



RED BEND CATHOLIC COLLEGE CHILD PROTECTION POLICY

Policy Name	Child Protection Policy
Head of Policy	Principal
Policy Manager	Principal
Attention	College employees (as defined in this policy) All Visitors to the College All who are on College premises and who in any capacity under the supervision or direction of the College are in contact with students.
Date of Introduction	June 2015
Date Policy Updated	January 2016
Related Legislation	<ul style="list-style-type: none"> • <i>Children and Young Persons (Care and Protection) Act 1998</i> (the Care and Protection Act); • <i>Child Protection (Working With Children) Act 2012</i> (NSW) (the WWC Act); and • <i>Ombudsman Act 1974</i> (NSW) (the Ombudsman Act).
Related Policies	<ul style="list-style-type: none"> • Code of Professional Conduct • Work Health and Safety • Promoting the Peace (Anti Bullying Policy)

Please Note

This Policy is a direction to you by the College as an employee or contractor of the College or volunteer associated with the College. You must comply with this policy. If you do not comply with this policy, the College may take disciplinary action, up to and including termination of your employment or engagement and if the College deems it necessary, referral of the matter to the appropriate government department and/or the Police.

This Policy document is intended to be provided and made available to staff including employees and contractors during their employment or engagement with the College to ensure a clear understanding of their duties and obligations under the key items of child protection legislation in NSW. This Policy outlines the key concepts and definitions under the relevant legislation including mandatory reporters, reportable conduct, and risk management. It also sets out expected standards of behaviour in relation to employees and contractors and their relationships with students. If after reviewing this policy you have any queries or concerns about this policy please contact the Principal as soon as is practicable.

CHILD PROTECTION POLICY

Purpose

- to provide a safe, secure environment for every student at the College;
- to inform staff of their moral and legal obligations in the area of child protection;
- to provide for staff clear and unambiguous procedures for appropriate response to all aspects of Child Protection;
- to comply and to be seen to comply with Church guidelines and statutory requirements in this area.

1. POLICY

- 1.1 This College is committed to providing an environment in which students feel safe and are protected from any form of abuse, violence, injury, neglect or exploitation. Students in the College have the right to expect that while they are at the College or at College-sponsored activities, every effort will be made to protect them from harm.
- 1.2 In complying with Statutory and Church requirements in the treatment of issues relating to child protection and reportable conduct the College will provide staff with advice and training to assist them in their duty of care.
- 1.3 Having a large residential boarding school community, the College is aware of its duty of care for all boarding students outside normal class teaching hours. It will constitute, therefore, practices and procedures which accommodate this significant residential component of the College abiding by the following principles:
- the prime importance of and the need to respect the dignity of each individual
 - the fostering of the health, developmental needs, spirituality, self-respect of every student
 - the protection of the best interests of the students by promoting their safety, welfare and well-being;
 - sensitivity, confidentiality, and justice in the investigation of all allegations or investigations of abuse and neglect.

Thus,

- The Principal or his or her delegate is responsible for compliance with the terms of the legislation; he or she is to be informed of all matters concerning the welfare of students, including suspected or disclosed allegations of abuse and/or neglect.
- All disclosures will be treated sensitively, respecting the dignity of the individual.

- Students who make a disclosure to a staff member must be informed of the responsibility of that staff member with regard to reporting.
- All adults have the responsibility to care for children and to protect them from any kind of abuse.
- In every preventative and/or protective action related to child abuse, the total well being of the child is the primary concern.
- The value of the family unit is respected but not to the detriment of the well being of the child.
- Employees who have access to information regarding suspected or disclosed child abuse have the obligation to observe confidentiality in relation to the entire matter, subject to the relevant reporting obligations.
- Employees must avoid any false, exaggerated or unjustified assertions that they may infringe the good name of, or honour due to, another person.
- The Principal is to ensure that the College's pastoral care structures address issues of child abuse making appropriate provision for the support of children, families and employees directly involved.

