



**WILLIAM CLARKE  
COLLEGE**  
CHRIST OUR WISDOM

# **Child Protection Policy & Manual**

Executive Policy

Child Protection

<b>Policy</b>	<p>The College is committed to safeguarding and promoting the safety, welfare and wellbeing of children and young people and expects all staff and volunteers to fulfil this commitment.</p> <p>All persons who have a concern related to a Child Protection matter must report their concern to the Head of Entity (Head) and in accordance with any other obligations outlined in the Child Protection Manual at the end of this policy.</p> <p>The College commits to be a child-safe organisation and to the implementation of the recommendations and the Child Safe Standards contained in the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse.</p>
<b>Purpose</b>	<p>Individual staff and the College have a range of obligations relating to the safety, protection and welfare of students including:</p> <ul style="list-style-type: none"> <li>• A duty of care</li> <li>• Obligations under Child Protection legislation, particularly in relation to mandatory reporting</li> <li>• Obligations under the Working with Children legislation</li> <li>• Obligations under Work Health and Safety legislation</li> <li>• The Staff Code of Conduct.</li> </ul> <p>The purpose of this Policy and Manual is to provide direction and guidelines as to how staff and the Head of Entity (Head, acting on behalf of the College) are to respond in respect to Child Protection matters.</p> <p>Child protection is vitally important. As a Christ-centred College we value each child and young person as people created in the image of God and loved by Him and therefore important to us.</p>
<b>Relevant Compliance Legislation or Linked Document</b>	<p><b>Relevant Legislation</b></p> <ul style="list-style-type: none"> <li>• The Children and Young Persons (Care and Protection) Act 1998 (NSW) (the <b>Care and Protection Act</b>)</li> <li>• The Child Protection (Working with Children) Act 2012 (NSW) (the <b>WWC Act</b>)</li> <li>• Children's Guardian Act 2019</li> <li>• The Crimes Act 1900 ("<b>Crimes Act</b>").</li> </ul> <p><b>Linked documents that should be read in conjunction with this policy</b></p> <p>Mandatory Reporting Guide – <a href="https://reporter.childstory.nsw.gov.au">https://reporter.childstory.nsw.gov.au</a></p> <p>Royal Commission Final Report Recommendations Royal Commission Final Report: Volume 6 Child Safe Standards Royal Commission Final Report: Volume 13 Schools</p> <p><b>Policies that should be read in conjunction with this policy and manual:</b></p> <ul style="list-style-type: none"> <li>• Staff Code of Conduct</li> <li>• Work Health and Safety Policy</li> <li>• Complaints Handling Flowchart</li> <li>• Complaints Handling Policy</li> <li>• Anti-Bullying Policy.</li> </ul>
<b>Scope</b>	<p>All employees, contractors and volunteers are responsible under this policy.</p>

