

CHILD PROTECTION POLICY

1. INTRODUCTION

1.1 PURPOSE

The School, in its commitment to provide a child safe organisation which cultivates attitudes, behaviours and strategies in the prevention of harm to children, has adopted the Child Safe Standards.

The purpose of this policy is to summarise the obligations required by Child Protection legislation and provide guidelines as to how the School deals with matters. Child protection is a community responsibility. Individuals and the School have a range of obligations relating to the safety, protection and welfare of students.

This policy applies to any employee or volunteer engaged by the School for any School approved activity or business function, either on a paid or unpaid basis.

Individuals bound by this Policy who fail to adhere to any term and/or condition set out below may be in breach of their terms of engagement.

1.2 DEFINITIONS (FOR THE PURPOSE OF THIS POLICY)

Disciplinary action means performance management which may result in restricted or prohibited duties and/or termination of engagement, including summary dismissal.

A **Disqualified Person** means a person who has been convicted, or against whom proceedings have been commenced, for a disqualifying offence outlined in Schedule 2 of the WWC Act. A disqualified person cannot be granted a WWCC clearance and is prohibited from engaging in child related work.

Employee means any individual engaged by the School, including – permanent, part time or casual staff, contractors, sub-contractors and service providers on a paid basis.

ESOA means the employee or volunteer subject of an allegation.

Finding means the information discovered as the result of an investigation.

Ill-treatment means, in accordance with the Children's Guardian Act, conduct towards a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel.

Neglect means, in accordance with the Children's Guardian Act, a significant failure by a person with parental responsibility for the child, or an authorised carer or an employee if the child is in the employee's care, to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child that causes or is likely to cause harm to the child.

Physical assault which is non-serious means assault which involves minor force only and did not, and was not ever likely to, result in serious injury.

Physical assault which is serious means assault which results in a child being injured, beyond the type of injury like a minor scratch, bruise or graze; or it had the potential to result in a serious injury; or the injury suffered may be minor, but the assault is associated with aggravating circumstances (in this regard, aggravated circumstances might include associated inhumane or demeaning behaviour by an employee.

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

Reportable conduct means, in accordance with the Children's Guardian Act, a sexual offence, sexual misconduct, ill-treatment of a child, neglect of a child, an assault against a child, an offence under s43B (failure to protect) or s316A (failure to report) of the Crimes Act, and behaviour that causes significant emotional or psychological harm to a child.

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

Sexual misconduct means, in accordance with the Children's Guardian Act, any conduct with, towards or in the presence of a child that is sexual in nature (but may not be a sexual offence) and includes the following (non-exhaustive) examples – descriptions of sexual acts without a legitimate reason to provide the descriptions; sexual comments, conversations or communications; comments to a child that express a desire to act in a sexual manner towards a child.

A **sexual offence** means, in accordance with the Children's Guardian Act, an offence of a sexual nature under NSW any state/territory, or Commonwealth law committed against, with, or in the presence of a child, such as sexual touching of a child, a child grooming offence, production, dissemination or possession of child abuse material. An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of a sexual offence.

The Office of the Children's Guardian (OCG) is the independent statutory authority in NSW Government that promotes and regulates the quality of child safe organisations, services and people.

Volunteer means any individual engaged by the School to provide services, free of charge.

1.3 LEGISLATION

The School complies with the following (without limitation) New South Wales Child Protection legislation:

- > the *Children and Young Persons (Care and Protection) Act 1998* ("Care and Protection Act");
- > the *Child Protection (Working with Children) Act 2012* ("WWC Act");
- > the *Children's Guardian Act 2019* ("Children's Guardian Act")
- > the *Crimes Act 1900* ("Crimes Act").



1.4 RELATED POLICIES

There are a number of other School policies and/or procedures that relate to Child Protection which must be known and understood including (without limitation):

- > Code of Conduct;
- > Work Health and Safety (WHS) Guidelines;
- > A Safe Learning and Working Environment Policy;
- > Discrimination, Harassment and Bullying Statements;
- > Grievance Procedure; and
- > Pastoral Care Policy.

1.5 COMPLIANCE AND RECORDS

The Head Master or his delegate monitors compliance with this policy and securely maintains School records relevant to this policy, which includes:

- > a register of individuals who have read and agree to abide by this policy;
- > Working with Children Check clearance (WWCC clearance) verifications;
- > mandatory reports to the Department of Communities and Justice (DCJ), NSW Police and the OCG, and
- > reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions.