1.4 This Policy document is intended to be provided and made available to staff including employees, volunteers and contractors during their employment or engagement with the College to ensure a clear understanding of their duties and obligations under the key items of child protection legislation in NSW. This Policy outlines the key concepts and definitions under the relevant legislation including mandatory reporters, reportable conduct, and risk management. It also sets out expected standards of behaviour in relation to employees and contractors and their relationships with students.

1. Introduction

General

- 1.1 The safety, protection and well-being of all students is of fundamental importance to the College.
- 1.2 Both you and the College have a range of different obligations relating to the safety, protection and welfare of students including:
- (a) a duty of care to ensure that reasonable steps are taken to prevent harm to students;
 - (b) obligations under child protection legislation; and
 - (c) obligations under work health and safety legislation.
- 1.3 The purpose of this Policy is to summarise the obligations imposed by child protection legislation on the College and on employees, contractors and volunteers at the College and to provide guidelines as to how the College will deal with certain matters.
- 1.4 Child protection is a community responsibility.

Key legislation

- 1.5 There are three key pieces of child protection legislation in New South Wales:
- (a) the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the **Care and Protection Act**);
 - (b) the *Child Protection (Working With Children) Act 2012* (NSW) (the **WWC Act**); and
 - (c) the *Ombudsman Act 1974* (NSW) (the **Ombudsman Act**).
- 1.6 We deal with each below.

Your obligations to report

- 1.7 While we set out below circumstances in which the legislation requires reporting of particular child protection issues, the College requires you to report any concern you may have about the safety, welfare or wellbeing of a child or young person to the Principal.

- 1.8 If the allegation involves the Principal, you are required to report to the Regional Director of Marist Schools Australia.
- 1.9 This obligation is part of the College's overall commitment to the safety, welfare and well-being of children.

Other policies

- 1.10 Please note that there are a number of other College policies that relate to child protection which you need to be aware of and understand including (but not limited to):
- 1.11 These relevant policies include:
- a) the **Code of Professional Conduct** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the College;
 - b) the **Work Health and Safety Policy** which summarises the obligations imposed by work health and safety legislation on the College and workers; and
 - c) **Promoting the Peace (Anti Harassment and Bullying Policy)** which summarises your obligations in relation to unlawful discrimination, harassment and bullying;

2. CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998 (The Care and Protection Act)

- 2.1 The Care and Protection Act provides for mandatory reporting of children at risk of significant harm.
- 2.2 NOTE: Any concern regarding the safety, welfare or well being of a student must be reported to the Principal or his delegate.

Who is a mandatory reporter?

- 2.3 Under the Care and Protection Act persons who:
- (a) in the course of their employment, deliver services including health care; welfare, education, children's services and residential services, to children; or
 - (b) hold a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services and residential services, to children, are mandatory reporters.
 - (c) All staff and volunteers are mandatory reporters. Reports are to be made to the Principal.

When must a report be made to the Department of Family and Community Services?

What is the threshold?

- 2.4 A mandatory reporter must, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, report to Department of Family and Community Service (Community Services) as soon as practicable, the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm. (See "The Structured Decision Making System – New South Wales Mandatory Report Guide" published by the Department of Family and Community Services and accessible at the following url address:
http://www.community.nsw.gov.au/kts/guidelines/documents/mandatory_reporter_guide.pdf)
- 2.5 In addition, while not mandatory, the College considers that a report should also be made to Community Services where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person. It is the policy of the College that when a person who is subject to this policy has reasonable grounds to suspect that a young person is at risk of significant harm, a report is to be made to the

Principal who will then determine whether a report should be made to Community Services.

- 2.6 If the allegation resulting in the risk of significant harm involves the Principal, you are required to report to the Regional Director of Marist Schools Australia.

