



## STU004 Child Safety and Protection Policy

### Rationale

The role of the non-government schools sector in child safety is to assist in the recognition and notification of suspected child abuse and neglect and, where abuse has occurred, to offer support to the student within the school environment.

Beyond the mandatory requirements in respect of child safety, St Catherine's School Sydney (the School) is committed to the welfare and healthy development of staff and students in its care, working together to build a nurturing environment and a network of rich relationships. The values of integrity, courage, relationships and service underpin the School's purpose. As an Anglican school founded on Biblical wisdom, our values are the model for our own actions and our interactions with each other as a community.

### Scope

This policy applies to all staff and visitors at the School.

### Definitions

**Staff** also referred to as employees in this policy, include casual, temporary and permanent staff.

**Visitor** refers to a contractor, volunteer, parent or outside person to the School.

Other definitions related to child safety and protection legislation are included in the content of this policy.

### Policy

All staff, visitors and the school have a range of different obligations relating to the safety, protection and welfare of students including:

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

The purpose of this policy is to summarise the obligations imposed by child safety and protection legislation on the School and on staff and visitors at the School, and to provide guidelines as to how the school will deal with certain matters. It is to also set out staff responsibilities for child protection training.

Child safety and protection is a community responsibility.

### Key legislation

There are four key pieces of child safety and protection legislation in New South Wales, which the School's staff and visitors need to follow:

1. the Children and Young Persons (Care and Protection) Act 1998 (NSW) (the Care and Protection Act)
2. the Child Protection (Working With Children) Act 2012 (NSW) (the WWC Act)
3. The Children's Guardian Act NSW 2019 (NSW) (The Children's Guardian Act) including the NSW Child Safe Standards (2022)
4. The Crimes Act 1900 (NSW) (The Crimes Act)

Refer to the procedures below for the legal requirements of each of the above key pieces of legislation.

### Your obligations to report

While we set out below circumstances in which the legislation requires reporting of particular child safety 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 Headmistress.

If the allegation involves the Headmistress, you are required to report to the Chair of Council.



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

## Other policies

Please note that there are a number of other school policies that relate to child safety which staff and visitors need to be aware of and understand including (but not limited to) the:

- EMP001 Staff code of conduct which sets out information about the standards of behaviour expected of all staff and working visitors of the school
- EMP004 Recruitment and selection policy
- EMP011 Casual and temporary staff induction
- HR003 Unlawful discrimination, harassment, bullying and victimisation policy which summarises your obligations in relation to unlawful discrimination, harassment, bullying and victimisation
- STU008 Discipline policy
- STU014 Quality behaviour/ anti-bullying (in relation to students) policy
- WHS001 Work health and safety policy and procedures manual, which summarises the obligations imposed by work health and safety legislation on the school and its staff.

## Procedures

- Child protection training is completed by all staff on an annual basis, either in person or online.
- In person training is conducted in the first week of the school year by the Director of Senior School students for all staff. These sessions focus on child safety and protection updates and cover scenario examples of inappropriate behaviour and reportable conduct. An objective of these sessions is to equip staff with the knowledge and skills needed to identify examples of inappropriate behaviour.
- The Director of Senior School Students is responsible for ensuring the training complies with the Child protection policy. This policy is available for all staff to view on the school portal.
- Staff are required to sign in for the session with their personalised swipe card. They are also required to sign a paper document to confirm their attendance.
- The Director of Senior School Students in consultation with the Director of Human Resources and the Risk and Compliance Officer are responsible for ensuring that all staff complete Child Protection Training.
- If staff are absent for the annual face to face training or their employment commences during the calendar year, they will complete online training in Child Protection.
- Online training is delivered via an external provider.
- Staff will be notified of how to complete online training with a deadline for completion.
- At the beginning of each year, staff are emailed this policy and are required to acknowledge that they have read, understood, and agree to comply with the Child Safety and Protection policy and procedures.
- We promote respect, fairness and consideration for all members of the community. All staff members are provided with child safe policies and procedures and have opportunity to clarify their understanding. Staff members are encouraged to ask questions and contribute to the continuous improvement of child safe policies, procedures and practices in the workplace.
- The School's child protection committee also meets twice a year to review the procedures.

## PART A: The NSW Child Safe Standards

The Royal Commission into Institutional Responses to Child Sexual Abuse recommended 10 Child Safe Standards, drawing on its findings, research and consultation about what makes organisations child safe.

The Child Safe Standards provide a benchmark against which organisations can assess their child safe capacity and set performance targets. The Standards provide tangible guidance for organisations to drive a child safe culture, adopt strategies and act to put the interests of children first, to keep them safe from harm.

