

## PURPOSE / RATIONALE

This document outlines the Policy for the care and protection of children at St Edmund's College (the School). The School caters for children with a diagnosed disability including sensory impairment, intellectual disability and/or autism.

## Intended Use

This Policy document is intended to be provided and made available to workers (including employees, volunteers 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.

## 1. Introduction

### 1.1. General

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

Both the workers and the School have a range of different obligations relating to the safety, protection and welfare of students including:

- a) a duty of care to ensure that reasonable steps are taken to prevent harm to students;
- b) obligations under child protection legislation; and
- c) obligations under work health and safety legislation.

The purpose of this Policy is to summarise the obligations imposed by child protection legislation on the School and on workers at the School and to provide guidelines as to how the School will deal with certain matters.

Child protection is a community responsibility.

### 1.2. Key legislation

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

- a) the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the **Care and Protection Act**);
  - b) the *Child Protection (Working With Children) Act 2012* (NSW) (the **WWC Act**); and
  - c) the *Ombudsman Act 1974* (NSW) (the **Ombudsman Act**).
- (See Parts A, B and C below.)

For the purposes of the Care and Protection Act a **Child** is a person under the age of 16 years and **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 Ombudsman Act **Child** is a person under the age of 18 years.

### 1.3. Workers' obligations to report

While circumstances are set out below in which the **legislation** requires reporting of particular child protection issues, the School requires workers to report **any concern** they may have about the safety, welfare or wellbeing of a child or young person to **the Principal**.

If the allegation involves the **Principal**, the worker is required to report to the Director of Regional Support, Eastern Region from Edmund Rice Education Australia (EREA).

This obligation is part of the School's overall commitment to the safety, welfare and well-being of children.

#### 1.4. Duty of Care and Legal Liabilities

Staff can be deemed legally liable if they have been negligent in relation to their responsibilities under the legislation as it pertains to the care and protection of children.

Generally speaking, a person owes a duty not to injure another as a result of his or her own negligent act or omission. The duty does not usually extend to the taking of steps to prevent injury where one has not caused or contributed to the risk giving rise to the injury.

There exists, however, special duty relationships between some members of our society which give rise to more onerous duties of care. The relationship between teacher and pupil is one of these.

The general law of negligence provides that a person may be negligent if:

- a) S/he owes a duty of care to the person injured, that is, the standard judged reasonable in all of the circumstances;
- b) S/he did not carry out that duty to the legal standard required;
- c) The person suffered damage as a result of the failure to observe the duty of care.

With regard to care and protection the following general principles apply:

- a) Staff must take reasonable care to ensure that their students are not harmed. They have a duty to protect their students against foreseeable risks of personal injury or harm;
- b) The standard of care is that of a reasonably prudent parent. The degree of care depends on such factors as the age of the students;
- c) There must be an efficient system of supervision in operation in the School.

Duty of care applies while the students are under the care of the School. This applies equally to School based activities and out of School activities. The same duty of care applies to employees who volunteer their services to the School.

Employees are required to follow good standards and approved practice. An example of good standards or approved practice would be compliance with the School's Code of Behaviour and School Rules.

#### 1.5. Other Policies

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

- a) **Policy 06.03.00-E – Professional Code of Conduct** – which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the School;
- b) **Policy 03.01.00-E – Work Health and Safety** – which summarises the obligations imposed by work health and safety legislation on the School and workers; and
- c) **Policy 02.13.00-E and Procedure 02.13.01-E – Anti-Bullying** – which summarise workers' obligations in relation to unlawful discrimination, harassment and bullying.

### 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**.

## **1. Who is a mandatory reporter?**

Under the Care and Protection Act 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 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 Community Services?**

### **2.1 What is the threshold?**

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 Community Services 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.

In addition, while not mandatory, the School considers that a report should also be made to Community Services 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**

'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.

### **2.3 Significant harm**

#### **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

### Policy definition of significant harm

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.

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.

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.

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

### Child abuse and neglect

There are different forms of child abuse. These include neglect, sexual, physical and emotional abuse.

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.

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.

Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.

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.

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.

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.

This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.

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.

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.

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

Reporting by the School about these matters to Community Services and, where necessary, the police, is generally undertaken by **the Principal**. This is supported by Community Services in accordance with best practice principles and is the expectation of the School.

If you have a concern that a child or young person is at risk of significant harm you should contact **the Principal** as soon as possible to discuss whether the case reaches 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 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.

You are not required to, and must not, undertake any investigation of the matter yourself.

You are not to inform the parents or caregivers that a report to Community Services has been made.

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?**

While the Care and Protection Act outlines a mandatory reporter's obligation to report to Community Services, as an employee of the School, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Principal.

