



# EMANUEL SCHOOL

## **Child Protection Policy**

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## **Child Protection Policy**

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### **PURPOSE**

This policy sets out staff responsibilities for child protection and processes that staff must follow in relation to child protection matters.

### **SCOPE**

This policy applies to all staff of Emanuel School which includes employees, contractors, and volunteers. Staff members who fail to adhere to this policy may be in breach of their terms of employment.

### **POLICY STATEMENT**

Emanuel School is committed to the safety, protection and welfare of students in accordance with the Child Safe Standards and child protection legislation in NSW including:

- Children and Young Persons (Care and Protection) Act 1998 (“Care and Protection Act”)
- Child Protection (Working With Children) Act 2012 (“WWC Act”)
- Children’s Guardian Act 2019 (“Children’s Guardian Act”)
- Part 3A Child safe scheme (“Children’s Guardian Act”)
- Crimes Act 1990 (“Crimes Act”)

At Emanuel School child protection is the responsibility of all staff members and encompasses:

- A duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen; and
- Obligations under child protection legislation including the requirement for all staff members to report any child protection or child wellbeing concerns about the safety, welfare or wellbeing of a child or young person to the Principal.
- If the allegation involves the Principal, a report should be made to the President of the School Board.

### **KEY PRINCIPLES**

The key principles of this policy are in accordance with the Child Safe Standards:

- i. Child safety is embedded in organisational leadership, governance and culture.

- ii. Children participate in decisions affecting them and are taken seriously.
- iii. Families and communities are informed and involved.
- iv. Equity is upheld, and diverse needs are taken into account.
- v. People working with children are suitable and supported.
- vi. Processes to respond to complaints of child abuse are child focused.
- vii. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
- viii. Physical and online environments minimise the opportunity for abuse to occur.
- ix. Implementation of the Child Safe Standards is continuously reviewed and improved.
- x. Policies and procedures document how the organisation is child safe.

## 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 (Crimes Act 1900 – NSW)**

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 (Crimes Act 1900 – NSW)**

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

### **Special care relationships (Crimes Act 1900 – NSW)**

It is a crime in NSW for a staff member, volunteer or contractor to have a sexual relationship with a student 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 a member of the teaching staff of 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 teachers and others who have special care of the child.

## COMPLIANCE AND RECORDS

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

- Register of staff members who have read and acknowledged that they read and understood this policy.
- Working with children check clearance (WWCC clearance) verifications.
- Mandatory reports to Department of Communities and Justice (DCJ), previously known as Family and Community Services.
- Reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions.

## DEFINITIONS

TERM	MEANING
Abuse - Neglect	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.
Abuse - Sexual	Sexual abuse is when someone involves a child or young person in a sexual activity by using their power over them or taking advantage of their trust. Often children are bribed or threatened physically and psychologically to make them participate in the activity. Child sexual abuse is a crime.
Abuse - Physical	Physical abuse is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted

	<p>strangulation and female genital mutilation.</p> <p>Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.</p> <p>Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punishing a child (in a non-trivial way) is a crime.</p>
Abuse - Emotional	<p>Emotional abuse can result in serious psychological harm, where the behaviour of their parent or caregiver damages the confidence and self-esteem of the child or young person, resulting in serious emotional deprivation or trauma.</p> <p>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.</p> <p>This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.</p>
Child-related work	<p>Child-related work involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work. Child-related work includes, but is not limited to work in the following sectors:</p> <ul style="list-style-type: none"> <li>• Early education and child-care including education and care service, child-care centres and other child care;</li> <li>• Schools and other educational institutions and private coaching or tuition of children;</li> <li>• Religious services;</li> <li>• Residential services including boarding schools, homestays more than three weeks, residential services and overnight camps;</li> <li>• Transport services for children including school bus services, taxi services for children with a disability and supervision of school road crossings; and</li> <li>• Counselling, mentoring or distance education not involving direct contact.</li> </ul>

