



Clarence Valley
ANGLICAN SCHOOL

Child Protection Policy

Intended Use

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.

Child Protection Policy		
Policy Last Review April 2020	Review Date and Frequency Annually	Responsible for Review Principal
Recommended By School Executive	Approved By School Council	Approval Date 26 May 2020

1. INTRODUCTION

1.1. **Purpose**

The safety, protection and well-being of all students is of fundamental importance to the School.

This Policy sets out staff responsibilities for child protection and processes that staff must follow in relation to child protection matters. This policy applies to all staff members, which includes employees, contractors and volunteers.

Staff members who fail to adhere to this policy may be in breach of their terms of employment.

Child protection is a community responsibility.

1.2. **Key legislation**

There are four key pieces of child protection legislation in New South Wales:

- a) the *Children and Young Persons (Care and Protection) Act 1998* (“Care and Protection Act”)
- b) the *Child Protection (Working with Children) Act 2012* (“WWC Act”)
- c) the *Children’s Guardian Act 2019* (“*Children’s Guardian Act*”)
- d) The *Crimes Act 1990* (“Crimes Act”)

We deal with each below.

1.3. **Related policies**

There are a number of other School policies that relate to child protection that staff members must be aware of and understand including (but not limited to):

- a) Staff Code of Conduct Policy - sets out information about the standards of behaviour expected of all staff members
- b) Work, Health and Safety Policy - identifies obligations imposed by work health and safety legislation on the school and staff members
- c) Anti-Bullying and Harassment Policy - outlines obligations in relation to student bullying
- d) School Community Complaints Procedure - provides the steps taken by the school in addressing complaints
- e) Staff Social Networking Policy - sets out information about the standards expected of all staff members.

1.4. **Compliance and records**

The Principal or their delegate monitors compliance with this policy and securely maintains School records relevant to this policy, which includes:

- register of staff members who have read and acknowledged that they have read and understood this policy
- register of staff members who have completed mandatory Child Protection Training
- Working With Children Check clearance verifications
- mandatory reports to the Department of Communities and Justice (DCJ), previously

- known as Family and Community Services; and
- reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions

2. CHILD PROTECTION

The safety, protection and welfare of students is the responsibility of all staff members and encompasses:

- a duty of care to ensure that reasonable steps are taken to prevent harm to students which could have reasonably been foreseen
- obligations under child protection legislation

2.1. *Child protection concerns*

There are different reasons for concern for children. Obligations for reporting concerns for children include neglect, sexual and physical abuse, danger to self or others, a parent/carer relinquishing care or concern for the carer.

- Neglect is the failure by a parent or caregiver to adequately meet a child's/young person's needs such as: supervision, shelter, medical care, hygiene/clothing, mental health care, schooling/education, nutrition, or other basic needs. A young person is a danger to self or others and parents/carers are not supervising or providing care.
- Sexual abuse is sexual activity or behavior that is imposed, or is likely to be imposed, on a child/young person by another person.
- Physical abuse is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or other adult house member.
- Psychological Harm a child/young person appears to be experiencing psychological/emotional distress and is a danger to self or others as a consequence of parent/carer behaviour.
- Danger to Self or Others a child/young person is demonstrating suicidal or self-harming behaviours. A child/young person is a danger to self or others and the reporter does not know whether the parent/carer behaviours contributed now or in the past.
- Relinquishing Care a parent/carer states they will not or cannot continue to provide care for a child under the age of 16 or a young person over 16 and they are unable to make an informed decision (temporarily or permanently). The child/young person is in voluntary care for longer than legislation allows.
- Carer Concern a child/young person is significantly affected by carer concerns such as substance abuse, mental health and domestic violence.

2.2. *Child wellbeing concerns*

Child wellbeing concerns are safety, welfare or wellbeing concerns for a child or young person that do not meet the mandatory reporting threshold for risk of significant harm in section 5.1.2

2.3. *Staff member responsibilities*

Key legislation requires reporting of particular child protection concerns. However, as part of the school's overall commitment to child protection all staff are required to report any child protection or child wellbeing concerns about the safety, wellbeing of a child or young person to the Principal.

If the allegation involves the Principal, a report should be made in writing to the Chair of School Council (via the Business Manager, who is the Secretary to School Council). The Secretary to School Council will pass the report to the Chair of School Council.