2. CHILD PROTECTION

The safety, protection and welfare of students is the responsibility of every employee or volunteer engaged by the School and includes:

- > a duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen; and
- > a duty to fulfil obligations required by child protection legislation.

2.1 REPORTABLE CONDUCT DEFINITIONS

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

The Reportable Conduct Scheme is an **allegation-based scheme**. The threshold for making a notification to the Office of the Children's Guardian is that a reportable allegation has been made – that is, there is an allegation that an employee has engaged in conduct that may be reportable conduct or that they are the subject of a conviction that is considered a reportable conviction.

Reportable conduct means certain defined conduct (see below). A finding of reportable conduct is a sustained finding, which requires evidence supporting that the conduct occurred on the balance of probabilities, and that it constitutes reportable conduct (or a reportable conviction).

The threshold for making a notification of a reportable allegation is therefore lower than the threshold for making a finding of reportable conduct.

Reportable conduct definitions

The Children's Guardian Act defines reportable conduct as:

- > a sexual offence
- > sexual misconduct
- > ill-treatment of a child
- > neglect of a child
- > an assault against a child
- > an offence under s43B (failure to protect) or s316A (failure to report) of the Crimes Act; and
- > behaviour that causes significant emotional or psychological harm to a child.

Sexual offence

A sexual offence is an offence of a sexual nature under a law of NSW, another state/territory, or the Commonwealth committed against, with or in the presence of a child, such as:

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

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

Sexual misconduct

The Children's Guardian Act defines sexual misconduct to mean any conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence) and provides the following (non-exhaustive) examples:

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

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

You must report any concern you may have about the safety, protection and/or welfare of a student to the Head of School, Deputy Head Master or Head Master. If the allegation involves the Head Master, you are required to report, in writing, to the Chairman of the School Council, PO Box 174 Summer Hill NSW 2130 [marked Confidential].

3. TRAINING

The School provides any employee or volunteer it engages with a copy of this Policy and a requirement to participate in child protection training. Training may be face-to-face or online. Satisfactory participation will be recorded on the School's database and evidenced by an attendance record.

Individuals newly engaged by the School must acknowledge having received and agree to abide by the terms of this Policy prior to commencing engagement.

4. WORKING WITH CHILDREN CHECK

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

The OCG is responsible for determining applications for a WWCC clearance. It involves a national criminal history check and review of reported workplace misconduct findings.

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

The School complies with the WWC Act and mandates that any individual engaged to provide services to students which involves 1:1 interaction, whether paid or unpaid, must hold a valid Working with Children Check Clearance. It is an offence for any employee or volunteer to engage in child-related work when they do not hold a WWCC Clearance or if they are subject to a bar.

4.1 WORKING WITH CHILDREN CHECK CLEARANCE

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

4.1.1 THE INDIVIDUAL

Child-related work involves direct contact by an employee or volunteer with a child(ren) wherein the contact is a usual part of, and more than incidental to, the work. Child related work includes, but is not limited to:

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

Any employee or volunteer engaged for the purposes of child-related work are required to:

- > hold and maintain a valid WWCC clearance;
- > not engage in child-related work at any time that they are subjected to an interim bar or a bar;
- > report to the Head Master if they are no longer eligible for a WWCC clearance, the status of their WWCC clearance changes or are notified by the OCG that they are subjected to a risk assessment; and
- > notify the OCG of any change to their personal details within 3 months of the change occurring. Failure to do so may result in a fine.

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

4.1.2 THE SCHOOL

The School is required to:

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

For any further information refer to the School's Working with Children Check Guidelines.

4.2 ONGOING MONITORING

The OCG will continue to monitor criminal records and professional conduct findings of all WWCC clearance holders through a risk assessment process. This process is an evaluation of an individual's suitability for child-related work.

4.3 PROCESS FOR REPORTING TO OCG

4.3.1 THE SCHOOL

The School is required to advise the OCG of the findings after a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault, must be referred to the OCG.

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

4.3.2 FINDING OF MISCONDUCT INVOLVING CHILDREN

The School will report any finding of reportable conduct to the OCG.

When informing an employee or volunteer of a finding of reportable conduct against them, the School should alert them to the consequent report to the OCG in relation to sustained findings of sexual misconduct, a sexual offence or a serious physical assault.

The WWC Act enables an individual who has a sustained finding referred to the OCG to request access to the records held by the School in relation to the finding of misconduct involving children, once final findings are made. The entitlements of an individual to request access to information in terms of s46 of the WWC Act are enacted when a finding of misconduct involving children has been made.