Child Safe Scheme and Standards	The Child Safe Scheme gives the Office of the Children's Guardian (OCG) additional powers to monitor and investigate how organisations implement the Child Safe Standards to support the safety and wellbeing of children and young people. Under the Scheme, certain child-related organisations including in the Education, Early Childhood, Health and Youth Justice sectors, must implement the Child Safe Standards.
Child wellbeing concerns	Child wellbeing concerns are safety, welfare or wellbeing concerns for a child or young person that do not meet the mandatory reporting threshold, risk of significant harm.
ESOA	Employee Subject Of the Allegation
OCG	Office of the Children's Guardian The Office of the Children's Guardian is an independent statutory body that promotes the interests, safety and rights of children and young people in NSW. The core functions of the Office of the Children's Guardian include administering Working With Children Checks, Reportable Conduct Scheme and implementation of the Child Safe Standards.
Principal or their delegate	For the purposes of this policy this refers to the School Principal and the Deputy Principal as their delegate.
Reportable allegation	Reportable allegation is an allegation that an employee has engaged in conduct that may be reportable conduct.
Reportable conviction	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.
SAT	Strategic Advisory Team
WWC	Working with Children Check
WWCC	Working with Children Check ClearanceA WWCC clearance is authorisation under the WWC Act for a person to engage in child-related work.

# Child Protection Procedures

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## 1. PURPOSE

The purpose of this procedure is to provide clearly defined procedures for Child Protection at Emanuel School including:

- Training
- Working with Children Checks
- Mandatory reporting
- Reportable Conduct

## 2. SCOPE

This policy applies to all staff of Emanuel School which includes employees, contractors, and volunteers. Staff members who fail to adhere to this policy may be in breach of their terms of employment.

## 3. KEY PRINCIPLES

The following general key principles are to be considered:

- i. The School provides all staff with appropriate training to fulfil their legal obligations and comply with the School's Child protection Policy.
- ii. The School takes all matters relating to the safety of children seriously and will investigate all concerns in compliance with its regulatory requirements.
- iii. All investigations will be undertaken as confidentially as possible and follow the principles of procedural fairness.
- iv. Appropriate risk management procedures will be put in place at the beginning, during and at the end of an investigation.

### 4.1.1 TRAINING PROCEDURES

- a. The School provides all staff members with a copy of this policy and procedure and will provide all staff members with the opportunity to participate in child protection training annually.
- b. Training is held on at least an annual basis, typically at the commencement of the school year. This may be face to face or online.
- c. Training is mandatory for all staff and staff need to sign-in to confirm their attendance and



these records are stored in electronic form. Any staff that do not attend are identified through attendance records and required to attend a make-up session later in the year, organised by the Deputy Principal.

- d. Training for casual staff members including sports coaches, music tutors etc. is also held on an annual basis and delivered by a member of the Human Resources and/or Principal or Deputy Principal.
- e. The New Staff Orientation Program includes a session, delivered by the Principal, on Child Protection matters, with direct links to both the Staff Code of Conduct and Child Protection Policy in instances where whole school training does not occur at the commencement of the school year.
- f. Child Protection Training programs are noted on the School Professional Learning Calendar. Attendance records and records of acknowledgement are maintained by the Human Resources office.
- g. Child Protection Training programs are noted in the Annual Report.

#### **4.1.1 ACTIONS AND RESPONSIBILITIES**

The actions and responsibilities to be undertaken in respect of this procedure are set out below.

##### **I. The School is responsible for:**

- Providing all staff with annual child protection training.
- Taking all reasonable steps to ensure staff understand and comply with the School's Child Protection Policy and Procedures.
- Maintaining accurate records of all records of acknowledgement and training.