3. *TRAINING*

3.1. *The School*

The School provides all staff members access to a copy of this policy and ensures that all permanent and part-time staff participate in Mandatory Child Protection Training.

- A representative from AISNSW or another external consultant will be engaged to deliver Child Protection Training to all staff at a Professional Development day in January tri-annually or earlier if legislative change occurs.
- At the start of the year on an all staff Professional Development day the Child Protection Policy is brought to the attention of staff and key points of mandatory reporting are discussed.
- All staff are required to complete a compulsory annual update course that builds upon Mandatory Child Protection Training. Staff participation is recorded in a register and certificates are filed in staff personnel files.
- Any member of staff who is absent for the external presentation will be required to complete online learning, or an alternative training, to ensure suitable baseline training has been accomplished.
- Staff will be notified of any updates or changes in legislation and regulations within one month of the changes being made. Notification will be via e-mail and the revised Policy will be loaded onto the Teacher Kiosk page in TASS.

3.2. *Staff members*

All new staff members prior to commencing must read this Policy and sign a Staff Compliance Policy document acknowledging that they have read, understood and agreed to comply with this policy.

All continuing staff will be required, on an annual basis, to read this Policy and sign a Staff Compliance Policy document acknowledging that they have read, understood and agreed to comply with this policy.

4. WORKING WITH CHILDREN

The WWCC Act protects children by requiring a worker to have a WWCC clearance or current application to engage in child-related work. Failure to do so may result in a fine or imprisonment.

The Office of the Children's Guardian (OCG) is responsible for determining applications for a Working With Children Check clearance (WWCC clearance). It involves a national criminal history check and review of reported workplace misconduct findings. The result is either to:

- grant a WWCC clearance (generally valid for 5 years)
- refuse a WWCC clearance (further applications cannot be made for 5 years)

In addition, the OCG may impose an interim bar on engaging in child-related work for both applicants and WWCC clearance holders.

WWCC clearance holders are subject to ongoing monitoring by the OCG.

4.1.1. Staff members

Staff members who engage in child-related work and eligible volunteers (including those working at overnight camps) are required to:

- hold and maintain a valid WWCC clearance
- not engage in child-related work at any time that they are subject to an interim bar or a bar
- report to the Principal if they are no longer eligible for a WWCC clearance, the status of their WWCC clearance changes or are notified by the OCG that they are subject to a risk assessment
- notify the Children's Guardian of any change to their personal details within three months of the change occurring. Failure to do so may result in a fine

It is an offence for an employee to engage in child-related work when they do not hold a WWCC clearance or if they are subject to a bar.

All volunteers are required to be aware of and follow the expectations of conduct expressed in the School's Staff Code of Conduct Policy.

4.1.2. The School

The School is required to:

- verify online and record the status of each child-related worker's WWCC
- only employ or engage child-related workers or eligible volunteers who have a valid WWCC and
- advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's Working with Children Check Directorate (WWCC Directorate).
- It is an offence for an employer to knowingly engage a child-related worker who does not hold a WWCC clearance or who has a bar.

It is an offence for an employer to knowingly engage a child-related worker when they do not hold a WWCC clearance or who has a bar.

4.2. **Working With Children Check Clearance**

A WWCC clearance is an authorisation under the WWC Act for a person to engage in child-related work.

4.2.1. **Child related work**

Child related work involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work. Child related work includes, but is not limited to work in the following sectors:

- early education and child care including education and care service, child care centres and other child care
- schools and other educational institutions and private coaching or tuition of children
- religious services
- residential services including boarding schools, homestays for more than three weeks, residential services and overnight camps
- transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings
- Counselling, mentoring or distance education not involving direct contact

Any queries about whether roles/duties engage in child-related work should be directed to the Principal.

4.2.2 **Application/Renewal**

An application or renewal can be made through Service NSW or its replacement agency. The process for applying for and renewing a WWCC clearance with the OGC involves a national police check and a review of findings of misconduct. If the OGC grants or renews a WWCC clearance the holder will be issued with a number which is to be provided to the School to verify the status of a staff member's WWCC clearance.

4.2.3. **Refusal/Cancellation**

The OGC can refuse to grant a WWCC clearance or cancel a WWCC clearance. The person is then restricted from engaging in child-related work and not able to apply for another clearance for five years. Employers are notified by the OGC and instructed to remove such persons from child-related work.

