students. This Policy is largely based on the Child Protection Policy developed by the Association of Independent Schools.



## PART A: THE CARE AND PROTECTION ACT

The Care and Protection Act provides for mandatory reporting of children at risk of significant harm.

Note: Any concern regarding the safety, welfare or wellbeing of a student must be reported to the Principal without delay.

### 1. Who is a mandatory reporter?

- (a) Under the Care and Protection Act persons who:
  - (i) in the course of their employment, deliver services including health care welfare, education, children's services and residential services, to children; or
  - (ii) hold a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services and residential services, to children, are mandatory reporters.
- (b) All teachers are mandatory reporters. Other School employees may also be mandatory reporters. If you are not sure whether you are a mandatory reporter, you should speak to the Principal.

### 2. When must a report be made to the Department of Communities and Justice (DCJ)?

#### 2.1 What is the threshold?

- (a) A mandatory reporter must, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, report to DCJ as soon as practicable, the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.
- (b) In addition, while not mandatory, the School requires that a report should also be made to DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

#### 2.2 Reasonable grounds

- (a) 'Reasonable grounds' refers to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm, based on:
  - (i) first hand observations of the child, young person or family;
  - (ii) what the child, young person, parent or another person has disclosed; and
  - (iii) what can reasonably be inferred based on professional training and / or experience.
- (b) 'Reasonable grounds' does not mean that you are required to confirm your suspicions or have clear proof before making a report. If you have any doubt about whether you have reasonable grounds, you should immediately speak with the Principal. Err on the side of caution.



## 2.3 Significant harm

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,
- (c) 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,
- (d) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- (e) 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,
- (f) 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,
- (g) the child was the subject of a pre-natal report under section 25 of the Care and Protection Act 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.

## 2.4 Other relevant definitions

- (a) Policy definition of **significant harm**
  - (i) A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well-being of the child or young person are present to a significant extent.
  - (ii) What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent.
  - (iii) What is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or well-being.
  - (iv) In the case of an unborn child, what is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child's birth.
  - (v) The significance can result from a single act or omission or an accumulation of these.
- (b) **Child** is a person under the age of 16 years for the purposes of the Care and Protection Act.



(c) **Child abuse and neglect**

- (i) There are different forms of child abuse. These include neglect, sexual, physical and emotional abuse.
  - (ii) **Neglect** is the continued failure by a parent or caregiver to provide a child with the basic things needed for his or her proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.
  - (iii) **Physical abuse** is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation.
  - (iv) **Injuries** include bruising, lacerations or welts, burns, fractures or dislocation of joints.
  - (v) Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punishing a child (in a non-trivial way) is a crime.
  - (vi) **Serious psychological harm** can occur where the behaviour of their parent or caregiver damages the confidence and self-esteem of the child or young person, resulting in serious emotional deprivation or trauma.
  - (vii) Although it is possible for 'one-off' incidents to cause serious harm, in general it is the frequency, persistence and duration of the parental or carer behaviour that is instrumental in defining the consequences for the child.
  - (viii) This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.
  - (ix) **Sexual abuse** is when someone involves a child or young person in a sexual activity by using their power over them or taking advantage of their trust. Often children are bribed or threatened physically and psychologically to make them participate in the activity. Child sexual abuse is a crime.
- (d) **Child wellbeing concerns** are safety, welfare or wellbeing concerns for a child or young person that do not meet the mandatory reporting threshold, risk of significant harm.
- (e) **Young person** means a person who is aged 16 years or above but who is under the age of 18 years for the purposes of the Care and Protection Act.



### 3. What should you do if you consider that a mandatory report is required?

- (a) Reporting by the School about these matters to DCJ and, where necessary, the Police, is generally undertaken by the Principal. This is in accordance with best practice principles and is the expectation of the School.
- (b) If you have a concern that a child or young person is at risk of significant harm you should contact the Principal without delay to discuss whether the case reaches the threshold of 'risk of significant harm' and the steps required to report the matter.
- (c) However, if there is an immediate danger to the child or young person and the Principal or next most senior member of staff is not contactable you should speak to the Police and/or the Child Protection Helpline directly and then advise the Principal or next most senior member of staff at the School as soon as possible.
- (d) You are not required to, and **must not**, undertake any investigation of the matter yourself.
- (e) You are not to inform the parents or caregivers that a report to DCJ or police has been made.
- (f) You are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with your mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy but could expose you to potential civil proceedings for defamation.