Reasonable grounds

- 2.7 'Reasonable grounds' refers to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm, based on:
- (a) first hand observations of the child, young person or family
 - (b) what the child, young person, parent or another person has disclosed
 - (c) what can reasonably be inferred based on professional training and / or experience.
- 2.8 'Reasonable grounds' does not mean that you are required to confirm your suspicions or have clear proof before making a report.
- 2.9 A person who is permitted or required by the Care and Protection Act to make a report is not prevented, by reason only of having made that report, from responding to the needs of, or discharging any other obligations in respect of, the child or young person the subject of the report in the course of that person's employment or otherwise.

Significant harm

- 2.10 A child or young person is 'at risk of significant harm' if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:
- (a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
 - (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
 - (c) in the case of a child or young person who is required to attend College in accordance with the Education Act 1990 —the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
 - (d) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
 - (e) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
 - (f) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,

- (g) the child was the subject of a pre-natal report under section 25 of the Care and Protection Act and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.,
- (h) If a person, other than the Director-General of the Department of Family and Community Services or an authorised carer provides out-of-home care in respect of a child or young person.

Other relevant definitions

Policy definition of significant harm

- 2.11 A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well-being of the child or young person are present to a significant extent.
- 2.12 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.
- 2.13 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.
- 2.14 In the case of an unborn child, what is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child's birth.
- 2.15 The significance can result from a single act or omission or an accumulation of these.
- 2.16 Child is a person under the age of 16 years for the purposes of the Care and Protection Act.

Child abuse and neglect

- 2.17 There are different forms of child abuse. These include neglect, sexual, physical and emotional abuse.
- 2.18 Neglect is the 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.

- 2.19 Physical abuse is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person without reasonable excuse. 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.
- 2.20 Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.
- 2.21 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.
- 2.22 Serious psychological harm can occur where the behaviour of their parent or caregiver damages the confidence and self esteem of the child or young person, resulting in serious emotional deprivation or trauma.
- 2.23 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.
- 2.24 This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.
- 2.25 Grooming is an act or behaviour intended to win the trust or allegiance of a child in order to make them vulnerable or less alert to potential abuse. (A detailed report on grooming behaviours can be found at www.childwise.net/news/17/groomingdec13).
- 2.26 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 even if the child alleges that they have consented to the sexual abuse.
- 2.27 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.
- 2.28 Young person means a person who is aged 16 years or above but who is under the age of 18 years for the purposes of the Care and Protection Act.
- 2.29 The above definitions are not necessarily exhaustive and any person to whom this policy applies should exercise their best judgment when considering potential abuse of a child or young person in any form.
- 2.30 If anyone to whom this policy applies is in doubt as to whether any of the above forms of abuse are occurring, they should speak to the Principal as soon as is reasonably practicable.

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

- 2.31 Reporting by the College about these matters to Community Services and, where necessary, the police, is generally undertaken by the Principal. This is in accordance with best practice principles and is the expectation of the College.
- 2.32 If you have a concern that a child or young person is at risk of significant harm you should contact the Principal or his delegate as soon as possible to discuss whether the case reaches the threshold of 'risk of significant harm' and the steps required to report the matter.
- 2.33 However, if there is an immediate danger to the child or young person and the Principal or the next most senior member of staff is not contactable you should speak to the Police and/or Community Services and/or the Child Protection Helpline directly and then advise the Principal or next most senior member of staff at the College as soon as possible.
- 2.34 You are not required to, and must not, undertake any investigation of the matter yourself.
- 2.35 You are not to inform the parents or caregivers that a report to Community Services has been made.
- 2.36 You are required to deal with the matter confidentially and only disclose the necessary details of the matter to the persons referred to above or as required to comply with your mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy, but could expose you to potential civil proceedings for defamation.
- 2.37 However, reporting conducted in good faith and in accordance with this policy and to the designated authorities named in this policy will not expose you to potential civil proceedings for defamation.
- 2.38 What should you do if you have a concern that is below the mandatory reporting threshold?
- 2.39 While the Care and Protection Act outlines a mandatory reporter's obligation to report to Community Services, as an employee of this College, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Principal.
- 2.40 You are required to deal with all reports regarding the safety, welfare or wellbeing of a student with confidentially and only disclose it to the Principal and any other person th Principal nominates. Failure to do so will be a breach of this policy.