4.2.4 **Interim Bar**

The OGC may issue an interim bar, for up to 12 months, to high risk individuals to prevent them from engaging in child-related work while a risk assessment is conducted. If an interim bar remains in place for six months or longer, it may be appealed to the Administrative Decisions Tribunal.

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

4.2.5. ***Disqualified person***

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. A disqualified person cannot be granted a WWCC clearance and is therefore restricted from engaging in child-related work.

4.3. ***Ongoing monitoring***

The OCG will continue to monitor criminal records and professional conduct findings of all WWCC clearance holders through a risk assessment process.

4.3.1. ***Risk assessment***

A risk assessment is an evaluation of an individual's suitability for child-related work.

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 or sexual misconduct representing a risk to children, findings of misconduct involving children.

4.4 **Process for reporting to OCG**

4.4.1. ***The School***

Independent Schools are defined as a reporting body by the WWC Act.

The School is required to advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's WWCC Directorate. Information must also be referred internally to the OCG's WWCC Directorate if it meets the threshold for consideration of an interim WWCC bar, as per Section 17 of the WWC Act, pending a formal risk assessment.

The School may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act and the Children's Guardian Act.

4.4.2. ***Findings of misconduct involving children***

The School will report to the OCG when a sustained finding has been made against an employee that they engaged in:

- sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
- any serious physical assault of a child

The School will advise the person that the OCG has been notified of a finding of misconduct involving children.

The WWC Act enables a person who has a sustained finding referred to the OCG under the Act to request access to the records held by the school in relation to the finding of misconduct involving children once final findings are made. The entitlement of a person to

access information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

4.4.3. Other Information

The School may also be required to provide information to the OGC that is relevant to an assessment of whether a person poses a risk to the safety of children or the OGC's monitoring functions.

The Business Manager maintains a Working With Children Check (WWCC) Register in hard and soft copy formats. The hard copy format is stored in the Business Manager's Office and the soft copy on the Business Manager's School computer network drive. The Business Manager regularly reviews the Register for pending WWCC expiry dates, conducts online WWCC verifications and emails staff and volunteers to remind them to update their WWCC. Staff and volunteers are given one months notice prior to the expiry of the card. The Business Manager also follows-up until new/current WWCC verifications are received.

5. MANDATORY REPORTING

The Care and Protection Act provides for mandatory reporting of children at risk of significant harm. A child is a person under the age of 16 years and a young person is aged 16 years or above but who is under the age of 18 years for the purposes of the Care and Protection Act.

Under the Care and Protection Act mandatory reporting applies to persons who:

- a) in the course of their employment, deliver services including health care; welfare, education, children's services and residential services, to children; or
- b) 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.

All teachers are mandatory reporters. Other staff members may also be mandatory reporters. Any queries about whether other staff members are mandatory reporters should be directed to the Principal.

5.1. Reports to Communities and Justice

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 the Department of Communities and Justice (DCJ) as soon as practicable. The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

In addition, while not mandatory, the School considers 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 wellbeing of the young person.

In the Independent School Sector a mandatory reporter will meet their obligation if they report to the Principal in the School. This centralised reporting model ensures that a person in the School has all of the information that may be relevant to the circumstances of the child

at risk of significant harm and addresses the risk of the school not being aware of individual incidences that amount to cumulative harm.

5.1.1. **Reasonable grounds**

'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:

- a) first hand observations of the child, young person or family
- b) what the child, young person, parent or another person has disclosed
- c) what can reasonably be inferred based on professional training and/or experience

'Reasonable grounds' does not mean that you are required to confirm your suspicions or have clear proof before making a report.

5.1.2. **Significant harm**

A child or young person is 'at risk of significant harm' if current concerns exist for the safety, welfare or wellbeing of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met
- 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
- in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990* (NSW) —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
- the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated
- 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
- 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
- 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

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or wellbeing of the child or young person are present to a significant extent.

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.

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.

The significance can result from a single act or omission or an accumulation of these.

5.3 Process for mandatory reporting

5.3.1. Staff members

Staff members must raise concerns about a child or young person who may be at risk of significant harm with the Principal as soon as possible to discuss whether the matter meets the threshold of 'risk of significant harm' and the steps required to report the matter.