**The 10 Child Safe Standards and the ways in which the school meets these standards are as follows:**

1. *Child safety is embedded in organisational leadership, governance and culture*
  - There are two Child Safety Officers appointed by the school tasked with overall responsibility for embedding an organisational culture of child protection and safety in the school.
  - The school holds professional learning sessions annually which are mandatory for all staff to attend. These sessions focus on child safety and protection updates covers scenario examples of inappropriate behaviour and reportable conduct.
  - Child safety is an agenda item for fortnightly staff meetings.
  - Child protection committee meets each term.
2. *Children participate in decisions affecting them and are taken seriously*
  - Children are given information on internal and external support services through participating in academic care sessions.
3. *Families and communities are informed and involved*
  - This policy is distributed to the community through the school portal. Parents and community members are invited to make contact with the school directly concerning any child safety and protection issue.
4. *Equity is upheld and diverse needs are taken into account*
  - These issues are addressed in a number of policies including but not limited to EMP001 Staff code of conduct, HR003 Unlawful discrimination, harassment, bullying and victimisation policy, STU008 Discipline policy, STU014 Quality behaviour/ anti-bullying (in relation to students) policy
5. *People working with children are suitable and supported*
  - This is dealt with in the body of this policy
6. *Processes to respond to complaints of child abuse are child-focused*
  - Annual training and engagement with this policy ensures that responses are appropriate
7. *Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training*
  - The school holds professional learning sessions annually which are mandatory for all staff to attend. These sessions focus on child safety and protection updates covers scenario examples of inappropriate behaviour and reportable conduct.
  - Child safety is an agenda item for fortnightly staff meetings
8. *Physical and online environments minimise the opportunity for abuse to occur*
  - Staff and volunteers are provided with child safety training annually to enable them to identify risks of abuse and other harm to students. These child safe policies, procedures and practices are reviewed in order to regularly make required improvements to minimise the risk of abuse or other kinds of harm.
9. *Implementation of the Child Safe Standards is continuously reviewed and improved*
  - The risk and compliance officer maintains records and ensures that the policies are regularly reviewed by the director of day school and other staff members to ensure ongoing implementation and improvement.
10. *Policies and procedures document how the organisation is child safe.*
  - Child safe policies are specific to the school and its environment, and they address local risks to the safety of children. Policies and procedures are readily accessible. Staff follow child safe policies and procedures. Documents are saved in accordance with GOV021 Data governance policy.



## **PART B: The Care and Protection Act**

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

Important note:

Any concern regarding the safety, welfare or wellbeing of a student must be reported to the Headmistress.

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

Under the Care and Protection Act any persons who:

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

### **When must a report be made to the Department of Communities and Justice?**

#### **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 Department of Communities and Justice 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 the Department of Communities and Justice where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and wellbeing of the young person.

#### **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:

- first hand observations of the child, young person or family
- what the child, young person, parent/guardian or another person has disclosed
- what can reasonably be inferred from having professional training knowledge and/or experience.

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

#### **3. Significant harm**

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

- The basic physical or psychological needs of the child or young person is not met or is at risk of not being met.
- The parents/guardians or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care.
- In the case of a child or young person who is required to attend school in accordance with the Education Act 1990 - the parents/guardians 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 the consequence is the child or young person is at risk of serious physical or psychological harm.
- A parent/guardian or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.
- The child was the subject of a pre-natal report under section 25 of the Care and Protection Act and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

#### 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 wellbeing of the child or young person are present to a significant extent.

What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent.

What is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or wellbeing.

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 that 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 punish a child (in a non-trivial way)* is a crime.

*Serious psychological harm* can occur where the behaviour of their parent/guardian 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 or young persons 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.

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

The Headmistress generally undertakes the reporting by the school of matters to the Department of Communities and Justice and, where necessary, the police. 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 Headmistress 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 Headmistress or next most senior member of staff is not contactable you should speak to the police directly and then advise the Headmistress 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/guardians or caregivers that a report to the Department of Communities and Justice 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.

### **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 the Department of Communities and Justice, as an employee of this school, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Headmistress.

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 Headmistress and any other person the Headmistress nominates. Failure to do so will be a breach of this policy.

### **PART C: The Children's Guardian Act**

Section 29 of the Children's Guardian Act requires the heads of entities, including non-government schools in New South Wales, to notify the Office of the Children's Guardian (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 involved individual is an employee of the relevant entity at the time when the allegation becomes known by the head of entity.

#### **Reportable Conduct:**

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

#### **The OCG:**

- 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



- must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions
- is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable conduct or reportable convictions
- 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
- may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government school, or the handling of or response to such a matter (e.g., arising out of complaints by the person who is the subject of an allegation)
- may investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint or notification, if the OCG considers it appropriate to do so.

## **The definition of 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 section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act 1900
- 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 or
- conduct of a class or kind exempted from being reportable conduct by the Children's Guardian Act under section 30.

## **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 and 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 WWC Act, grooming is recognised as a form of sexual misconduct. The Children's Guardian Act and this Child Safety Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2).