### 4. What should you do if you have a concern that is below the mandatory reporting threshold?

- (a) While the Care and Protection Act outlines a mandatory reporter's obligation to report to DCJ, as an employee of this School, any concern regarding the safety, welfare and wellbeing of a student (including Child wellbeing concerns) must be reported to the Principal.
- (b) You are required to deal with all reports regarding the safety, welfare or wellbeing of a student confidentially and only disclose it to the Principal and any other person the Principal nominates. Failure to do so will be a breach of this policy.



## 5. Reporting child-to-child conduct

- (a) There are a range of circumstances in which child-to-child conduct may be reportable, either to DCJ or to the Police.
- (b) In the case of mandatory reporting to DCJ, this would include circumstances of problematic sexual behaviour by a child or young person toward another child or young person (that is, conduct outside the bounds of normal sexual behaviour), including child-to-child sexual abuse.
- (c) Child-to-child sexual abuse can occur when a child or young person involves another child in sexual activity. It can be physical, verbal or emotional and can include but is not limited to a child:
  - (i) kissing or holding another child in a sexual manner;
  - (ii) exposing a sexual body part to a child;
  - (iii) having sexual relations with a child;
  - (iv) talking in a sexually explicit way;
  - (v) making obscene phone calls or remarks to a child;
  - (vi) sending obscene messages to a child via technology including social media; and/or
  - (vii) fondling a child in a sexual manner.
- (d) If you have any concern that problematic sexual behaviour by a child or young person toward another child or young person (including child-to-child sexual abuse) is occurring, you must immediately advise the Principal. If you are not sure whether the sexual behaviour is problematic, you should err on the side of caution and report to the Principal.
- (e) The issue of bullying by a student is dealt with in the School's Bullying Policy and Procedure. However, depending on the seriousness and nature of the alleged conduct – e.g., physical assault or involves threats of violence - the matter may also be reportable to the Police. In such instances, you must immediately advise the Principal. Err on the side of caution in reporting such matters to the Principal.



## PART B: THE CHILDREN'S GUARDIAN ACT

### 1. Responsibilities

#### 1.1 General

- (a) The Children's Guardian Act requires the Head of Relevant Entity (HRE) of certain agencies, including non-government schools, to notify the Office of the Children's Guardian (OCG) of reportable allegations and convictions against their employees, investigate the allegation, advise the OCG of the outcome and take appropriate action to prevent reportable conduct by employees.
- (b) Under the Children's Guardian Act, an employee of an entity includes:
  - an individual employed by, or in, the entity
  - a volunteer providing services to children
  - a contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold, a Working with Children Check for the purposes of their work with the entity; and
  - a person engaged by a religious body where that person holds, or is required to hold, a Working with Children Check for the purposes of their work with the religious body.

#### 1.2 OCG role

- (a) must keep under scrutiny the systems for preventing reportable conduct by employees of non-government schools and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions;
- (b) must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions;
- (c) is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable or reportable convictions;
- (d) must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation;
- (e) may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government school, or the handling of or response to such a matter (e.g., arising out of complaints by the person who is the subject of an allegation); and
- (f) may undertake investigations of non-government schools where the OCG considers it appropriate to do so, including where there is evidence of systemic failure or serious conflict of interests.





### 1.3 Head of Relevant Entity (HRE)

The HRE is the Principal of the School. Under the Childrens Guardian Act, the HRE must:

- (a) ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions
- (b) make a notification to the Office of the Children's Guardian within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the entity
- (c) as soon as practicable after receiving the reportable allegation/conviction, arrange for it to be investigated/determined
- (d) complete the investigation within a reasonable time, having regard to the principles of procedural fairness and the mandatory considerations outlined in Division 6 of the Act
- (e) provide information about the allegation, the progress of the investigation and the finding and action taken to the alleged victim and their parent/carer unless the head of the relevant entity considers that it is not in the public interest to do so
- (f) by 30 calendar days after the head of the entity becomes aware of the reportable allegation, provide either a finalised entity report or an update (an interim report, reasons the investigation has not been completed and an estimated timeframe for completion)
- (g) make a finding of reportable conduct if satisfied, on the balance of probabilities, that the case against the employee the subject of the reportable allegation has been proved
- (h) provide information to the Children's Guardian that the Guardian requires under relevant provisions of the Act, which may include information about a reportable allegation, the relevant entity's response to a reportable allegation, and systems for preventing and responding to reportable allegations
- (i) ensure an appropriate level of confidentiality of information relating to reportable allegations and only disclose information about the allegations in circumstances permitted by the Act or other legislation

At the end of the investigation of a reportable allegation, the HRE must send a report to the OCG that enables the OCG to determine whether the investigation was carried out in a satisfactory manner and whether appropriate action was or can be taken.