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 the member of staff should speak to the Police and/or the Child Protection Helpline (13 21 11) directly and then advise the Principal or next most senior member of staff at the School as soon as possible.

Staff members are not required to, and must not, undertake any investigation of the matter. Staff members are not permitted to inform the parents or caregivers that a report to DCJ has been made.

Staff members are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy, but could incite potential civil proceedings for defamation.

5.3.2. The School

In general, the Principal makes a report to the DCJ and, where necessary, the Police. This is supported by DCJ in accordance with best practice principles.

The Principal will provide feedback from the Child Protection Helpline and advise the reporting staff member of the Engagement number.

5.4 Process for reporting concerns about students

5.4.1. Staff members

The Care and Protection Act outlines a mandatory reporter's obligation to report to DCJ concerns about risk of significant harm. However, to ensure centralised reporting all staff members are required to report any concern regarding the safety, welfare and wellbeing of a student to the Principal. Staff members who are unsure as to whether a matter meets the threshold of 'risk of significant harm' should report their concern to the Principal regardless.

Staff members 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.

6. REPORTABLE CONDUCT

Section 29 of the Children's Guardian Act 2019 requires the Heads of Entities (the person who is primarily responsible for executive decision making in the organisation), including non-government schools in New South Wales, to notify the OCG of all allegations of reportable conduct and convictions involving an 'employee' and the outcome of the School's

investigation of these allegations. Under the Children's Guardian Act 2019 allegations of child abuse only fall within the reportable conduct jurisdiction if the involved individual is an employee of the relevant entity at the time when the allegation becomes known by the Head of Entity.

Reportable conduct:

- involves a child (a person under the age of 18 years) at the time of the alleged incident; and
- involves certain defined conduct as described in the Act (see below)

The OCG:

- 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 (eg arising out of complaints by the person who is the subject of an allegation); and
- f) may investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint or notification, if the OCG considers it appropriate to do so.

6.1. **Reportable conduct**

Under the Children's Guardian Act 2019 reportable conduct is defined as:

- a) a sexual offence
- b) sexual misconduct
- c) an assault against a child
- d) ill-treatment of a child
- e) neglect of a child
- f) an offence under section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act 1900; and
- g) behaviour that causes significant emotional or psychological harm to a child

Reportable conduct does not extend to:

- a) 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
- b) 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
- c) conduct of a class or kind exempted from being reportable conduct by the Children's Guardian Act under section 30.

6.1.1. **Definitions**

The following definitions relate to reportable conduct:

Sexual offence: an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child, such as:

- sexual touching of a child;
- a child grooming offence;
- production, dissemination or possession of child material.

Definitions of grooming, within child protection legislation, are complex. Under the Crimes Act, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual offence. The Crimes Act (s73) also extends the age of consent to 18 years when a child is in a 'special care' relationship. Under Schedule 1(2) of the WWC Act, grooming is recognised as a form of sexual misconduct. The Children's Guardian Act 2019 and this Child Protection Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2).

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of sexual offence.

Sexual misconduct: conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence). The Act provides the following (non-exhaustive) examples:

- descriptions of sexual acts without a legitimate reason to provide the descriptions;
- sexual comments, conversations or communications;
- comments to a child that express a desire to act in a sexual manner towards the child, or another child.

Note - crossing professional boundaries comes within the scope of the scheme to the extent that the alleged conduct meets the definition of sexual misconduct. That is, the conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence).

Assault: an assault can occur when a person intentionally or recklessly (ie: knows the assault is possible but ignores the risk):

- applies physical force against a child without lawful justification or excuse - such as hitting, striking, kicking, punching or dragging a child (actual physical force); or
- causes a child to apprehend the immediate and unlawful use of physical force against them - such as threatening to physically harm a child through words and/or gestures regardless of whether the person actually intend to apply and force (apprehension of physical force)

Ill-treatment: is defined as conduct towards a child that is:

- unreasonable; and
- seriously inappropriate, improper, inhumane or cruel.

Ill-treatment can include a range of conduct such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and using inappropriate forms of behaviour management towards a child.

Neglect: defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm - by a person who has care and/or has responsibility towards a child.