##### **II. Staff are responsible for:**

- Reading this policy and procedure and signing the acknowledgement that they have read and understood the policy and procedure.
- Participating in annual child protection training and additional training, as directed by the Principal.
- Meeting their legal obligations and School expectations in relation to:
  - a. Mandatory reporting.
  - b. Reportable conduct.
  - c. Working with children checks.
  - d. Professional boundaries.

#### 4.2.1 WORKING WITH CHILDREN CHECK PROCEDURES

The WWCC Act protects children by requiring a worker to have a Working With Children's Check (WWCC) clearance or current application to engage in child related work. Failure to do so may result in a fine or imprisonment.

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

- Grant a WWCC clearance (generally valid for 5 years); or
- Refuse a WWCC clearance (further applications cannot be made for 5 years).

In addition, the OCG may impose an interim bar on engaging in child related work for both applicants and WWCC clearance holders. It is an offence for an employee to engage in child-related work when they do not hold a WWCC clearance or if they are subject to a bar.

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

- a. As part of the recruitment process, candidates (including permanent or casual employees, or any other child-related workers or eligible volunteers) are required to provide the School with their WWCC and photo ID.
- b. Their WWCC is then verified online by a member of the Human Resources team prior to an Offer of Employment being issued. In rare instances where a candidate does not yet have a WWCC e.g. they are interstate, a conditional offer of employment may be issued where a valid WWCC is required before they commence employment.
- c. WWCC records are entered into the School's online database against each staff member's record including the expiry date and can be extracted in the prescribed form as required by the OCG Record Keeping template.
- d. The Human Resources team ensure that records are maintained and current. Automated reports are generated from the database alerting the Human Resources team when a WWCC is nearing expiry, who will then email the staff member.
- e. In the instance a valid WWCC clearance is not provided prior to the expiry date, a report is automatically generated from the School's database and sent to the Principal, Deputy Principal, and Human Resource Manager showing staff members whose WWCC is due to expire in the next week. In this instance, staff will have until the expiry of their WWCC to rectify this otherwise they will be stood down from duties until a valid WWCC can be provided and verified.
- f. Any queries about whether a particular role or duty is considered as child-related work should be directed to the Principal.

#### 4.2.1 ACTIONS AND RESPONSIBILITIES

The actions and responsibilities to be undertaken in respect of this procedure are set out below.

**I. The School is responsible for:**

- Verifying online and recording the status of each child-related worker's WWCC clearance.
- Only employing or engaging child-related workers or eligible volunteers who have a valid WWCC clearance.
- Advising 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 (WWCC) Directorate.
- Not committing an offence by knowingly engaging a child-related worker who does not hold a WWCC clearance or who has a bar.
- Ensuring records are maintained and current through the Human Resources office.
- Providing information to the OCG that is relevant to an assessment of whether a person poses a risk to the safety of children or the OCG's monitoring functions. When required, this will be completed by the Principal.

**II. Staff and eligible volunteers (including those volunteers working at overnight camps) are responsible for:**

- Holding and maintaining a valid WWCC clearance.
- Not engaging in child-related work at any time that they are subjected to an interim bar or a bar.
- Reporting to the Principal if they are no longer eligible for a WWCC clearance, the status of their WWCC clearance changes or they are notified by the OCG that they are subjected to a risk assessment.
- Notifying the OCG of any change to their personal details within 3 months of the change occurring. Eg changes of name. Failure to do so may result in a fine.

**III. Volunteers (including those volunteers working at overnight camps) are responsible for:**

- Following the expectations of conduct expressed in the School's Staff Code of Conduct.
- Providing a volunteer WWCC for overnight camps.

Further information about WWC and how to obtain a WWCC can be found in the *Appendix 1 Fact Sheet 1*.

#### 4.2.2 REPORTING TO THE OCG PROCEDURES

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

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

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.

#### 4.2.2 ACTIONS AND RESPONSIBILITIES

The actions and responsibilities to be undertaken in respect of this procedure are set out below.