## 1.4 Your obligations to report

- (a) You must immediately report any concerns you may have about any other employee engaging in reportable conduct or any allegation of 'reportable conduct' that has been made to you, to the Principal, including information about yourself. If you are not sure whether the conduct is reportable conduct but consider that it is inappropriate behaviour you must still report it.
- (b) The reportable conduct scheme is allegations-based. If an allegation is, on the face of it, a reportable allegation, it must be notified to the Principal irrespective of other factors or information that may suggest that the allegation has no weight. The allegation does not have to be made by a person affected. It may be that a 'rumour' of reportable conduct is sufficient. Always err on the side of caution and raise those matters with the Principal.
- (c) You must also report to the Principal if you become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct.
- (d) This includes information relating to yourself.
- (e) If the allegation involves the Principal, you are required to report to the Chairman of the School Council.

## 1.5 Contact for parents

The Principal is the contact point for parents if they wish to report an allegation of reportable conduct against an employee.

## 2. What is reportable conduct, conviction or allegation?

### 2.1 Definitions:

- (a) Reportable conduct is defined as:
  - (i) any sexual offence or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material);
  - (ii) any assault, ill-treatment or neglect of a child; and
  - (iii) any behaviour that causes psychological harm to a child whether or not, in any case, with the consent of the child.
  - (iv) Any offence under section 43B or 316A of the Crimes Act



- (b) Reportable conduct does not extend to:
  - (i) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or
  - (ii) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures; or
  - (iii) conduct of a class or kind exempted from being reportable conduct by the OCG.
- (c) A *reportable conviction* is any conviction for an offence involving reportable conduct.
- (d) A *reportable allegation* is an allegation that a relevant employee has engaged in conduct that may be reportable conduct

## 2.2 Other relevant definitions

Set out below are definitions of the various terms referred to above in relation to reportable conduct.

- (a) Behaviour that causes **psychological harm** to a child is behaviour that is obviously or very clearly unreasonable and results in significant harm or trauma to a child. There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.
- (b) **Child** is a person under the age of 18 years for the purposes of the Children's Guardian Act.
- (c) **Ill-treatment** captures those circumstances where a person treats a child in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner. The focus is on the alleged conduct rather than the actual effect of the conduct on the child.

Ill-treatment can include disciplining or correcting a child in an obviously unreasonable and seriously inappropriate manner; making excessive and/or degrading demands on a child; hostile use of force towards a child; and/or pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.
- (d) **Neglect** includes either an action or inaction by a person who has care responsibility towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.
  - (i) Supervisory neglect:
    - (A) An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
    - (B) An intentional or reckless failure to adequately supervise a child or a significantly careless act or failure to act, that:
      - (I) Involves a gross breach of professional standards, and
      - (II) Has the potential to result in the death or significant harm to a child.
  - (ii) Carer neglect:

Grossly inadequate care that involves depriving a child of the basic necessities of life: such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.



- (iii) Failure to protect from abuse:  
An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.
- (iv) Reckless act (or failure to act):  
A reckless act, or failure to act, that:
  - (A) Involves a gross breach of professional standards, and
  - (B) Has the potential to result in the death of, or significant harm to, a child.
- (e) **Physical Assault** is any act by which a person intentionally inflicts unjustified use of physical force against another. An assault can also occur if a person causes another person to reasonably apprehend that unjustified force is going to be used against them. Even if a person who inflicts physical harm or causes another person to reasonably apprehend physical harm does not actually intend to inflict the harm or cause fear, they may still have committed an assault if they acted 'recklessly'.
- (f) 'Recklessness' in this context relates to circumstances when the person ought to have known that their actions would cause a person physical harm or cause them to fear injury.
- (g) Assaults can include hitting, pushing, shoving, throwing objects or making threats to physically harm a child.
- (h) **PSOA** 'person subject to the allegation'.
- (i) **Reportable conviction** means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.
- (j) **Sexual Misconduct** - there are various types of sexual misconduct including (but not limited to):
  - (i) crossing professional boundaries, and
  - (ii) sexually explicit comments and other overtly sexual behaviour; and
  - (iii) grooming behaviour.

The alleged conduct must have been committed against, with or in the presence of a child.