**Executive Policy**

**Child Protection**

<b>Definitions</b>	<p><b>Child</b> has the same meaning as defined in each piece of related legislation.</p> <p><b>Child Safe Standards</b> refer to the standards contained within the Royal Commission Final Report Volume 6, which are summarised as:</p> <p>Standard 1 Child safety is embedded in institutional leadership, governance and culture.</p> <p>Standard 2 Children participate in decisions affecting them and are taken seriously.</p> <p>Standard 3 Families and communities are informed and involved.</p> <p>Standard 4 Equity is upheld, and diverse needs are taken into account.</p> <p>Standard 5 People working with children are suitable and supported.</p> <p>Standard 6 Processes to respond to complaints of child sexual abuse are child focussed.</p> <p>Standard 7 Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.</p> <p>Standard 8 Physical and on-line environments minimise the opportunity for abuse to occur.</p> <p>Standard 9 Implementation of the Child Safe Standards is continuously reviewed and improved.</p> <p>Standard 10 Policies and procedures document how the institution is child safe.</p> <p><b>Staff</b> as defined in the Staff Code of Conduct refers to all employees, whether full or part-time, permanent, temporary or casual and those contracted to work at William Clarke College, including approved volunteers.</p> <p>Other definitions are contained within supporting policies and documentation.</p>
<b>Procedures</b>	<p>The key procedures are summarised below. The Child Protection manual contains additional procedures which are to be followed by the appropriate persons.</p> <p><b>Staff</b> Staff are to:</p> <ol style="list-style-type: none"> <li>1. Acknowledge and sign the “Providing a Culture of Safety at the College” document prior to their employment.</li> <li>2. Participate in Child Protection training annually (<b>refer Manual section 3</b>).</li> <li>3. Maintain a valid Working with Children Certificate and renew such prior to expiry (<b>refer Manual section 4</b>).</li> <li>4. Follow the Mandatory Reporting obligations (<b>refer Manual section 5</b>).</li> <li>5. Report any Child Protection or child wellbeing concerns about the safety, welfare or wellbeing of a child to the Head (*).</li> <li>6. Be aware of what constitutes Reportable Conduct (<b>refer Manual section 6</b>); and</li> <li>7. Be aware of what constitutes criminal offences under the Crimes Act (<b>refer Manual section 7</b>).</li> </ol> <p>(*) Please note that if an allegation involves the Head, you are required to report your concern directly to the Chair of Council.</p> <p><b>Head (Head of Entity)</b> The Head is responsible for all reporting to Department of Communities and Justice, the Office of the Children’s Guardian and/or the police.</p> <p>The Head will, as necessary, request or provide information to/from prescribed bodies under Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998.</p> <p>Where a risk assessment is required, this will be undertaken by the Head, Deputy or their delegate.</p>

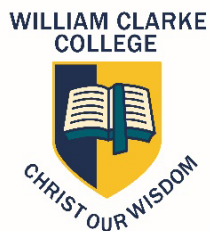
	<b>Confidentiality and records</b> The College, through the Head, will confidentially maintain all records in relation to child protection matters indefinitely.	
<b>Delegation &amp; Responsibilities</b>	The Head of Entity (Head) has overall jurisdiction in regard to Child Protection at William Clarke College.	
	Period of Delegation	Indefinite in accordance with legislation.
	Accountability	All staff are accountable to the Head or Chair of Council.

## DOCUMENT STATUS

Document Approver	Executive
Document Author	Executive Policy Committee
Version	5.0
Date of Executive adoption	9 August 2022
Date for Review	As per Register

## PREVIOUS VERSION HISTORY – Reformatted policy history

Version 1	16 February 2018
Version 2	11 March 2019
Version 3	18 October 2019
Version 4	25 November 2020



# **WILLIAM CLARKE COLLEGE**

## **CHILD PROTECTION MANUAL**

### **INDEX**

1. Introduction.....	2
2. Child Protection .....	3
3. Training .....	4
4. Working with Children .....	4
5. Mandatory reporting.....	7
6. Reportable conduct.....	9
7. Criminal offences.....	15
Acknowledgement.....	16

# 1. Introduction

## 1.1 Purpose and scope

This manual sets out staff responsibilities for Child Protection and processes that staff must follow in relation to Child Protection matters. The requirements of this Manual support the Child Protection Policy and therefore applies to all staff members, which includes employees, contractors and volunteers.

Staff members who fail to adhere to the Child Protection Policy and/or the requirements in the Manual may be in breach of their terms of employment.

## 1.2 Key legislation

There are four key pieces of Child Protection legislation in New South Wales:

- The *Children and Young Persons (Care and Protection) Act 1998* ("Care and Protection Act")
- The *Child Protection (Working With Children) Act 2012* ("WWC Act")
- The *Children's Guardian Act 2019*
- The *Crimes Act 1990* ("Crimes Act").

## 1.3 Related policies

The Child Protection Policy and the Child Protection Obligations documents represent the key requirements of the College.

There are a number of other school policies that can relate to Child Protection that staff members must be aware of and understand including (but not limited to):

- Staff Code of Conduct - sets out information about the standards of behaviour expected of all staff members.
- Work Health and Safety Policy - identifies the obligations imposed by Work Health and Safety legislation on the College and staff members.
- Discrimination, Harassment and Bullying Policy - summarises obligations in relation to unlawful discrimination, harassment and bullying.
- Complaint Handling Procedures - provides the steps taken by the College in addressing complaints.
- Anti- Bullying Policy.
- Social Media Policy.