4.3.3 OTHER INFORMATION

The School may also be required to provide information to the OGC that is relevant to an assessment of whether a person poses a risk to the safety, protection and/or welfare of a child or the OCG's monitoring functions.

5. MANDATORY REPORTING

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

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

- > in the course of their employment, deliver services including health care; welfare, education, children's services and residential services, to children; or
- > hold a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services to children including health care, welfare, education, children's services and residential services.

All employees or volunteers engaged by the School are mandatory reporters.

5.1 REPORTS TO COMMUNITIES AND JUSTICE

A mandatory reporter must take steps to satisfy themselves, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, that a report to the DCJ has been submitted as soon as practicable. The report must include the name, or a description, of the child and the grounds for suspecting that the child may be at risk of significant harm.

In addition, the School may choose to make a report to the DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) may be at risk of significant harm and there are current concerns about the safety, protection and welfare of the young person.

At Trinity Grammar School, a mandatory reporter will meet their obligation if they report to the Head of School, Deputy Head Master or Head Master. This centralised reporting model ensures that a person in the School has all of the information that may be relevant to the circumstances of the child at risk of significant harm and addresses the risk of the School not being aware of individual incidences that amount to cumulative harm.

5.1.1 REASONABLE GROUNDS

'Reasonable grounds' refers to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm, based on:

- > first-hand observations of the child, young person or family;
- > information the child, young person, parent or another person has disclosed;
- > what can reasonably be inferred based on professional training and / or experience.

'Reasonable grounds' does not mean a person is required to confirm their suspicions or have clear proof before making a report.

5.1.2 SIGNIFICANT HARM

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

- > the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met;
- > the parents or other caregivers have not arranged, and are unable or unwilling to arrange, for the child or young person to receive necessary medical care;
- > in the case of a child or young person who is required to attend school in accordance with the Education Act, the parents or other caregivers have not arranged, and are unable or unwilling to arrange, for the child or young person to receive an education in accordance with that Act;
- > the child or young person has been, or is, at risk of being, physically or sexually abused or ill-treated;
- > the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
- > a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered, or is at risk of suffering, serious psychological harm;
- > the child was the subject of a pre-natal report under s25 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.

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, protection and welfare.

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

5.2 PROCESS FOR MANDATORY REPORTING

5.2.1 EMPLOYEES AND VOLUNTEERS ENGAGED BY THE SCHOOL

All employees and volunteers must raise concerns about a student who may be at risk of significant harm with the Head of School, Deputy Head Master or Head Master as soon as possible to discuss whether the matter meets the threshold of the 'risk of significant harm' and the steps required to report the matter.

However, if there is an immediate danger to the student and the Head of School, Deputy Head Master or Head Master is not contactable the concern should be brought to the attention of the NSW Police and/or the Child Protection Helpline (13 21 11) directly and then advised to the next most senior member of staff at the School as soon as possible.

Employees and volunteers engaged by the School are not required to and must not, undertake any investigation of the matter or inform a parent or guardian that a report has been made.

Employees and volunteers engaged by the School are required to deal with the matter confidentially and only disclose it to the persons referred to in this Policy, or as required to comply with any mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this Policy, but may lead to potential civil defamation proceedings.

5.2.2 THE SCHOOL

In general, the Head Master has the responsibility to report these matters to the relevant agency, as required.

5.3 PROCESS FOR REPORTING CONCERNS ABOUT STUDENTS

5.3.1 EMPLOYEES AND VOLUNTEERS ENGAGED BY THE SCHOOL

The Care and Protection Act outlines a mandatory reporter's obligation to report any risk of significant harm. However, to ensure centralised reporting, any employee or volunteer engaged by the School is required to report any concern regarding the safety, protection or welfare of a student

to the Head of School, Deputy Head Master or Head Master. Any matter that potentially reaches the threshold of a risk of significant harm, must be reported to the Head of School, Deputy Head Master or Head Master.

Employees and volunteers engaged by the School are required to act on all reports regarding the safety, protection or welfare of a student confidentially and only disclose it to the Head of School, Deputy Head Master or Head Master.

6. REPORTABLE CONDUCT

S29 of the Children's Guardian Act requires the Head Master to notify the OCG of all allegations of reportable conduct and convictions involving an employee and the outcome of the School's investigation of these allegations. Under the Children's Guardian Act, allegations of child abuse only fall within the reportable conduct jurisdiction if the ESOA is an employee or volunteer of the relevant entity at the time when the allegation becomes known by the Head Master.