##### **I. The Principal is responsible for:**

- Reporting the findings of reportable conduct investigations to the OCG
- Reporting the findings of reportable conduct investigations to the OCG WWCC Directorate
- Informing an employee when a finding of reportable conduct is made and the consequent report to the WWCC Directorate

#### 4.3.1 MANDATORY REPORTING PROCEDURES

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, for the purposes of the Care and Protection Act.

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 including health care, welfare, education, children's services and residential services, to children.

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

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 (*see Appendix 2 – Fact sheet 2 for further details of what is meant by significant harm*), report to the Department of Communities and Justice (DCJ) as soon as practicable. The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

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

### **Important note**

In the independent school sector, a mandatory reporter will meet their obligation if they report to the Principal in the School. This centralised reporting model ensures that a person in the School has all of the information that may be relevant to the circumstances of the child at risk of significant harm and addresses the risk of the School not being aware of individual incidences that amount to cumulative harm.

### **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 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.

### **Procedure**

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

- b. If there is an immediate danger to the child or young person and the Principal or other member of the SAT are not contactable, staff members should contact the Police and/or the Child Protection Helpline (13 21 11) directly and then advise the Principal or next most senior member of staff at the School as soon as possible.
- c. Staff members are not required to, and must not, undertake any investigation of the matter.
- d. Staff members are not permitted to inform the parents or caregivers that a report to DCJ has been made.
- e. Staff members are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy but could incite potential civil proceedings for defamation.

#### **4.3.1 ACTIONS AND RESPONSIBILITIES**

The actions and responsibilities to be undertaken in respect of this procedure are set out below. To ensure centralised reporting, all staff members are required to report any concern regarding the safety, welfare and wellbeing of a student to the Principal or their delegate.

##### **I. The School is responsible for:**

- Report all matters to DCJ and, where necessary, the Police. This is to be done by the Principal or their delegate. This is supported by the DCJ in accordance with best practice principles.
- When making a report it must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.
- Complying with all directions from the DJC or NSW Police.

##### **II. Staff are responsible for:**

- Reporting any concern regarding the safety, welfare and wellbeing of a student to the Principal or their delegate.
- Reporting all matters, even if they are unsure as to whether a matter meets the threshold of 'risk of significant harm', to the Principal or their delegate.
- Dealing with all reports regarding the safety, welfare or wellbeing of a student confidentially and only disclose it to the Principal and any other person the Principal nominates.

#### **4.4.1 REPORTABLE CONDUCT PROCEDURES**

Section 29 of the Children's Guardian Act 2019 requires the Heads of Entities, including non-government schools in New South Wales, to notify the OCG of all allegations of reportable conduct and

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

**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)

Under the Children's Guardian Act 2019 *reportable conduct* means:

- 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 316A (Failure to report) of the Crimes Act 1900
- Behaviour that causes significant emotional or psychological harm to a child.  
(See Appendix 3 – Fact Sheet 3 for definitions of the above)

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.

**Procedure**

**a. Staff members**

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

the School Board

**b. Parent Carers and community members.**

- I. Parents, carer and community members are encouraged to report any conduct that is in their view inappropriate, reportable or criminal conduct to the Principal or their delegate. All such reports will be dealt with in accordance with the School's Complaint Handling procedures.

**c. The School**

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

- I. 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 Principal has a reasonable excuse).
- II. The notification should include the following information:
  - That a report has been received in relation to an employee of the School, and
  - The type of reportable conduct, and
  - The name of the employee, and
  - The name and contact details of School and the Principal, and
  - For a reportable allegation, whether it has been reported to Police, and
  - If a report has been made to the Child Protection Helpline, that a report has been made, and
  - The nature of the relevant entity's initial risk assessment and risk management action.
- III. The notice must also include the following, if known to the Principal:
  - Details of the reportable allegation or conviction considered to be a reportable conviction,
  - The date of birth and working with children number, if any, of the employee the subject of the report,
  - The police report reference number (if Police were notified),
  - The report reference number if reported to the Child Protection Helpline,
  - The names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.
- IV. Maximum penalty for failure to notify within 7 business days —10 penalty units.