## 1.4 Compliance and records

**The Head or their delegate** monitors compliance with the policy and this manual and securely maintains College records relevant to this policy, which includes:

- Maintaining records of staff members who have read and acknowledged that they read and understood this manual, which is held with Human Resources.
- Verifying Working with Children Check clearances.
- Providing mandatory reports to the Department of Communities and Justice (DCJ), previously known as Family and Community Services.
- Providing reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions.

## 2. Child Protection

The safety, protection and welfare of students is the responsibility of 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.
- Obligations under Child Protection legislation.

### 2.1 Child Protection concerns

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.

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.

Physical abuse is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation.

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

Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punish a child (in a non-trivial way) is a crime.

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.

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.

### 2.2 Child wellbeing concerns

Child wellbeing concerns include the safety, welfare or wellbeing matters for a child or young person that do not meet the mandatory reporting threshold, risk of significant harm in section 5.1.2.

### 2.3 Staff member responsibilities

Key legislation requires reporting of particular Child Protection concerns. However, as part of the College's overall commitment to Child Protection, all staff are required to report any Child Protection or child wellbeing concerns about the safety, welfare or wellbeing of a child or young person to the **Head**.

If the allegation involves the **Head**, a report should be made to the **Chair of College Council**.

Access to contact details for the persons abovementioned is available on the Child Protection page in Connect.

## 3. Training

### 3.1 The College

The College provides all staff members with a copy of the Child Protection Policy and Manual through Connect and will provide all staff members with the opportunity to participate in Child Protection training annually.

### 3.2 Staff members

All new staff members must read this Policy and Manual and sign the acknowledgement that they have read and understood the policy and manual.

All staff members must participate in annual Child Protection training and additional training, as directed by the Head. The training compliments this Manual and provides information to staff about their legal responsibilities related to Child Protection and College expectations, including:

- Mandatory Reporting
- Reportable Conduct
- Working With Children Check
- The Staff Code of Conduct and professional boundaries.

## 4. Working with Children

The WWC Act protects children by requiring a worker to have a Working with Children Check 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)
- 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.

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

### 4.1 Responsibilities for Working with Children Checks

#### 4.1.1 Staff members

Staff members who engage in child-related work and eligible volunteers (including those volunteers working at overnight camps) are required to:

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

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

All volunteers are required to:

- Be aware and follow the expectations of conduct expressed in the College Staff Code of Conduct.
- Attend a volunteers training course.



- Hold and maintain a valid WWCC clearance.
- Acknowledge that they have read and understood Child Protection related policies.

#### **4.1.2 The College**

The College is required to:

- Verify online and record the status of each child-related worker's check.
- Only employ or engage child-related workers or eligible volunteers who have a valid check.
- Advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's Working with Children Check Directorate (WWCC Directorate).

It is an offence for an employer to knowingly engage a child-related worker when they do not hold a WWCC clearance or who has a bar.

## **4.2 Working with Children Check clearance**

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

### **4.2.1 Child-related work**

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:

- Early education and child-care including education and care service, child-care centres and other childcare.
- Schools and other educational institutions and private coaching or tuition of children.
- Religious services.
- Residential services including boarding schools, homestays more than three weeks, residential services and overnight camps.
- Transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings.
- Counselling, mentoring or distance education not involving direct contact.

Any queries about whether roles/duties engage in child-related work should be directed to the Head.

### **4.2.2 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 College to verify the status of a staff member's WWCC clearance.

### **4.2.3 Refusal/Cancellation**

The OCG can refuse to grant a Working with Children check clearance 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 OCG and instructed to remove such persons from child-related work.

#### 4.2.4 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, it may be appealed 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.

#### 4.2.5 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. A disqualified person cannot be granted a Working with Children check clearance and is therefore restricted from engaging in child related work.

### 4.3 Ongoing monitoring

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

#### 4.3.1 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, pattern of behaviour or offences involving violence of sexual misconduct representing a risk to children, findings of misconduct involving children.**

### 4.4 Process for reporting to OCG

#### 4.4.1 The College

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

The College 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. 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 WWC Act, pending a formal risk assessment.

