



# **NOWRA ANGLICAN COLLEGE**

## **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**

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# INTRODUCTION

## 1.1. General

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

Both you 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 employees, contractors and volunteers 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**).

We deal with each below.

## 1.3. Your obligations to report

While we set out below circumstances in which the **legislation** requires reporting of particular child protection issues, the School requires you to report **any concern** you may have about the safety, welfare or wellbeing of a child or young person to The Executive Principal via the Head of School, unless the concern involves the Head of School.

If the allegation involves The Executive Principal, you are required to report to the Chairman of the School Council, Mr Shields. The Head of School will assist you to make the report.

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

## 1.4. Other policies

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

- a) the **Code of Conduct** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the School;

- b) **Work Health and Safety Program documentation** which explains the obligations imposed by work health and safety legislation on the school and workers; and
- c) **Discrimination, Harassment and Bullying documentation** which explains your obligations in relation to unlawful discrimination, harassment and bullying; and
- d) **Grievance Policies and Procedures**
- e) **Bullying, Responding to and Preventing guidelines**
- f) **Employment of Permanent Staff Guidelines**
- g) **Employment of Casual Teachers Guidelines**
- h) **IT and electronic communications policy**
- i) **Complaints policy**

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## **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 well being of a student must be reported to The Executive Principal via the Head of School.

### **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 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 is a person under the age of 16 years for the purposes of the Care and Protection Act.

### **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.

Young person means a person who is aged 16 years or above but who is under the age of 18 years for the purposes of the Care and Protection Act.

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

Reporting by the School about these matters to Community Services and, where necessary, the police, is generally undertaken by The Executive Principal or the Head of School. This is 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 Head of School 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 Executive Principal, the Head of School 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 this 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 with confidentiality and only disclose it to the Executive Principal or Head of School and any other person the Executive 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 1974* requires the heads of certain agencies, including non government schools 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 all school staff, whether they are engaged in child-related work or not, as well as - individuals engaged to provide services to children as 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 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 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 conflict of interests.

#### 1.3 Head of Agency

The Head of Agency is the Executive Principal of the School.

Under the Ombudsman Act the Head of Agency 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 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.

#### **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 Executive Principal via the Head of School, 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. If the employee involved is the Head of School then you must report directly to the Executive Principal.

This includes information relating to yourself.

If the allegation involves the Executive Principal, you are required to report to the Chairman of School Council, the Head of School will assist you with making this report.

#### **1.5 Contact for parents**

The Executive Principal or the Head of School 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.

**Child** is a person under the age of 18 years for the purposes of the Ombudsman Act.

**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 three categories which include:

- (1) crossing professional boundaries, and
- (2) sexually explicit comments and other overtly sexual behaviour, and
- (3) grooming behaviour

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

### **Crossing professional boundaries**

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

- 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.
- h) Grooming Behaviour

**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) possession/ dissemination/ production of child pornography or child abuse material
- (f) using children to produce pornography
- (g) grooming or procuring children under the age of 16 years for unlawful sexual activity
- (h) deemed non-consensual sexual activity on the basis of special care relationships

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

#### **3.1 Initial steps**

Once an allegation against an employee is received, the Head of Agency is required to:

- (a) determine on face value whether it is an allegation of reportable conduct, and if so whether exempted from reporting to the Ombudsman under Class or Kind provisions;
- (b) assess whether Community Services or the Police need to be notified (ie, if reasonable grounds to suspect that a child is at risk of significant harm or a victim of a criminal offence);
- (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 (if reportable and not exempted);
- (e) carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- (f) 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 Head of Agency 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) decide on any other action to be taken as a result of the investigation;
- (j) apply the NSW Office of the Children's Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG; and
- (k) send the final report to the Ombudsman and report to the OCG (where required) (see Part C).

The steps followed in the investigate process will be guided by the "Recommended Protocols for Internal Investigative and Disciplinary Proceedings, 2001" (IEU/AIS) as updated from time to time (See Appendix 2.), as well as advice provided by the NSW Ombudsman in its Child Protection Fact Sheets and Practice Updates.

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 Head of Agency is responsible for ensuring that risk management is considered throughout the investigation and will ensure that risk is comprehensively assessed 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 Head of Agency 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 Head of Agency 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 Head of Agency 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 each allegation and a decision made by the Head of Agency 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.

## **6. Findings and Disciplinary Action**

In relation to any findings reached the School will:

- (a) give the PSOA details of the proposed finding/s; and
- (b) give the PSOA a reasonable opportunity to respond before a final decision is made.

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).

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 Head of Agency or with the Head of Agency's express authority]. Any child protection-related records of the School may be requested, accessed and scrutinised by the NSW Ombudsman as part of its legislated responsibilities.

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



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

## **PART C: FURTHER GUIDELINES - Regarding interviews of students and staff by police and officers from Community Services**

In carrying out their responsibility to investigate criminal matters and suspected child abuse and neglect, NSW Police and the officers of Community Services may require information from schools or seek to interview students or staff on site.

Under what circumstances should students be interviewed at schools by NSW Police or Community Services officers?

Unless special circumstances exist, students should not be interviewed on school site. "Special circumstances has a wide meaning but will include the following:

- When police have been called to the school or institute by the principal as a result of a student being found with a prohibited weapon, knife, firearm or substance or as a result of any other criminal activity relating to the school.
- When students or their possessions are to be searched by police as a result of being suspected of being in possession of a prohibited weapon or substance.
- When the matter being investigated concerns allegations involving other family members and it would be inappropriate to conduct the interview at the student's home.
- When the matter being investigated is of an urgent nature and the immediate safety and wellbeing of the student or some other person will be at risk if the interview does not take place at the school or institute site.

If special circumstances do exist and an interview is to take place at the school the following issues need to be considered.