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.

## **PART B: The Ombudsman Act**

### **1 Responsibilities**

#### **1.1 General**

Part 3A of the Ombudsman Act requires the heads of certain agencies, including non-government School in New South Wales, to notify the New South Wales Ombudsman of all allegations of reportable conduct by an 'employee' and the outcome of the School's investigation of these allegations.

An 'employee' includes employees, contractors, volunteers, work experience participants, clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services. In this part where there is a reference to an employee it includes all of these persons.

#### **1.2 The Ombudsman**

The Ombudsman:

- 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 allegations or reportable convictions;
- c) is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable allegations or is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable allegations 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 allegations 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 'own motion' investigations of non-government schools where the Ombudsman considers it appropriate to do so, including where there is evidence of systemic failure or serious conflicts of interest.

#### **1.3 Head of Agency**

The Head of Agency is the Principal of the School.

Under the Ombudsman Act the Head of Agency (Principal) must:

- a) set up systems within their organisation to ensure that they are advised of any allegations of reportable conduct against employees;
- b) notify the Ombudsman (using a NSW O Part A notification form) as soon as possible and no later than thirty days after being made aware of an allegation;
- c) Notify the Ombudsman whether or not the School plans to take disciplinary or other action in relation to an employee who is the subject of a reportable allegation or conviction, and the reasons for taking or not taking any such action as soon as practicable; and
- d) provide the Ombudsman with any documentary and other information as the Ombudsman may from time to time request to assist in the Ombudsman's monitoring of an investigation.

This will typically include the NSW O Part B notification form and risk assessments.

#### **1.4 Your obligations to report**

You must 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.

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.

This includes information relating to yourself.

If the allegation involves the Principal, you are required to report to the Director of Regional Support, Eastern Region from Edmund Rice Education Australia (EREA).

#### **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?**

#### **2.1 Definition of reportable conduct**

Reportable conduct is defined as:

- a) 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);
- b) any assault, ill-treatment or neglect of a child; and
- c) any behaviour that causes psychological harm to a child whether or not, in any case, with the consent of the 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 Ombudsman under section 25CA.

## 2.2 Other relevant definitions

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

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.

**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.

**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.

1. Supervisory neglect:
  - An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
  - An intentional or reckless failure to adequately supervise a child or a significantly careless act or failure to act, that:
    - Involves a gross breach of professional standards, and
    - Has the potential to result in the death or significant harm to a child.
2. 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.
3. 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.
4. Reckless act (or failure to act):
  - A reckless act, or failure to act, that:
    - Involves a gross breach of professional standards, and
    - Has the potential to result in the death of, or significant harm to, a child.

**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'.

'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.

Assaults can include hitting, pushing, shoving, throwing objects or making threats to physically harm a child.

**PSOA** 'person subject to the allegation'.

**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.

**Sexual Misconduct** has two categories which include:

- (1) crossing professional boundaries; and
- (2) sexually explicit comments and other overtly sexual 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:

- relationship with;
- conduct towards; or
- focus on;

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

Codes of conduct that outline the nature of the professional boundaries which should exist between employees and children/young people can be particularly useful. For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be necessary to provide more detailed written advice about what constitutes appropriate behaviour.

### **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
- d) 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 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. For example, in change rooms or toilets when supervision is not required or justified.

**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:

- (a) indecent assault
- (b) sexual assault
- (c) aggravated sexual assault
- (d) sexual intercourse and attempted sexual intercourse
- (e) sexual touching
- (f) possession / dissemination / production of child pornography or child abuse material
- (g) using children to produce pornography
- (h) grooming or procuring children under the age of 16 years for unlawful sexual activity
- (i) deemed non-consensual sexual activity on the basis of special care relationships
- (j) exposing a child to indecent material
- (k) providing a child with an intoxicating substance
- (l) intentionally sexually touching a child or young person in special care
- (m) inciting a child or young person in special care to touch the carer/teacher/staff member or another person
- (n) concealing child abuse.

**Sexual Touching** – young person between 16 and 18 under special care

- A child is under a person's "special care" if the person is a member of the teaching staff of the school (a teacher, principal or deputy principal or any other person employed at the school who has students at the school under their care or authority) at which the victim is a student. A child is also under a person's "special care" if the



person has an established personal relationship with the victim in connection with the provision of religious, sporting, musical or other instruction to the victim.

- Sexual Touching means a person touching another person with any part of the body or with anything else or through anything, including anything being worn by the person doing the touching or by the person being touched, in circumstances where a reasonable person would consider the touching to be sexual.
- If a person intentionally sexually touches / incites a young person to touch them or another person, and the young person is under that person's "special care", they will be guilty of an offence punishable by a two or four year gaol term (depending on the age of the young person).