***Crossing professional boundaries***

Sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or intimate:

- (A) relationship with;
- (B) conduct towards; or
- (C) focus on;

a child or young person, or a group of children or young persons.

***Sexually explicit comments and other overtly sexual behaviour***

Behaviour involving sexually explicit comments and other overtly sexual behaviour which can constitute sexual misconduct. Some forms of this behaviour also involve crossing professional boundaries. This conduct may include:

- (A) inappropriate conversations of a sexual nature
- (B) comments that express a desire to act in a sexual manner
- (C) unwarranted and inappropriate touching involving a child
- (D) sexualised behaviour with or towards a child (including sexual exhibitionism)



- (E) personal correspondence (including electronic communications such as e-mails and text messages) with a child or young person in relation to the adult's intimate, romantic or sexual feelings for a child or young person
- (F) exposure of children and young people to sexual behaviour of others including display of pornography
- (G) watching children undress in circumstances where supervision is not required and it is clearly inappropriate.

### **Grooming Behaviour**

Grooming or procuring a child under the age of 16 years for unlawful sexual activity is a sexual offence. Schedule 1(2) of the WWC Act also recognises grooming as a form of sexual misconduct.

Behaviour should only be seen as 'grooming' where there is evidence of a pattern of conduct that is consistent with grooming the alleged victim for sexual activity, and that there is no other reasonable explanation for it.

The types of behaviours that may lead to such a conclusion include (but are not limited to):

- (A) Persuading a child or group of children that they have a 'special' relationship, for example by:
  - (I) spending inappropriate special time with a child
  - (II) inappropriately giving gifts
  - (III) inappropriately showing special favours to them but not other children
  - (IV) inappropriately allowing the child to overstep rules
  - (V) asking the child to keep this relationship to themselves.
- (B) Testing boundaries, for example by:
  - (I) undressing in front of a child
  - (II) encouraging inappropriate physical contact (even where it is not overtly sexual) talking about sex
  - (III) 'accidental' intimate touching.
- (C) Inappropriately extending a relationship outside of work (except where it may be appropriate - for example where there was a pre-existing friendship with the child's family or as part of normal social interactions in the community).



- (D) Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.

An adult requesting that a child keep any aspect of their relationship secret or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

**Sexual Offences** encompasses all criminal offences involving a sexual element that are 'committed against, with or in the presence of a child'.

These offences include (but are not limited to) the following:

- sexual touching
- sexual assault;
- aggravated sexual assault;
- sexual intercourse and attempted sexual intercourse;
- possession/ dissemination/ production of child pornography or child abuse material;
- using children to produce pornography;
- grooming or procuring children under the age of 16 years for unlawful sexual activity; and
- sexual intercourse--young person between 16 and 18 under special care



### 3. What happens when an allegation of reportable conduct is made?

#### 3.1 Initial steps

Once an allegation of reportable conduct against an employee is received, the HRE is required to:

- (a) determine on face value whether it is an allegation of reportable conduct;
- (b) assess whether DCJ or the Police need to be notified (ie, if reasonable grounds to suspect that a child is at risk of significant harm or criminal offence);
- (c) notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by DCJ or the Police);
- (d) notify the OCG within 7 days of receiving the allegation;
- (e) carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- (f) investigate the allegation or appoint someone to investigate the allegation (unless to do so would be likely to compromise any investigation by DCJ or the Police).

#### 3.2 Investigation principles

The School will:

- (a) be mindful of the principles of procedural fairness;
- (b) inform the person subject of the allegation (PSOA) of the substance of any allegations made against them and provide them with a reasonable opportunity to respond to the allegations;
- (c) make reasonable enquiries or investigations before making a decision;
- (d) avoid conflicts of interest;
- (e) conduct the investigation without unjustifiable delay;
- (f) handle the matter as confidentially as possible; and
- (g) provide appropriate support for all parties including the child/children, witnesses and the PSOA.



### 3.3 Investigation steps

- (a) In an investigation the HRE or appointed investigator will generally:
  - (i) interview relevant witnesses and gather relevant documentation;
  - (ii) provide a letter of allegation to the PSOA;
  - (iii) interview the PSOA;
  - (iv) consider relevant evidence and make a preliminary finding in accordance with the NSW OCG guidelines;
  - (v) inform the PSOA of the preliminary finding and provide them with an opportunity to respond;
  - (vi) consider any response provided by the PSOA;
  - (vii) make a final finding in accordance with the NSW OCG guidelines;
  - (viii) decide on the disciplinary action, if any, to be taken against the PSOA;
  - (ix) apply the NSW Office of the Children's Guardian (OCG) guidelines and decide if the matter is reportable to the OCG; and
  - (x) send the final report to the OCG (where required) (see Part C).
- (b) The steps followed in the investigation process will be guided by the "Recommended Protocols for Internal Investigative and Disciplinary Proceedings, 2001" (IEU/AIS) as updated from time to time (See Attachment 1.)
- (c) The steps outlined above may need to be varied on occasion to meet particular circumstances. For example, it may be necessary to take different steps where the matter is also being investigated by DCJ or the NSW Police.
- (d) A PSOA may have an appropriate support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.