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

#### 4.4.2 Finding of misconduct involving children

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

When informing an employee of a finding of reportable conduct against them, the College should alert them to the consequent report to the WWCC Directorate in relation to sustained findings of sexual misconduct, a sexual offence of 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 College 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.

#### 4.4.3 Other information

The College may also be required to provide information to the OGC that is relevant to an assessment of whether a person poses a risk to the safety of children or the OGC's monitoring functions.

## 5. Mandatory reporting

The Care and Protection Act provides for mandatory reporting of children at risk of significant harm. A child is a person under the age of 16 years. 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.

**In the context of the College, all staff (teachers and support and operational) are mandatory reporters.** Any queries about whether other staff members are mandatory reporters should be directed to the Head.

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.
- Hold a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services and residential services, to children, are mandatory reporters.

### 5.1 Reports to Department of Communities and Justice

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, refer to the MRG Decision Tree on the Department of Communities and Justice (DCJ) website as soon as practicable. The Decision Tree will inform you as to the appropriate action you are required to take. All outcomes from the Decision Tree must be provided to the Head.

In the independent school sector, a mandatory reporter will meet their obligation if they report to the Head in the College. This centralised reporting model ensures that a person in a 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 a school not being aware of individual incidences that amount to cumulative harm.

In addition, the College 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 well-being of the young person.

Staff make the report and provide a copy to the Head.

#### 5.1.1 Reasonable grounds

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

- First-hand observations of the child, young person or family.
- 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.

### 5.1.2 Significant harm

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

- 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 or young person's safety, welfare or well-being.

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

## 5.2 Process for mandatory reporting

Staff members are mandatory reporters. Once a staff member has made use of the MRG Decision Tree, they must forward the report and any response from DCJ immediately to the Head. Furthermore, staff must also follow any directions from DCJ.

If unsure, staff should raise their concerns about a child or young person who may be at risk of significant harm with the **Head** or Deputy Head 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.

Staff members are required to deal with all reports regarding the safety, welfare or wellbeing of a student with confidentiality and only disclose it to the Head and any other person the Head nominates. Failure to maintain confidentiality will not only be a breach of this policy but could incite potential civil proceedings for defamation.

If there is an immediate danger to the child or young person and the **Head** or Deputy is not contactable, staff members should contact the police and/or the Child Protection Helpline (13 21 11) directly and then advise the Head or Deputy at the College as soon as possible.

**Staff members must not and are not required to undertake any investigation of the matter. Staff members are not permitted to inform the parents or caregivers that a report to DCJ has been made.**

## 6. Reportable conduct

Section 29 of the Children's Guardian Act 2019 requires the Heads of certain agencies, including non-government schools in New South Wales, to notify the New South Wales Office of 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 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 Head of Entity. Reportable conduct involves:

- A child (a person under the age of 18 years) at the time of the alleged incident
- Conduct that meets the definition of reportable conduct as defined in the Act.

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 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 (eg 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.

### 6.1 Reportable conduct

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 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.
- 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.
- Conduct of a class or kind exempted from being reportable conduct by the Children's Guardian under section 30.

#### 6.1.1 Definitions

The following definitions relate to *reportable conduct*:

**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)
- 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).

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 physical harm to the child.

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

**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.

### **Grooming**

Definitions of ‘grooming’ within Child Protection legislation are complex. Under the *Crimes Act*, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual offence. The *Crimes Act* (s73) also extends the age of consent to 18 years when a child is in a ‘special care’ relationship. Under Schedule 1(2) of the *Child Protection (Working With Children) Act*, grooming is recognised as a form of sexual misconduct. The Children’s Guardian Act 2019 and this Child Protection Policy reflect all of these definitions within the context of the Reportable Conduct Scheme (Division 2).

**Ill-treatment** is defined as conduct towards a child that is:

- Unreasonable
- Seriously inappropriate, improper, in humane or cruel.

Ill-treatment can include a range of conduct such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and using inappropriate forms of behaviour management towards a child.

**Neglect** is defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm – by a person who as 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.

**ESOA** means the ‘employee subject of the allegation’.

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

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

**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 not a sexual offence).

**Sexual offences:** 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.

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.

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

### 6.2.1 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 **Head**. Where it is uncertain if the conduct is reportable conduct but is considered inappropriate behaviour, this must also be reported to the Head.