- Community Services and police should provide the principal with the reason why the interview must be conducted at the school.
- Parents or carers should be notified and requested to attend the school prior to the interview taking place unless there is an exceptional reason as to why they should not be informed. If the allegations involve a family member and the principal is satisfied, after receiving advice from Community Services or police, that parental or carer contact is inappropriate, the interview can proceed without contact being made. Community Services and police personnel should be asked to explain why it is inappropriate for the parents to be contacted. If there is disagreement between the principal and Community Services/NSW police officers about whether parents should be notified, the principal should contact the Association of Independent Schools for advice.
- If it is a matter where parental or carer contact prior to the interview is appropriate and contact cannot be made or the parents or carers cannot attend, the student must be given the opportunity to have some other adult person present during the interview. This may include a member of staff and ideally will be someone with whom the student is familiar and with whom they feel comfortable.
- If the principal forms the view on reasonable grounds that the student is not capable of deciding whether or not he or she should have a support person the principal will make that decision. In reaching this conclusion and determining who may be suitable to act as a support person for a student, principals should have regard to the age, maturity, developmental level and any relevant cultural issues of the student, together with their own knowledge of the student's individual circumstances.

- Similarly, if it is a matter where parental or carer contact prior to the interview is inappropriate, the student should be given the opportunity to have some other adult present during the interview. This may include a member of staff. Principals need to be aware that some students may not be comfortable having a member of staff who they identify as being in a position of authority as a support person.
- If the parents or carers are contacted and refuse permission for the student to be interviewed, or the student refuses to be interviewed, the principal must not allow the interview to take place at the school.
- Any interview must not take place until the relevant support person is present.
- The principal should plan with the officers conducting the interview to ensure a suitable location for the interview is identified, appropriate arrangements for the way the student will leave and return to the classroom are implemented and strategies for maintaining confidentiality are addressed.
- Before any interview takes place, the principal must confirm that the purpose of the interview will be explained to the student by the police or Community Services officers. This need not be done in the presence of the principal but should be undertaken in the presence of the support person.
- In relation to any interviews conducted by police in respect of criminal investigations, the principal must ensure the student is advised by police that he or she is not obliged to answer any questions asked by them.
- Any warning given by police must occur prior to the interview taking place. If police decline to advise the student of his or her right not to answer any questions, the interview should not be allowed to occur on the school site.
- Principals should not allow other students who are under the age of 18 to act as a student's support person in interviews conducted on school premises.
- If police attend as a result of an incident at the school, the principal should be careful not to allow any staff members to act as a support person if their presence may give rise to a conflict of interest.

What should be done if parents or care givers subsequently seek information or make a complaint about what has taken place during the course of an interview conducted on the school?

Community Services or NSW Police are responsible for communicating with parents or carers about any matters related to an interview. Any person making an inquiry or complaint concerning an interview with a student should be referred to the relevant officer.

What should be done if the police indicate they want to arrest the student?

The principal must not interfere with any decision of the police to arrest a student. If arrested, the student must accompany the police and the principal must immediately notify the parents or care givers, unless instructed not to by the police.

If police do wish to arrest a student, as far as possible arrangements should be made to safeguard the privacy of the students concerned. Suitable arrangements should be made to minimize any disturbance or distress to the student concerned and other students and staff at the school.

## **PART D: The Child Protection (Working With Children) Act 2012 (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. It is also the responsibility of the employee to provide to the School a Working With Children Check Clearance number for verification.

If you are an existing employee, employed at this school in paid child-related work prior to the commencement of the new Working With Children system<sup>i</sup>, or you are a volunteer, your requirement to obtain a Check will be phased in over a five year period, according to the phase in schedule developed by the OCG (Attachment 2) and the Sydney Anglican Schools Corporation Working with Children Check policy (Attachment 3).

### **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>ii</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) sign the Volunteer Statutory Declaration. Some volunteers engaged in high risk roles maybe required to have a Check;iii.
- (b) to be aware and follow the expectations of conduct expressed in the School Staff Code of Conduct.

### **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 12 months. If an interim bar remains in place for six 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>iv</sup>:

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

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

A person who has physical contact or face to face contact with children in work outlined above in 3.2, including schools. This may include volunteer work.

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).

If you are unclear if your role is child-related you 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>v</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 worker 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>vi</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 sustained findings for certain 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 of 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 (Check) means authorisation under the WWC Act to engage in child-related work. An employee will be issued with a number which is to be provided to the School to verify the status of an employee's Check.

## ACKNOWLEDGEMENT

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

## ATTACHMENTS

The following documents are to be read in conjunction with this policy:

1. "Recommended Protocols for Internal Investigative and Disciplinary Proceedings, 2001" (IEU/AIS);
2. The new Working With Children Fact Sheet: *Phase in schedule for existing workers* (valid until 31 Dec 2017); and
3. The Anglican Schools Corporation Working With Children Check Policy 2015 Overview 3.1.7
4. NSW Ombudsman Child Protection Practice Update 2013-1 Defining Reportable Conduct
5. NSW Ombudsman Child Protection Fact Sheet No:3 Child Protection Legislation: What employers and employees need to know

## REFERENCES

NSW Family and Community Services

[www.community.nsw.gov.au](http://www.community.nsw.gov.au)

NSW Ombudsman

[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

The Office of the Children's Guardian [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au)

Department of Premier and Cabinet – Keep Them Safe

[www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au)

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<sup>i</sup> The New Working With Children system commenced in NSW on 15 June 2013. The previous Working With Children system ceased 7 June 2013.

<sup>ii</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) or at appendix XX (which may be updated from time to time by the OCG).

<sup>iii</sup> Commencement of Volunteer Statutory Declaration to be in line with the OCG release date.

<sup>iv</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>

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<sup>v</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>vi</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)