#### **4.4.1 ACTIONS AND RESPONSIBILITIES**

The actions and responsibilities to be undertaken in respect of this procedure are set out below.

**I. The OCG is responsible for:**

- Keeping 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.
- Receiving and assessing notifications from non-government schools concerning reportable



conduct or reportable convictions.

- Overseeing or monitoring the conduct of investigations by non-government schools into allegations of reportable or reportable convictions.
- Determining whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation.
- In some instances directly investigating 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).
- Investigating 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.

**II. The Principal is responsible for:**

- Ensuring specified systems are in place for preventing, detecting and responding to reportable allegations or convictions.

**III. Staff are responsible for:**

- Reporting any concerns about other employees engaging in conduct that that is considered inappropriate, or reportable conduct, or any allegation of inappropriate, or reportable conduct.

#### **4.4.2 INVESTIGATING AN ALLEGATION OF REPORTABLE CONDUCT PROCEDURE**

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

**a. Initial steps**

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

- I. Determine whether it is an allegation of reportable conduct.
- II. Assess whether 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.
- III. Notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by DCJ or Police).
- IV. Notify the OCG within 7 business days of receiving the allegation.
- V. Carry out a risk assessment and take action to reduce/remove risk, where appropriate.
- VI. Provide an initial letter to the ESOA advising that an allegation of reportable conduct has been made against them and the School's responsibility to investigate this matter under Section 34 of the Children's Guardian Act 2019.
- VII. Investigate the allegation or appoint someone to investigate the allegation.

**b. Investigation Principles**

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

- I. Follow the principles of procedural fairness.
- II. Inform the ESOA 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.
- III. Make reasonable enquiries or investigations before making a decision.
- IV. Avoid conflicts of interest.
- V. Conduct the investigation without unjustifiable delay.
- VI. Handle the matter as confidentially as possible.
- VII. Provide appropriate support for all parties including the child/children, witnesses and the ESOA.

**c. Investigation Steps**

In an investigation the Principal or appointed investigator will generally:

- I. Interview relevant witnesses and gather relevant documentation.
- II. Provide a letter of allegation to the ESOA.
- III. Provide the ESOA with the opportunity to provide a response to the allegations either in writing or at Interview.
- IV. Consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines.
- V. Inform the ESOA 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.
- VI. Consider any response provided by the ESOA.
- VII. Make a final finding, in accordance with the OCG guidelines.
- VIII. Decide on the disciplinary action, if any, to be taken against the ESOA.
- IX. 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 2019.
- X. Should the final report be unfinished within 30 days, the Principal must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as per section 38 of the Children's Guardian Act 2019.

**d. Interim report**

Submission of an interim report must include:

- I. A reason for not providing the final report within 30 days and an estimated time frame for completion of the report.
- II. 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 Principal proposes to take in relation to the reportable allegation or reportable conviction;

including if the Principal 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.

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

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

An ESOA 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.

**e. Findings**

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

**f. Disciplinary Action**

As a result of the allegations, investigation or final findings, 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:

- I. Details of the proposed disciplinary action; and
- II. A reasonable opportunity to respond before a final decision is made.

**g. Information for the ESOA**

The ESOA will be advised:

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

The ESOA does not automatically have the right to:

- I. Know or have confirmed the identity of the person who made the allegation; or
- II. 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.

**Confidentiality**

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

confidentially as possible.

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

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

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

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

#### **4.4.2 ACTIONS AND RESPONSIBILITIES**

The actions and responsibilities to be undertaken in respect of this procedure are set out below.

**I. The Principal is responsible for:**

- Investigating the allegation
- Ensuring all regulatory reporting obligations are met.
- Ensuring any investigation undertaken meets the standards for procedural fairness.