## 4. Risk management

- (a) Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence.
- (b) The HRE is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

### 4.2 Initial risk assessment

- (a) One of the first steps following an allegation of reportable conduct against an employee is for the HRE to conduct a risk assessment. The purpose of this initial risk assessment is to identify and minimise the risks to:
  - (i) the child(ren) who are the subject of the allegation;
  - (ii) other children with whom the employee may have contact;
  - (iii) the PSOA;
  - (iv) the School, and
  - (v) the proper investigation of the allegation.
- (b) The factors which will be considered during the risk assessment include:
  - (i) the nature and seriousness of the allegations;
  - (ii) the vulnerability of the child(ren) the PSOA has contact with at work;
  - (iii) the nature of the position occupied by the PSOA;
  - (iv) the level of supervision of the PSOA; and
  - (v) the disciplinary history or safety of the PSOA and possible risks to the investigation.
- (c) The HRE will take appropriate action to minimise risks. This may include the PSOA being temporarily relieved of some duties, being required not to have contact with certain students, or being suspended from duty. When taking action to address any risks identified, the School will take into consideration both the needs of the child(ren) and the PSOA.
- (d) Please Note: A decision to take action on the basis of a risk assessment is not indicative of the findings of the matter. Until the investigation is completed and a finding is made, any action, such as an employee being suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

### 4.3 Ongoing Risk Management

The HRE will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

### 4.4 Risk Management at the Conclusion of the Investigation

At the completion of the investigation, a finding will be made in relation to the allegation and a decision made by the HRE regarding what action, if any, is required in relation to the PSOA, the child(ren) involved and any other parties.



## 5. What information will be provided to the PSOA?

- (a) The PSOA will be advised:
  - (i) that an allegation has been made against them (at the appropriate time in the investigation); and
  - (ii) of the substance of the allegation of any preliminary finding and any final finding.
- (b) The PSOA does not automatically have the right to:
  - (i) know or have confirmed the identity of the person who made the allegation; or
  - (ii) be shown the content of the OCG notification form or other investigation material that reveals all information provided by other employees or witnesses.
- (c) The WWC Act enables a person who has a finding referred to the OCG under that Act to request access to the records held by the School in relation to a finding (see Part C section 3.5).

## 6. Disciplinary Action

- (a) As a result of the allegations, investigation or final findings, the School may take disciplinary action against the PSOA (including termination of employment).
- (b) In relation to any disciplinary action the School will:
  - (i) give the PSOA details of the proposed disciplinary action; and
  - (ii) give the PSOA a reasonable opportunity to respond before a final decision is made.

## 7. Confidentiality

- (a) It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible.
- (b) The School requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.
- (c) Records about allegations of reportable conduct against employees will be kept in a secure area and will be accessible by the HRE or with the HRE's express authority.
- (d) No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the Principal to do so.
- (e) If you become aware of a breach of confidentiality in relation to a reportable conduct allegation you must advise the Principal.



## PART C: NSW Child Protection (Working with Children) Act (WWC Act)

### 1. General

- (a) The OCG is responsible for employment screening for child related employment. A Working with Children Check (Check) is a prerequisite for anyone in child-related work. It involves a national criminal history check and review of reported workplace misconduct findings. The result of a Check is either a clearance to work with children for five years, or a bar against working with children. Cleared applicants are subject to ongoing monitoring by the OCG, and any relevant new records which appear against a cleared applicant's name may lead to the Check being revoked.
- (b) It is the responsibility of the staff member to ensure that when they are eligible to apply for a check or when their check is up for renewal that they do so.