Reportable conduct:

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

The OCG:

- > monitors the systems for preventing reportable conduct by employees of the School and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions;
- > receives and assesses notifications from the School concerning reportable conduct or reportable convictions;
- > oversees or monitors the conduct of investigations by the School into allegations of reportable conduct or reportable convictions;
- > determines whether an investigation has been conducted properly and whether appropriate action has been taken as a result of the investigation;
- > may directly investigate an allegation of reportable conduct or reportable conviction against an employee of the School, or the handling of or response to such a matter (eg arising out of a complaint by the person who is the subject of an allegation); and
- > may investigate the way in which the School has dealt with, or is dealing with, a report, complaint or notification, if the OCG considers it appropriate to do so.

6.1 REPORTABLE CONDUCT

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

- > a sexual offence;
- > sexual misconduct;
- > an assault against a child;
- > ill-treatment of a child;
- > neglect of a child;
- > an offence under s43B (failure to protect) or s316A (failure to report) of the Crimes Act; and
- > behaviour that causes significant emotional or psychological harm to a child.

Reportable conduct does not extend to:

- > 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
- > the use of physical force that, in all the circumstances, is trivial or negligible and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures.

6.1.1 DEFINITIONS

The following definitions relate to *reportable conduct*:

- > **Sexual offence:** an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child, such as:
 - sexual touching of a child;
 - a child grooming offence;
 - production, dissemination or possession of child abuse material.
- Definitions of 'grooming', within child protection legislation, are complex. Under the Crimes Act, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual

offence. The Crimes Act (s73) also extends the age of consent to 18 years when a child is in a 'special care' relationship. Under Schedule 1(2) of the WWCC Act, grooming is recognised as a form of sexual misconduct. The Children's Guardian Act and this Child Protection Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2).

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

- > **Sexual misconduct:** is conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence). The Act provides the following (non-exhaustive) examples:
 - descriptions of sexual acts without a legitimate reason to provide the descriptions;
 - sexual comments, conversations or communications;
 - comments to a child that express a desire to act in a sexual manner towards the child, or another child.

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

- > **Assault:** an assault can occur when a person intentionally or recklessly (ie. knows the assault is possible but ignores the risk):
 - applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force); or
 - causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words and/or gestures regardless of whether the person actually intends to apply any force (apprehension of physical force)
- > **Ill-treatment:** is defined as conduct towards a child that is:
 - unreasonable; and
 - seriously inappropriate, improper, inhumane or cruel.Ill-treatment can include a range of conduct such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and using inappropriate forms of behaviour management towards a child.
- > **Neglect:** is defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm by a person who has care and/or responsibility of a child.

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

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

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

- An obviously or very clearly unreasonable or serious act, or series of acts, that the employee knew or ought to have known was unacceptable, and
 - Evidence of psychological harm to the child that is more than transient, including displaying patterns of out of character behaviour, regression in behaviour, distress, anxiety, physical symptoms or self-harm, and
 - An alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.
- > **Reportable allegation** is an allegation that an employee has engaged in conduct that may be reportable conduct.
 - > **Reportable conviction** means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.
 - > **Employee** of an entity includes:
 - an individual employed by, or in, the entity
 - a volunteer providing services to children
 - a contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold, a WWCC clearance for the purposes of their work with an entity; and
 - a person engaged by a religious body where that person holds, or is required to hold, a WWCC clearance for the purposes of their work with the religious body.
 - > **ESOA** (Employee Subject of the Allegation).

6.2 PROCESS FOR REPORTING OF REPORTABLE CONDUCT ALLEGATIONS OR CONVICTIONS

6.2.1 EMPLOYEES AND VOLUNTEERS ENGAGED BY THE SCHOOL

Any concerns about an employee or volunteer engaged by the School engaging in conduct that may be considered inappropriate, reportable conduct, or any allegation of inappropriate reportable conduct must be reported to the Head of School, Deputy Head Master or Head Master. Where it is uncertain if the conduct is reportable, but is considered inappropriate behaviour, this must also be reported. Any matter that potentially reaches the threshold of a risk of significant harm must be reported to the Head of School, Deputy Head Master or Head Master.

Employees and volunteers engaged by the School must also report to the Head of School, Deputy Head Master or Head Master as soon as they become aware that any individual engaged by the School has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct. This includes information relating to the employee themselves.