### **Concealing Child Abuse – Section 316 and 316A**

- An adult who knows, believes, or reasonably ought to know that a child abuse offence has been committed against another person, and
  - who knows, believes or reasonably ought to know that he or she has information that might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender, and
  - fails without reasonable excuse to bring that information to the attention of the NSW Police as soon as practicable,will be guilty of an offence punishable by two years' imprisonment.
- Concealing serious indictable offences imposes a positive reporting obligation on school teachers, including a principal of a school, a member of the clergy or any church or religious denomination, and other professions, to report known, or believed, acts of serious indictable offences – which includes forms of child abuse.
- The provision provides a non-exhaustive list of "reasonable excuses", outlining the circumstances in which the offence does not apply, including where a person:
  - believes, on reasonable grounds the Police already know the information,
  - has made a mandatory report under mandatory reporting laws or believes on reasonable grounds that another person has done so.
- This offence applies to all adults, not just mandatory reporters, and as such it is critical that organisations provide training to all adults in their organisation or reporting to external authorities and their obligations under this offence.

**Grooming** refers to patterns of behaviour or conduct aimed at engaging with an alleged victim for sexual activity.

Types of grooming behaviours may include:

- Persuading child/ren that there is a 'special' relationship
- Inappropriate gift giving
- Providing any financial or other material benefit
- Special favours / breaking rules
- Inappropriate amounts of time
- Secret relationship, tactics to keep relationship secret
- Testing boundaries (touching, physical contact, undressing in front of child, talking about sex)
- Extending relationship outside of work
- Personal communication about personal or intimate feelings

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 *Child Protection (Working With Children) Act*, grooming is recognised as a form of **sexual misconduct**. The *NSW Ombudsman Act, 1974* and this Child Protection Policy reflect all of these definitions within the context of the Reportable Conduct Scheme (Part 3A).

## **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 Principal is required to:

- (a) Determine on face value whether it is an allegation of reportable conduct;
- (b) Assess whether Community Services or the Police need to be notified (i.e. if reasonable grounds to suspect that a child is at risk of significant harm or a potential 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 Community Services or the Police);
- (d) Notify the Ombudsman within 30 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.

### **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**

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) Interview the PSOA;
- (d) Consider relevant evidence and make a preliminary finding in accordance with the NSW Ombudsman guidelines;
- (e) Inform the PSOA of the preliminary finding and provide them with an opportunity to respond;
- (f) Consider any response provided by the PSOA;
- (g) Make a final finding in accordance with the NSW Ombudsman Guidelines;
- (h) Decide on the disciplinary action, if any, to be taken against the PSOA;
- (i) Apply the NSW Office of the Children's Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG; and
- (j) Send the final report to the Ombudsman and report to the OCG (where required) (see Part 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 Community Services or the NSW 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.

## **4 Risk management**

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.

#### **4.1 Initial risk assessment**

One of the first steps following an allegation of reportable conduct against an employee is for the Principal to conduct a risk assessment. The purpose of this initial risk assessment is 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.

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.

#### **4.2 Ongoing Risk Management**

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

#### **4.3 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 Principal 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?**

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 Ombudsman 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 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 (see Part C section 3).

### **6. 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:

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

## **7. 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.

If you become aware of a breach of confidentiality in relation to a reportable conduct allegation you must advise the Principal.

## **PART C: WWC Act**

### **1 General**

The Office of the Children's Guardian (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.

It is the responsibility of the child-related worker 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**

The object of the WWC Act is to protect children:

- (a) By not permitting certain persons to engage in child-related work; and
- (b) By requiring persons engaged in child-related work to have working with children check clearances.

Schools are required to:

- (a) Verify online and record the status of each child-related worker's Check;
- (b) Only employ<sup>i</sup> or engage child-related workers or eligible volunteers who have a valid Check; and
- (c) Report findings of misconduct involving children made against child-related workers or volunteers.

Child-related workers and eligible volunteers are required to:

- (a) Hold and maintain a valid Check;
- (b) Not engage in child-related work at any time that they are subjected to an interim bar or a bar; and
- (c) 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.

All volunteers are required to:

- (a) To be aware and follow the expectations of conduct expressed in the School Professional Code of Conduct;
- (b) Read and abide by the Information Handbook for Volunteers, Casuals and Visitors.

### **3 Relevant Definitions**

#### **3.1 Bars**

##### 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.

##### Interim bar

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 twelve (12) months. If an interim bar remains in place for six (6) months or longer, it may be appealed against through 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.

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>ii</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;
- (e) Transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings; or
- (f) Contact with children is a usual part of and more than incidental to the work.