### 2. Responsibilities

- (a) The object of the WWC Act is to protect children:
  - (i) by not permitting certain persons to engage in child-related work; and
  - (ii) by requiring persons engaged in child-related work to have working with children check clearances.
- (b) Schools are required to:
  - (i) verify online and record the status of each child-related worker's Check;
  - (ii) only employ or engage child-related workers or eligible volunteers who have a valid Check; and
  - (iii) report findings of misconduct involving children made against child-related workers or volunteers.
- (c) Child-related workers and volunteers are required to:
  - (i) hold and maintain a valid Check;
  - (ii) not engage in child-related work at any time that they are subjected to an interim bar or a bar; and
  - (iii) report to the Principal if they are no longer eligible for a Check, the status of their Check changes or are notified by the OCG that they are subjected to a risk assessment.
- (d) All volunteers are required to:
  - (i) Have a current, valid Check;
  - (ii) be aware and follow the expectations of conduct expressed in the School Staff Code of Conduct.



### 3. Relevant Definitions

#### 3.1 Bars

(a) Final bar

This bar is applied based on a decision made by the OCG, following a risk assessment. This person is barred against working with children.

(b) Interim bar

(i) An interim bar is issued to high risk individuals to prevent them from continuing to work with children while a risk assessment is conducted. An interim bar may be applied for up to 12 months. If an interim bar remains in place for six months or longer, it may be appealed against through the New South Wales Civil and Administrative Decisions Tribunal.

(ii) Not everyone who is subject to a risk assessment will receive an interim bar; only those representing a serious and immediate risk to children.

(iii) Interim bars are issued only for risks considered likely to result in a final bar.

#### 3.2 Child-related work

Child-related work includes, but not limited to work in the following sectors<sup>1</sup>:

- (a) early education and child care including education and care service, child care centres and other child care;
- (b) education schools and other educational institutions and private coaching or tuition of children;
- (c) religious services;
- (d) residential services including boarding schools, homestays more than three weeks, residential services and overnight camps; or
- (e) transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings.

#### 3.3 Child-related worker

- (a) A person who has physical contact or face to face contact with children in work outlined above in 3.2, including schools. This may include volunteer work.
- (b) A child-related worker may commence work once they have completed the Check application process. An application is completed when the online application form is complete and the worker's identity has been proven at Service NSW and the fee has been paid (if in paid work).
- (c) If you are unclear if your role is child-related you should speak with the Principal.



### 3.4 Disqualified person

- (a) A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of WWC Act.
- (b) A disqualified person is a person who has a bar preventing them from working with children in child-related work.
- (c) It is an offence for an employer to knowingly engage a child-related worker when they do not hold a Check or who has a bar or an interim bar.
- (d) It is an offence for an employee to engage in child-related worker when they do not hold a Check or has a bar or an interim bar.

### 3.5 Findings of misconduct involving children

- (a) The school will report to the OCG when a finding has been made that the person (an employee of the school) subject to the finding engaged in:
  - (i) sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
  - (ii) any serious physical assault of a child.<sup>ii</sup>
- (b) The School will advise the person that the OCG has been notified of a finding of misconduct involving children.
- (c) The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the School in relation to the finding.

### 3.6 Reporting body

- (a) Independent Schools which are members of the AISNSW are defined as a reporting body by the WWC Act.
- (b) the WWC Act requires the School to notify the OCG findings of misconduct involving children made against a child-related worker. The School may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act.

### 3.7 Risk assessment

- (a) Risk assessment is an evaluation of an individual's suitability for child-related work.
- (b) The OCG will conduct a risk assessment on a person's suitability to work with children when a new record is received which triggers a risk assessment. This may include an offence under Schedule 1, pattern of behaviour or offences involving violence of sexual misconduct representing a risk to children, findings of misconduct involving children or notification made to OCG.

### 3.8 Working with Children Check Clearance

A Working with Children Check (Check) means authorisation under the WWC Act to engage in child-related work. An employee will be issued with a number which is to be provided to the School to verify the status of an employee's Check prior to the commencement of engagement or employment.



## ACKNOWLEDGEMENT

I \_\_\_\_\_ have read, understood and agree to comply with the terms of this Child Protection Policy.

I confirm I have never been in breach of another organisation's child protection or code of conduct policies.

I confirm I have never had concerns raised about my behaviour towards children or vulnerable persons.

I confirm I have never been the subject of an investigation or convicted of a criminal offence relating to abuse or inappropriate behaviour.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

## ATTACHMENTS

The following documents are attached to this policy:

1. "Recommended Protocols for Internal Investigative and Disciplinary Proceedings, 2001" (IEU/AIS); and
2. School Incident Report

## REFERENCES

NSW DCJ

The Office of the Children's Guardian

<http://www.austlii.edu.au/>

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