3. **THE OMBUDSMAN ACT**

Responsibilities

General

- 3.1 Part 3A of the Ombudsman Act requires the heads of certain agencies, including non government Colleges in New South Wales, to notify the New South Wales Ombudsman of all allegations of reportable conduct by an 'employee' and the outcome of the College's investigation of these allegations.
- 3.2 An 'employee' includes employees, contractors, volunteers, work experience participants, clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services. In this part where there is a reference to an employee it includes all of these persons.

The Ombudsman

- 3.3 The Ombudsman:
- (a) must keep under scrutiny the systems for preventing reportable conduct by employees of non government Colleges and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions;
 - (b) must receive and assess notifications from non government Colleges concerning reportable conduct or reportable convictions;
 - (c) is required to oversee or monitor the conduct of investigations by non government Colleges into allegations of reportable or reportable convictions;
 - (d) must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation;
 - (e) may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non government College, 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);
 - (f) may undertake 'own motion' investigations of non government Colleges where the Ombudsman considers it appropriate to do so, including where there is evidence of systemic failure or serious conflict of interests; and
 - (g) The Ombudsman may disclose information about an employee to the Office of Children's Guardian for the purpose of the exercise of functions under the *Child Protection (Working with Children) Act 2012*(WWC Act).

Head of Agency

- 3.4 The Head of Agency is the Principal of the College.
- 3.5 Under the Ombudsman Act the Head of Agency (Principal) must:
- (a) set up systems within their organisation to ensure that they are advised of any allegations of reportable conduct against employees or advised of any allegation that may constitute reportable conduct;
 - (b) notify the Ombudsman as soon as practicable and no later than thirty days after being made aware of an allegation;
 - (c) notify the Ombudsman whether or not the College plans to take disciplinary or other action in relation to an employee who is the subject of a reportable allegation or conviction, and the reasons for taking or not taking any such action as soon as practicable;
 - (d) notify the Ombudsman of any written submissions made to the Principal concerning any such allegation or conviction that the employee concerned wished to have considered in determining what (if any) disciplinary or other action should be taken in relation to the employee; and
 - (e) provide the Ombudsman with any documentary and other information as the Ombudsman may from time to time request to assist in the Ombudsman's monitoring of an investigation.

Your obligations to report

- 3.6 You must report any concerns you may have about any other employee engaging in reportable conduct or any allegation of 'reportable conduct' that has been made to you, to the Principal, including information about yourself. If you are not sure whether the conduct is reportable conduct but consider that it is inappropriate behaviour you must still report it.
- 3.7 You must also report to the Principal if you become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct.
- 3.8 This includes information relating to yourself.
- 3.9 If the allegation involves the Principal, you are required to report to the Regional Director of Marist Schools Australia.

Contact for parents

- 3.10 The Principal is the contact point for parents if they wish to report an allegation of reportable conduct against an employee.

What is reportable conduct?**Definition of reportable conduct**

3.11 Reportable conduct is defined as:

- (a) any sexual offence or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material);
- (b) any assault, ill-treatment or neglect of a child; and
- (c) any behaviour that causes psychological harm to a child; whether or not, in any case, with the consent of the child.

3.12 Reportable conduct does not extend to:

- (a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or
- (b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures; or
- (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

3.13 A reportable allegation is an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

Other relevant definitions

3.14 Set out below are definitions of the various terms referred to above in relation to reportable conduct.

3.15 Behaviour that causes psychological harm to a child is behaviour that is obviously or very clearly unreasonable and results in significant harm or trauma to a child.

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

3.17 Ill-treatment captures those circumstances where a person treats a child in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner. The focus is on the alleged conduct rather than the actual effect of the conduct on the child.