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



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

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

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

**Assault:** an assault can occur when a person intentionally or recklessly (i.e., 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
- seriously inappropriate, improper, inhumane or cruel. Ill-treatment can include a range of conduct such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and using inappropriate forms of behaviour management towards a child.

**Neglect:** defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm - by a person who has care and/or has responsibility towards a child. Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfil a duty or obligation, resulting in actual harm to a child where there is the potential for significant harm to a child. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

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

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

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

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

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

**Employee of an entity** includes:

- an individual employed by, or in, the entity
- a volunteer providing services to children





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- 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.

**PSOA** refers to person subject of the allegation.

**Head of entity** refers to the Headmistress or her delegate.

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

### **Staff members**

Any concerns about any other employee engaging in conduct that is considered inappropriate, or reportable conduct, or any allegation of inappropriate, or reportable conduct made to the employee or about the employee themselves must be reported to the Headmistress. Where it is uncertain if the conduct is reportable conduct but is considered inappropriate behaviour, this must also be reported. Staff members must also report to the Headmistress when they become aware that an employee has been charged with or convicted of an offence, including a finding of guilt without the court proceeding to a conviction, involving reportable conduct. This includes information relating to the employee themselves.

If the allegation involves the Headmistress, the staff member is required to report to the Chair of Council.

### **Parents, carers and community members**

Parents, carers and community members are encouraged to report any conduct that is in their view inappropriate, reportable or criminal conduct to the Headmistress or her delegate.

The Headmistress, as the head of entity under the Children's Guardian Act, must:

- Ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions
- Submit a 7-day notification form to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the entity (unless the head of the entity has a reasonable excuse).

The notification should include the following information:

1. that a report has been received in relation to an employee of the school
2. the type of reportable conduct
3. the name of the employee
4. the name and contact details of school and the head of entity
5. for a reportable allegation, whether it has been reported to Police or the Child Protection Helpline
6. if a report has been made to the Child Protection Helpline, that a report has been made
7. 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:

1. details of the reportable allegation or conviction considered to be a reportable conviction,
2. the date of birth and working with children number, if any, of the employee the subject of the report,
3. the police report reference number (if Police were notified),
4. the report reference number if reported to the Child Protection Helpline
5. the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a visitor.

Maximum penalty for failure to notify within 7 business days —10 penalty units.

## **Process for investigating an allegation of reportable conduct**

The Headmistress is responsible for ensuring that the following steps are taken to investigate an allegation of reportable conduct.

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## Initial steps

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

- determine whether it is an allegation of reportable conduct
- assess whether the DCJ or the Police need to be notified (i.e., if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek clearance from these statutory agencies prior to the school proceeding with the reportable conduct investigation
- notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by the DCJ or 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 provide an initial letter to the person subject of the allegation ('PSOA') advising that an allegation of reportable conduct has been made against them and the school's responsibility to investigate this matter under section 34 of the Children's Guardian Act
- investigate the allegation or appoint someone to investigate the allegation.

## Investigation principles

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

- follow the principles of procedural fairness including to act fairly and without bias
- inform the PSOA of the substance of any allegations made against them, at the appropriate time in the investigation, and provide them with a reasonable opportunity to respond to the allegations
- make reasonable enquiries or investigations before making a decision
- avoid conflicts of interest
- conduct the investigation without unjustifiable delay
- handle the matter as confidentially as possible
- provide appropriate care and support for all parties including the child/children, witnesses and the PSOA (e.g., access to the school's pastoral care services such as the school's counsellors and chaplains, access to the Employee Assistance Program and referral to external services e.g., Victims Services)
- ensure the outcome is supported by evidence.

## Investigation steps

In an investigation the Headmistress or appointed investigator will generally:

- interview relevant witnesses and gather relevant documentation
- provide a letter of allegation to the PSOA
- provide the PSOA with the opportunity to provide a response to the allegations either in writing or at an interview
- consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines
- inform the PSOA of the preliminary finding in writing by the Head of Entity and provide them with a further opportunity to respond or make a further submission prior to the matter moving to final findings
- consider any response provided by the PSOA
- make a final finding in accordance with the OCG guidelines
- decide on the disciplinary action, if any, to be taken against the PSOA
- inform the PSOA of the school's legal reporting obligations

If it is completed, send the final report to the OCG within 30 days after having received the allegation, as per section 36 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 per section 38 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, if known, the facts and circumstances of the reportable allegation, any known information about a reportable conviction, action taken since the OCG received a notification about the reportable allegation or reportable conviction, further action the head of entity proposes to take in relation to the reportable allegation or reportable conviction, including if the head of entity proposes to take no further action, the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action, other information prescribed by the regulations;
- 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.

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.