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfill a duty of obligation, resulting in actual harm to a child where there is the potential for significant harm to a child. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

Behaviour that causes significant **emotional or psychological** harm to a child is conduct that is intentional or reckless (without reasonable excuse), obviously or very clearly unreasonable and which results in significant emotional harm or trauma to a child.

For a reportable allegation involving psychological harm, the following elements must be present:

- An obviously or very clearly unreasonable or serious act or series of acts that the employees knew or ought to have known was unacceptable, and
- Evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm and
- An alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.

Reportable allegation is an allegation that an employee has engaged in conduct that may be reportable conduct.

Reportable conviction means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offense involving reportable conduct.

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 WWCC clearance for the purpose of their work with an entity; and
- a person engaged by a religious body where that person holds, or is required to hold, a WWCC clearance for the purpose of their work with the religious body.

PSOA (Person Subject Of the Allegation).

6.2 ***Process for reporting of reportable conduct allegations or convictions***

6.2.1 ***Staff members***

Any concerns about any other employee engaging in conduct that is considered inappropriate, or reportable conduct, or any allegation of inappropriate, or reportable conduct made to the employee or about the employee themselves must be reported to the Principal.

Where it is uncertain if the conduct is reportable conduct but is considered inappropriate behaviour this must also be reported.

Staff members must also report to the Principal when they 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. This includes information relating to the employee themselves.

If the allegation involves the Principal, a report should be made in writing to the Chair of School Council (via the Business Manager, who is the Secretary to School Council). The Secretary to School Council will pass the report to the Chair of School Council.

6.2.2 *Parents, carers and community members*

Parents, carers and community members are encouraged to report any conduct that is in their view inappropriate, reportable or criminal conduct to the Principal or their delegate. All such reports will be dealt with in accordance with the School Community Complaints Procedure.

6.2.3 *The School*

The Principal, as the Head of Entity under the Children's Guardian Act 2019, must:

- Ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions.
- Submit a 7-day notification form to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the entity (unless the Head of the Entity has a reasonable excuse),
- The notification should include the following information:
 - (a) that a report has been received in relation to an employee of the School, and
 - (b) the type of reportable conduct, and
 - (c) the name of the employee, and
 - (d) the name and contact details of School and the Head of Entity, and
 - (e) for a reportable allegation, whether it has been reported to Police, and
 - (f) if a report has been made to the Child Protection Helpline, that a report has been made, and
 - (g) the nature of the relevant entity's initial risk assessment and risk management action,
- The notice must also include the following, if known to the Head of Entity;
 - (a) details of the reportable allegation or conviction considered to be a reportable conviction,
 - (b) the date of birth and WWC number, if any, of the employee the subject of the report,
 - (c) the police report reference number (if Police were notified),
 - (d) the report reference number if reported to the Child Protection Helpline,
 - (e) the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.
- Maximum penalty for failure to notify within 7 business days - 10 penalty units,

6.3. ***Process for investigating an allegation of reportable conduct***

The Principal ensures that the following steps are taken to investigate an allegation of reportable conduct.

6.3.1 ***Initial steps***

Once an allegation of reportable conduct against an employee is received, the Principal 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). If they have been notified, seek clearance from these statutory agencies prior to the School proceeding with the Reportable Conduct investigation;
- (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 business days of receiving the allegation;
- (e) carry out a risk assessment and take action to reduce/remove risk, where appropriate;
- (f) provide an initial letter to the PSOA advising that an allegation of reportable conduct has been made against them and the school's responsibility to investigate this matter under Section 34 of the Children's Guardian Act 2019; and
- (g) investigate the allegation or appoint someone to investigate the allegation.

6.3.2 ***Investigation principles***

During the investigation of a reportable conduct allegation the School will:

- (a) follow 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.

6.3.3 ***Investigation steps***

In an investigation the Principal or appointed investigator will generally:

- (a) interview relevant witnesses and gather relevant documentation;
- (b) provide a letter of allegation to the PSOA
- (c) provide the PSOA with the opportunity to provide a response to the allegations either in writing or at interview
- (d) consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines
- (e) inform the PSOA of the preliminary finding and provide them with further opportunity to respond or make a further submission prior to the matter moving to final findings;
- (f) consider any response provided by the PSOA
- (g) make a final finding in accordance with the OCG guidelines

- (h) decide on the disciplinary action, if any, to be taken against the PSOA
- (i) if it is completed, send the final report to the OCG within 30 days after having received the allegations, as per section 36 of the Children's Guardian Act 2019.
- (j) should the final report be unfinished within 30 days, the Head of Entity must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as per section 38 of the Children's Guardian Act 2019.