3.18 Ill-treatment can include disciplining or correcting a child in an obviously unreasonable and seriously inappropriate manner; making excessive and/or degrading demands on a child; hostile use of force towards a child; and/or pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

- 3.19 Neglect includes either an action or inaction by a person who has care responsibility towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.
- (a) Supervisory neglect:
- (i) An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
 - (ii) An intentional or reckless failure to adequately supervise a child or a significantly careless act or failure to act, that:
 - Involves a gross breach of professional standards, and
 - Has the potential to result in the death or significant harm to a child.
- (b) Carer neglect:
- (i) Grossly inadequate care that involves depriving a child of the basic necessities of life: such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.
- 3.20 Failure to protect from abuse:
- (a) An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.
- 3.21 Reckless act (or failure to act):
- (a) A reckless act, or failure to act, that:
- (i) Involves a gross breach of professional standards, and
 - (ii) Has the potential to result in the death of, or significant harm to, a child.
- 3.22 Physical Assault is any act by which a person intentionally inflicts unjustified use of physical force against another. An assault can also occur if a person causes another person to reasonably apprehend that unjustified force is going to be used against them. Even if a person who inflicts physical harm or causes another person to reasonably apprehend physical harm does not actually intend to inflict the harm or cause fear, they may still have committed an assault if they acted 'recklessly'.
- 3.23 'Recklessness' in this context relates to circumstances when the person ought to have known that their actions would cause a person physical harm or cause them to fear injury.
- 3.24 Assaults can include hitting, pushing, shoving, throwing objects or making threats to physically harm a child.
- 3.25 PSOA 'person subject to the allegation'.
- 3.26 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.

3.27 Sexual Misconduct has two categories which include:

- (a) crossing professional boundaries, and
- (b) sexually explicit comments and other overtly sexual behaviour.

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

Crossing professional boundaries

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

- (a) relationship with;
- (b) conduct towards; or
- (c) focus on;

a child or young person, or a group of children or young persons.

3.29 The College's Code of Professional Conduct outlines the nature of the professional boundaries which should exist between employees and children/young people and can be particularly useful. For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be necessary to provide more detailed written advice about what constitutes appropriate behaviour.

Sexually explicit comments and other overtly sexual behaviour

3.30 Behaviour involving sexually explicit comments and other overtly sexual behaviour which can constitute sexual misconduct. Some forms of this behaviour also involve crossing professional boundaries. This conduct may include:

- (a) inappropriate conversations of a sexual nature;
- (b) comments that express a desire to act in a sexual manner;
- (c) unwarranted and inappropriate touching;
- (d) sexual exhibitionism;
- (e) personal correspondence (including electronic communications such as e-mails and text messages) with a child or young person in relation to the adult's sexual feelings for a child or young person;
- (f) exposure of children and young people to sexual behaviour of others including display of pornography;
- (g) watching children undress. For example, in change rooms or toilets when supervision is not required or justified.

3.31 Sexual Offences encompasses all criminal offences involving a sexual element that are 'committed against, with or in the presence of a child'.

- 3.32 These offences include (but are not limited to) the following:
- (a) indecent assault;
 - (b) sexual assault;
 - (c) aggravated sexual assault;
 - (d) sexual intercourse and attempted sexual intercourse;
 - (e) possession/ dissemination/ production of child pornography or child abuse material;
 - (f) using children to produce pornography;
 - (g) grooming or procuring children under the age of 16 years for unlawful sexual activity;
 - (h) deemed non-consensual sexual activity on the basis of special care relationships.
- 3.33 The above definitions are not necessarily exhaustive and any person to whom this policy applies should exercise their best judgment when considering potential abuse of a child or young person in any form.
- 3.34 If anyone to whom this policy applies is in doubt as to whether any of the above forms of abuse are occurring, they should speak to the Principal as soon as is reasonably practicable.

What happens when an allegation of reportable conduct is made?