### **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 of entity, is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

#### **Initial risk assessment**

Following an allegation of reportable conduct against an employee, the head of entity 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 PSOA
- the school, and
- the proper investigation of the allegation.

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

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

The Headmistress, as head of entity, 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, being asked to take paid leave, or being suspended from duty. When taking action to address any risks identified, the school will take into consideration both the needs of the child(ren) and the PSOA.

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

#### **Ongoing risk assessment**

The Headmistress, as head of entity, will continually monitor risk during the investigation including in the light of any new relevant information that emerges.



## Findings

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

## Information for the PSOA

The PSOA will be advised:

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

The PSOA 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 final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

## Disciplinary action

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

In relation to any disciplinary action the school will give the PSOA details of the proposed disciplinary action and a reasonable opportunity to respond before a final decision is made.

## 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 are kept in a secure area with the Headmistress's express authority.

No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the Headmistress to do so. Staff members who become aware of a breach of confidentiality in relation to a reportable conduct allegation must advise the Headmistress.

## 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.

## Failure to protect offence

An adult working in a school, therefore all staff members, will commit an offence if they know another adult working there poses a 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.



## Failure to report offence

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

## PART D: Child Protection (Working With Children) Act 2012

### 1. General

The NSW 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 appearing against a cleared applicant's name may lead to the Check being revoked.

It is the responsibility of each child-related staff member to ensure that when they are eligible to apply for a Check or when their Check is up for renewal that they do so.

All staff at the school are required to have a Check. Parents or guardians who volunteer at their child's school are not required under the WWC Act to obtain a Check clearance. The school's volunteer policy, GEN012, identifies when volunteers are required to have a check.

### 2. Responsibilities

The object of the WWC Act is to protect children:

- by not permitting certain persons to engage in child-related work and
- by requiring persons engaged in child-related work to have Working with Children Check clearances.

Schools are required to:

- verify online and record the status of each child-related staff member's Check
- only employ or engage child-related staff members or eligible volunteers who have a valid Check
- report findings of misconduct involving children made against child-related staff members or volunteers.

All staff members and all volunteers who regularly work at the school are required to:

- hold and maintain a valid Check
- not engage in child-related work at any time that they are subjected to an interim bar or a bar
- report to the Headmistress 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 of the school are required to:

- abide by the requirements of GEN012 Volunteer policy.

### 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 or young people.





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

### 3.2 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 IV.

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 staff member when they do not hold a Check or who has a bar or an interim bar.

### 3.3 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:

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

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

The WWC Act enables a person who has a 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.

### 3.4 Reporting body

Independent schools which are members of the AIS NSW are defined as a reporting body by the WWC Act. Section 35 of the WWC Act requires this school to notify the OCG findings of misconduct involving children made against a child-related staff member. The school may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act.

### 3.5 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.

### 3.6 Working With Children Check Clearance

A Working With Children Check Clearance (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.

#### Guidelines

AIS Memorandum of Understanding between Department of Family and Community Services and AISNSW.  
NSW Communities and Justice [www.dcj.nsw.gov.au](http://www.dcj.nsw.gov.au)  
NSW Keep Them Safe - [www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au)  
NSW Office of the Children's Guardian - [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)

#### Communicating this policy

AUDIENCE	COMMUNICATED BY	COMMUNICATION PATHWAY
All staff	Director of Senior School Students	Staff professional development day



## Related documents

- BUS007 Contractor management policy
- EMP001 Staff code of conduct
- EMP004 Recruitment and selection policy
- EMP011 Casual staff induction policy
- GEN012 Volunteer policy
- HR003 Unlawful discrimination, harassment, bullying and victimisation policy
- STU008 Discipline policy
- STU014 Student quality behaviour and anti-bullying policy

## Responsibilities

- Director of Senior School Students
- Director of Human Resources
- Headmistress
- Risk and Compliance Officer

## Authorisation

  
Signature of Headmistress

7/6/24  
Date

## Certified by

  
Signature of Policy Officer

7/6/2024  
Date

Policy number	STU004	Version	0009
Written by	Director of Senior School Students	Approved date	7/6/24
Authorised by	Headmistress	Scheduled review	7/6/26
Certified by	Policy Officer		

## Document tracking

Version	Date	Change
0007	23 May 2022	Format changed in adherence with 2022 Style Guide.  Key legislation added of The Children's Guardian Act 2019 as well as the Crimes Act 1900. The Ombudsman Act 1974 removed. Title change to director of day school.
0008	14 September 2022	Addition of NSW Child Safe Standards. Policy renamed Child safety and protection policy. Removal of redundant sections 3.2 and 3.3. Addition of procedures regarding new child protection committee. Volunteer requirements removed and reference made to GEN012 Volunteer policy which details volunteer requirements. Addition of "All staff at the school are required to have a Check."
0009	7 June 2024	Addition of child protection training procedures, and who is responsible for ensuring staff are trained.