Submission of an interim report must include:

- a reason for not providing the final report within 30 days and an estimated time frame for completion of the report.
- specific information, including (if known); the facts and circumstances of the reportable allegations, any known information about a reportable conviction; action taken since the OCG received a notification about the reportable allegation or reportable conviction; including if the Head of Entity proposes to take no further action; the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action; other information prescribed by the regulations; and
- be accompanied by copies of documents in the School's possession, including transcripts of interviews and copies of evidence.

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 Police.

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.

6.4. Risk management throughout an investigation of a reportable conduct allegation

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.

The Principal 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.

6.4.1 Initial risk assessment

Following an allegation of reportable conduct against an employee the Principal conducts an initial risk assessment to identify and minimise the risks to:

- (a) the child(ren) who are the subject of the allegation;
- (b) other children with whom the employee may have contact;
- (c) the PSOA;
- (d) the School, and
- (e) the proper investigation of the allegation.

The factors which will be considered during the risk assessment include:

- (a) the nature and seriousness of the allegations;
- (b) the vulnerability of the child(ren) the PSOA has contact with at work;
- (c) the nature of the position occupied by the PSOA;
- (d) the level of supervision of the PSOA; and
- (e) the disciplinary history or safety of the PSOA and possible risks to the investigation.

The Principal 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.

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.

6.4.2 Ongoing Risk Management

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

6.4.3 Findings

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

6.4.4 Information for the PSOA

The PSOA will be advised:

- (a) that an allegation has been made against them (at the appropriate time in the investigation); and
- (b) of the substance of the allegation, or of any preliminary finding and the final finding.

The PSOA does not automatically have the right to:

- (a) know or have confirmed the identity of the person who made the allegation; or
- (b) be shown the content of the OCG notification form or other investigation material that reveals all information provided by other employees or witnesses.

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the School in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is initiated when a finding of misconduct involving children has been made.

6.4.5 Disciplinary Action

As a result of the allegations, investigation or final findings, the School may take disciplinary action against the PSOA (including termination of employment).

In relation to any disciplinary action, the School will give the PSOA:

- (a) details of the proposed disciplinary action; and
- (b) a reasonable opportunity to respond before a final decision is made.

6.4.6. **Confidentiality**

It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible.

The School requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.

Records about allegations of reportable conduct against employees will be kept in a secure area and will be accessible by the Principal or with the Principal's express authority.

No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the Principal to do so.

Staff members who become aware of a breach of confidentiality in relation to a reportable conduct allegation must advise the Principal.

7. Criminal Offences

In 2018 the Crimes Act was amended to adopt recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The new offences are designed to prevent child abuse and to bring abuse that has already occurred to the attention of the Police.

7.1. Failure to protect offence

An adult working in a school, therefore all staff members, will commit an offence if they know another adult working there poses as serious risk of committing a child abuse offence and they have the power to reduce or remove the risk, and they negligently fail to do so either by acts and/or omissions.

This offence is targeted at those in positions of authority and responsibility working with children who turn a blind eye to a known and serious risk rather than using their power to protect children.

7.2. Failure to report offence

Any adult, therefore all staff members, will commit an offence if they know, believe or reasonably ought to know that a child abuse offence has been committed and fail to report that information to police, without a reasonable excuse. A reasonable excuse would include where the adult has reported the matter to the Principal and is aware that the Principal has reported the matter to the police.

RELATED DOCUMENTS

- *Anti-Bullying and Harassment Policy*
- *Cathedral Campus Security Policy*
- *Clarenza Campus Security Policy*
- *Critical Incident Management Policy*
- *Employment Policy*
- *Privacy Policy*
- *Procedural Fairness Policy*
- *Safe and Supportive Environment Policy*
- *School Community Communication Policy*
- *School Community Complaints Policy*
- *Staff Code of Conduct Policy*
- *Student Code of Conduct*

Office of the Children's Guardian (OCG) replaces the Ombudsman

Department of Communities and Justice (DCJ) replaces the Family and Community Services (FACS)

Heads of Entities/Head of Entity (Principal)