If the allegation involves the Head Master, you are required to report, in writing, to the Chairman of the School Council, PO Box 174 Summer Hill NSW 2130 [marked Confidential].

6.2.2 PARENTS, CARERS AND COMMUNITY MEMBERS

Parents, guardians and community members are encouraged to report any conduct that is potentially inappropriate, potentially reportable or potentially criminal conduct to the Head of School, Deputy Head Master or Head Master. All such reports will be dealt with in accordance with the School's complaint handling procedures.

6.2.3 THE SCHOOL

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

- > ensure systems are in place for preventing, detecting and responding to reportable allegations or convictions
- > submit a 7-day notification form to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee,
 - The notification will include the following information:
 - (a) that a report has been received in relation to an employee of the School, and
 - (b) the type of reportable conduct, and
 - (c) the name of the employee, and
 - (d) the name and contact details of School and the Head of Entity, and
 - (e) for a reportable allegation, whether it has been reported to NSW Police, and
 - (f) that a report has been made to the Child Protection Helpline (if applicable), and
 - (g) the nature of the relevant entity's initial risk assessment and risk management action,
- > The notice must also include the following, if known to the Head of Entity:
 - (a) details of the reportable allegation or conviction considered to be a reportable conviction,
 - (b) the date of birth and Working with Children Check number, of the employee the subject of the report,
 - (c) the NSW Police report reference number (if Police were notified),
 - (d) the report reference number if reported to the Child Protection Helpline,
 - (e) the names of other relevant entities that employ or engage the employee, to provide a service to children, including as a volunteer or contractor.

6.3 PROCESS FOR INVESTIGATING AN ALLEGATION OF REPORTABLE CONDUCT

The Head Master or his delegate is responsible for ensuring that the following steps are taken to investigate an allegation of reportable conduct.

6.3.1 INITIAL STEPS

Once an allegation of reportable conduct against an employee is received, the Head Master or his delegate is required to:

- > determine whether it is an allegation of reportable conduct;
- > assess whether the DCJ or the NSW Police need to be notified (ie, if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, clearance from these statutory agencies must be given prior to the School proceeding with the reportable conduct investigation;
- > notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by the DCJ or NSW Police);
- > notify the OCG within 7 business days of receiving the allegation;
- > carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- > provide an initial letter to the ESOA advising that an allegation of reportable conduct has been made against them and that the School has a responsibility to investigate this matter under s34 of the Children's Guardian Act; and
- > investigate the allegation or appoint an Investigator.

6.3.2 INVESTIGATION PRINCIPLES

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

- > follow the principles of procedural fairness;
- > inform the ESOA of the substance of any allegations made against them, and provide them with a reasonable opportunity to respond to the allegation/s;
- > make reasonable enquiries or investigations before making a finding;
- > avoid any conflict of interest;
- > conduct the investigation without unjustifiable delay;
- > handle the matter as confidentially as possible; and
- > provide appropriate support for all parties, including the child(ren), any witnesses, and the ESOA.

6.3.3 INVESTIGATION STEPS

In an investigation the Head Master or his delegate will generally:

- > interview relevant witnesses and gather relevant documentation;
- > provide a letter of allegation to the ESOA;
- > provide the ESOA with the opportunity to provide a response to the allegation/s, either in writing or in an interview;
- > consider the evidence and make a preliminary finding in accordance with the OCG guidelines;
- > inform the ESOA of the preliminary finding in writing and provide them with a further opportunity to respond or make a further submission prior to making a final finding;
- > consider any response provided by the ESOA;
- > make a final finding in accordance with the OCG guidelines;
- > decide on the disciplinary action, if any, to be taken against the ESOA;
- > if it is completed, send the final report to the OCG within 30 days after having received the allegation, as required by s36 of the Children's Guardian Act.
- > should the final report be unfinished within 30 days, the Head of Entity must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as required by s38 of the Children's Guardian Act.
- > Submission of an interim report must include:
 - a reason for not providing the final report within 30 days and an estimated time frame for completion of the report.
 - specific information, including the facts and circumstances of the reportable allegation, any known information about a reportable conviction, action taken since the OCG received the notification of a reportable allegation or reportable conviction, further action the Head of Entity proposes to take in relation to the reportable allegation or reportable conviction, including whether the Head of Entity proposes to take no further action, the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action, and any other information prescribed by the regulations; and

- be accompanied by copies of documents in the School's possession, including transcripts of interviews and copies of evidence.