Staff members must also report to the **Head** 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.

Staff members must report to the Head when they become aware of conduct that occurred in the past that would now meet the reportable conduct definitions.

If the allegation involves the Head, the staff member must report to the **Chair of the College Council**.

### 6.2.2 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 Head or their delegate. All such reports will be dealt with in accordance with the College's Complaint Handling procedures.

### 6.2.3 The College

The Head, as the Head of Entity under the Children's Guardian Act 2019, 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:
  - That a report has been received in relation to an employee of the College,
  - The type of reportable conduct
  - The name of the employee
  - The name and contact details of the College and the Head of Entity
  - For a reportable allegation, whether it has been reported to police
  - If a report has been made to the Child Protection Helpline, that a report has been made
  - The nature of the relevant entity's initial risk assessment and risk mitigation action.
- The notice must also include the following, if known to the Head of Entity:
  - Details of the reportable allegation or conviction considered to be a reportable conviction
  - The date of birth and Working with Children Check 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.
- Maximum penalty for failure to notify within 7 business days – 10 penalty units.

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

The Head is required to adhere to the following steps to investigate an allegation of reportable conduct.

#### 6.3.1 Initial steps

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

- Determine on face value whether it is an allegation of reportable conduct
- Assess whether DCJ or the police need to be notified (ie, if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, 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 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 ESOA advising that an allegation of reportable conduct has been made against them and the College's responsibility to investigate this matter under Section 34 of the Children's Guardian Act 2019
- Investigate the allegation or appoint someone to investigate the allegation.
- Notify NESAs as appropriate

#### 6.3.2 Investigation principles

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

- Follow the principles of procedural fairness
- 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
- 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 support for all parties including the child/children, witnesses and the ESOA.



### 6.3.3 Investigation steps

In an investigation the Head or appointed investigator will generally:

- Interview relevant witnesses and gather relevant documentation
- Provide a letter of allegation to the ESOA
- Provide the ESOA with the opportunity to provide a response to the allegations either in writing or at Interview
- Consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines
- 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
- Consider any response provided by the ESOA
- Make a final finding in accordance with the OCG guidelines
- Decide on the disciplinary action, if any, to be taken against the ESOA. If it is completed, send the final report to the OCG within 30 days after having received the allegation, as per section 36 of the Children's Guardian Act 2019.

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 2019.

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
- Copies of documents in the College'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.

## 6.4 Risk management throughout an investigation of a reportable conduct allegation

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

The Head 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.

### 6.4.1 Initial risk assessment

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

- The child(ren) who are the subject of the allegation
- Other children with whom the employee may have contact
- The ESOA
- The College
- 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 ESOA has contact with at work
- The nature of the position occupied by the ESOA
- The level of supervision of the ESOA
- The disciplinary history or safety of the ESOA and possible risks to the investigation.

The Head 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 College 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.

#### **6.4.2 Ongoing risk assessment**

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

#### **6.4.3 Findings**

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

#### **6.4.4 Information for the ESOA**

The ESOA will be advised:

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

The ESOA does not automatically have the right to:

- Know or have confirmed the identity of the person who made the allegation
- 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 finding referred to the OCG under the Act to request access to the records held by the College 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.

#### **6.4.5 Disciplinary action**

As a result of the allegations, investigation or final findings, the College may take disciplinary action against the ESOA (including termination of employment).

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

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

#### 6.4.6 Confidentiality

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

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

Records about allegations of reportable conduct against employees will be kept in a secure area and will be accessible by the Head.

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

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

## 7. Criminal offences

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

### 7.1 Failure to protect offence (Crimes Act 1900 – NSW)

All staff members will commit an offence if they know another staff member 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.

### 7.2 Failure to report offence (Crimes Act 1900 – NSW)

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 Head and is aware that the Head has reported the matter to the police.

### 7.3 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.

## Acknowledgement

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

### REFERENCES

Department of Communities and Justice

<https://www.dcj.nsw.gov.au>

The Office of the Children's Guardian

<https://www.kidsguardian.nsw.gov.au>

Department of Premier and Cabinet – Keep Them Safe

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

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