#### **4.4.3 RISK MANAGEMENT THROUGHOUT AN INVESTIGATION OF A REPORTABLE CONDUCT ALLEGATION PROCEDURE PROCEDURE**

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

The Principal is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

**a. Initial risk assessment**

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

- I. The child(ren) who are the subject of the allegation,
- II. other children with whom the employee may have contact,
- III. The ESOA,
- IV. The School, and
- V. The proper investigation of the allegation.
- VI. Determine whether it is an allegation of reportable conduct.

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

- I. The nature and seriousness of the allegations,
- II. The vulnerability of the child(ren) the ESOA has contact with at work,
- III. The nature of the position occupied by the ESOA,

- IV. The level of supervision of the ESOA, and
- V. The disciplinary history or safety of the ESOA and possible risks to the investigation.

The Principal 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 identified, 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 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.

#### **b. Ongoing risk assessment**

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

### **4.4.3 ACTIONS AND RESPONSIBILITIES**

The actions and responsibilities to be undertaken in respect of this procedure are set out below.

#### **I. The Principal is responsible for:**

- Taking appropriate action to minimise risks to all relevant persons.

### **5. RELATED POLICIES AND SUPPORTING DOCUMENTS**

- Code of Conduct - sets out information about the standards of behaviour expected of all staff members.
- Work Health and Safety Statement - identifies the obligations imposed by work health and safety legislation on the School and staff members.
- Complaints Handling Policy - provides the steps taken by the School in addressing complaints
- Safe and Supportive Environment Policy - School's policy on student behaviour management.
- Student Wellbeing policy and Procedures K-6

#### **References**

NSW Family and Community Services - <https://www.facs.nsw.gov.au/families>

The Office of the Children's Guardian: <https://ocg.nsw.gov.au/>

Department of Communities & Justice: Targeted Earlier Intervention program:

<https://dcj.nsw.gov.au/service-providers/deliver-services-to-children-and-families/targeted-earlier-intervention-program.html>

## 7. ACCESS

Not restricted.

This document is available to all stakeholders via the School's Community website.

This document is available to all staff via the Staff Portal.

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### Acknowledgement

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

\_\_\_\_\_

Signed

\_\_\_\_\_

Dated

## **Appendix 1- Fact Sheet 1**

### **Working with Children Check and Working with Children Check Clearance**

#### **1. Application/Renewal**

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

#### **2. Refusal/Cancellation**

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

#### **3. Interim bar**

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

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

#### **4. 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 the WWC Act. A disqualified person cannot be granted a WWCC clearance and is therefore restricted from engaging in child-related work.

#### **5. Ongoing monitoring**

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

#### **6. Risk assessments**

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

The OCG will conduct a risk assessment on a person's suitability to work with children when a new record is received which triggers a risk assessment. This may include an offence under Schedule 1, a pattern of behaviour or offences involving violence or sexual misconduct representing a risk to children, findings of misconduct involving children.

## Appendix 2 - Fact Sheet 2

### Risk of Significant harm

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

- The child's or young person's basic physical or psychological needs are not being met or are at risk of not being met
- The parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care
- In the case of a child or young person who is required to attend school in accordance with the Education Act 1990, the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act
- The child or young person has been, or is at risk of being, physically or sexually abused or ill-treated
- The child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm
- A parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm
- The child was the subject of a pre-natal report under Section 25 of the Care and Protection Act, and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

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's or young person's safety, welfare or wellbeing.

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



## Appendix 3 - Fact Sheet 3

### Definitions relating 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 WWC Act, grooming is recognised as a form of sexual misconduct. The Children’s Guardian Act 2019 and this Child Protection Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2).

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

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

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

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

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

- Applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force); or
- Causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words and/or gestures regardless of whether the person actually 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:** defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm - by a person who has care and/or has responsibility towards a child.

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfill a duty 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.

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

- 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
- 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.