The steps outlined above may need to be varied on occasion to meet particular circumstances. For example, it may be necessary to take different steps where the matter is also being investigated by the DCJ or Police.

An ESOA may have a support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings, and not as an advocate or to take an active role.

6.4 RISK MANAGEMENT THROUGHOUT AN INVESTIGATION OF A REPORTABLE CONDUCT ALLEGATION

Risk management means identifying the potential for an incident or accident to occur, and taking steps to reduce the likelihood or severity of its occurrence.

The Head Master or his delegate is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during the investigation, and at the conclusion of the investigation.

6.4.1 INITIAL RISK ASSESSMENT

Following an allegation of reportable conduct against an employee, the Head Master or his delegate conducts an initial risk assessment to identify and minimise the risks to:

- > the child(ren) who are the subject of the allegation;
- > other children with whom the employee may have contact;
- > the ESOA;
- > the School, and
- > the proper investigation of the allegation.

Factors which will be considered during the risk assessment include:

- > the nature and seriousness of the allegation;
- > the vulnerability of the child(ren) the ESOA has contact with at work;
- > the nature of the position occupied by the ESOA;
- > the level of supervision of the ESOA; and
- > the disciplinary history or safety of the ESOA and possible risks to the investigation.

The Head Master or his delegate will take appropriate action to minimise risks. This may include the ESOA being temporarily relieved of some duties, being required not to have contact with certain students, being asked to take paid leave, or being suspended from duty. When taking action to address any risks, the School will take into consideration both the needs of the child(ren) and the ESOA.

A decision to take action on the basis of a risk assessment is not indicative of a finding. Until the investigation is completed and a finding is made, any action, including an employee being suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

6.4.2 ONGOING RISK ASSESSMENT

The Head Master or his delegate will monitor risk during the investigation, including any new information.

6.4.3 FINDINGS

At the completion of the investigation, a preliminary finding will be made in relation to the allegation and a decision made by the Head Master or his delegate regarding what action, if any, is required in relation to the ESOA, the child(ren) involved and any other parties.

6.4.4 INFORMATION FOR THE ESOA

The ESOA will be advised:

- > that an allegation has been made against; and
- > of the substance of the allegation, or of any preliminary finding and the final finding.

The ESOA does not automatically have the right to:

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

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the School in relation to the finding of misconduct involving children, once a final finding is made. The entitlements of a person to request access to information in terms of s46 of the WWC Act is enacted when a finding of misconduct involving children has been made.

6.4.5 DISCIPLINARY ACTION

As a result of the allegations, investigation or final finding, the School may take disciplinary action against the ESOA, including termination of employment.

In relation to any disciplinary action the School will give the ESOA:

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

6.4.6 CONFIDENTIALITY

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

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 Master or his delegate.

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

Any known breach of confidentiality in relation to a reportable conduct allegation must be reported to the Head Master.

7. CRIMINAL OFFENCES

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

7.1 FAILURE TO PROTECT OFFENCE (CRIMES ACT)

Any person engaged by the School, will commit an offence if they know or reasonably suspect that another person poses as serious risk of committing a child abuse offence and they have the power to reduce or remove the risk, and they negligently fail to do so either by acts and/or omissions.

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

7.2 FAILURE TO REPORT OFFENCE (CRIMES ACT)

Any person engaged by the School will commit an offence if they know, believe, or reasonably ought to know, that a child abuse offence has been committed and fail to report that information to NSW Police without a reasonable excuse. A reasonable excuse may include where the adult has reported the matter to the Head Master or his delegate and is aware that the Head Master or his delegate has reported the matter to the NSW Police.

7.3 SPECIAL CARE RELATIONSHIPS (CRIMES ACT)

It is a crime in NSW for any person engaged by the School to have a sexual relationship with a student or where there is a special care relationship. The Act provides that a young person is under an adult's special care if the adult is engaged by the School at which the young person is a student; or has an established personal relationship with the young person in connection with the provision of religious, sporting, musical or other instruction.

The Special Care (sexual intercourse) offence under s73 was supplemented by an additional special care offence involving sexual touching now under s73A of the Crimes Act. The new offence under s73A will expand special care offences to also apply to non-penetrative sexual touching. The offence will protect children aged 16-17 years from inappropriate sexual contact with persons engaged by the School and others who have special care of the child.

[Click here to read the **WWCC Guidelines**](#)