#### **3.3 Child-related worker**

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 an employee, contractor or subcontractor, volunteer, person undertaking practical training as part of an educational or vocational course (not school student work experience), minister, priest, rabbi, mufti or other like religious leader or spiritual officer of a religious or other member of a religious organisation.

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 the NSW motor registry or Council Agency and the fee has been paid (if in paid work).

Any person unclear whether their role is child-related should speak with the Principal.

#### **3.4 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.<sup>iii</sup>

A disqualified person is a person who has a bar preventing them from working with children in child-related work.

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.

It is an offence for an employee to engage in child-related work when they do not hold a Check or has a bar or an interim bar.

### **3.5 Findings of misconduct involving children**

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:

- (a) Sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
- (b) Any serious physical assault of a child.<sup>iv</sup>

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 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.

### **3.6 Reporting body**

Independent schools which are members of the AISNSW are defined as a reporting body by the WWC Act. Section 35 of the WWC Act requires this 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**

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 or notification made to OCG by the Ombudsman.

### **3.8 Working With Children Check Clearance**

A Working with Children Check (WWCC) 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 the employee's Check.

### **3.9 Failure to Obtain and Verify WWCC**

Financial penalties apply for failure by an employer to obtain and verify the details of a worker who is employed to work with children, or to keep a record of the details so obtained.

### **3.10 Duty to Keep WWCC Information up to date**

Each person who holds a WWCC clearance, or who has applied for a clearance, is required to notify the Children's Guardian of any change in their personal details (including contact and employment details) within three (3) months of the change occurring. Financial penalties apply if a person who is guilty of an offence fails to comply with this requirement without reasonable excuse.

<b>Responsible Officer</b>	College Principal
<b>Date of Next Review</b>	April 2022
<b>Related References, Policies, Procedures and Guides</b>	<p><b>Departments:</b>  NSW Family and Community Services <a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a>  NSW Ombudsman <a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a>  The Children's Guardian (formerly the NSW Commission for Children and Young People) <a href="http://www.kids.nsw.gov.au">www.kids.nsw.gov.au</a>  Department of Premier and Cabinet – Keep Them Safe  <a href="http://www.keepthemsafe.nsw.gov.au">www.keepthemsafe.nsw.gov.au</a></p> <p><b>Legislation:</b>  Children and Young Persons (Care and Protection) Act 1998  NSW Child Protection (Working with Children) Act 2012  NSW Child Protection Legislation Amendment Act 2015  NSW Ombudsman Act 1974  NSW Ombudsman – Child Protection Guidelines (revised 2004)  NSW Ombudsman Amendment (Child Protection and Community Services) Act 1998  NSW Crimes Act 1900</p> <p><b>Policies and Procedures:</b>  01.01.01-E – Child Protection Compliance Procedure  01.01.02-EREA – EREA Commitment Statement to Child Safety  01.01.04-EREA – Child Protection Flow Chart  01.02.04i-E – Handbook for Volunteers, Casuals &amp; Visitors Handbook  01.03.00-E – CP Recommended Protocols for Internal Investigative and Disciplinary Proceedings Policy  01.04.04b-NSW – Mandatory Reporting Guidelines  01.05.01-E – CP Employment Screening Procedure  01.06.00-E – Volunteers Policy  01.06.04b-E – Information Handbook for Volunteers, Casuals &amp; Prac Students  02.02.00-E – Pastoral Care of Students Policy  02.06.01-E – Privacy, Dignity &amp; Confidentiality Procedure  02.13.01-E – Anti-bullying Procedure  02.16.01-E – School Discipline Code Procedure  03.01.00-E – WHS Policy  03.02.01-E – Emergency Evacuation Procedure  03.05.01-E – Visitors and Tradespeople on Site Procedure  04.01.00-E – Excursions Policy  04.07.01-E – Code of Behaviour and School Rules Procedure  06.01.00-E – Staff Management Policy  06.02.00-E – Communications, Technology and Mobile Phones Policy  06.03.00-E – Professional Code of Conduct Policy</p>

<sup>i</sup>As of 15 June 2013, existing employees and volunteers are subjected to a phase in schedule developed by the OCG. This can be found at [www.kids.gov.nsw.au](http://www.kids.gov.nsw.au)

<sup>ii</sup> Further information at Part 2 Division 1 Section 6 Child Protection (Working With Children) Act 2012 found at <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+51+2012+cd+0+N>

<sup>iii</sup> Schedule 2 disqualifying offence can be found at: <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+51+2012+cd+0+N>

<sup>iv</sup> Further details of obligations of employers can be found in the *Information for Employers* guidelines and/or *Information for reporting bodies* factsheet developed by the OCG found at [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au)