Initial steps

- 3.35 Once an allegation of reportable conduct against an employee is received, the Head of Agency (Principal) is required to:
- (a) determine on face value whether it is an allegation of reportable conduct;
 - (b) assess whether Community Services or the Police need to be notified (ie, if reasonable grounds to suspect that a child is at risk of significant harm or criminal offence);
 - (c) notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by Community Services or the Police);
 - (d) notify the Ombudsman of the allegation of reportable conduct as soon as practicable but in any event within 30 days of receiving the allegation;
 - (e) carry out a risk assessment and take action to reduce/remove risk, where appropriate;
 - (f) notify the Ombudsman of the decision made in relation to taking action or otherwise and the reason(s) for that decision; and
 - (g) investigate the allegation or appoint someone to investigate the allegation.

Investigation principles

- 3.36 The College will:
- (a) be mindful of the principles of procedural fairness;
 - (b) inform the person subject of the allegation (PSOA) of the substance of any allegations made against them and provide them with a reasonable opportunity to respond to the allegations;
 - (c) make reasonable enquiries or investigations before making a decision;
 - (d) avoid conflicts of interest;
 - (e) conduct the investigation without unjustifiable delay;
 - (f) handle the matter as confidentially as possible; and
 - (g) provide appropriate support for all parties including the child/children, witnesses and the PSOA.

Investigation steps

- 3.37 In an investigation the Head of Agency (Principal) or appointed investigator will generally:
- (a) interview relevant witnesses and gather relevant documentation;
 - (b) provide a letter of allegation to the PSOA;
 - (c) interview the PSOA;
 - (d) consider relevant evidence and make a preliminary finding in accordance with the NSW Ombudsman guidelines;
 - (e) inform the PSOA of the preliminary finding and provide them with an opportunity to respond;
 - (f) consider any response provided by the PSOA;
 - (g) make a final finding in accordance with the NSW Ombudsman Guidelines;
 - (h) decide on the disciplinary action, if any, to be taken against the PSOA;
 - (i) apply the NSW Office of the Children's Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG; and
 - (j) send the final report to the Ombudsman and report to the OCG (where required) (see Part C).
- 3.38 A PSOA may have an appropriate support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.

Risk management

- 3.39 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.
- 3.40 The Head of Agency (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.

Initial risk assessment

- 3.41 One of the first steps following an allegation of reportable conduct against an employee is for the Head of Agency (Principal) to conduct a risk assessment. The purpose of this initial risk assessment is to identify and minimise the risks to:
- (a) the child(ren) who are the subject of the allegation;
 - (b) other children with whom the employee may have contact;
 - (c) the PSOA;
 - (d) the College, and
 - (e) the proper investigation of the allegation.
- 3.42 The factors which will be considered during the risk assessment include, but are not limited to:
- (a) the nature and seriousness of the allegations;
 - (b) the vulnerability of the child(ren) the PSOA has contact with at work;
 - (c) the nature of the position occupied by the PSOA;
 - (d) the level of supervision of the PSOA; and
 - (e) the disciplinary history or safety of the PSOA and possible risks to the investigation.
- 3.43 The Head of Agency (Principal) will take appropriate action to minimise risks. This may include the PSOA being temporarily relieved of some duties, being required not to have contact with certain students, or being suspended from duty. When taking action to address any risks identified, the College will take into consideration both the needs of the child(ren) and the PSOA.
- 3.44 Please Note: A decision to take action on the basis of a risk assessment is not indicative of the findings of the matter. Until the investigation is completed and a finding is made, any action, such as an employee being suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

Ongoing Risk Management

- 3.45 The Head of Agency (Principal) will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

Risk Management at the Conclusion of the Investigation

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

What information will be provided to the PSOA?

- 3.47 The PSOA will be advised:
- (a) that an allegation has been made against them (at the appropriate time in the investigation); and
 - (b) of the substance of the allegation, or of any preliminary finding and the final finding.
- 3.48 The PSOA does not automatically have the right to:
- (a) know or have confirmed the identity of the person who made the allegation; or
 - (b) be shown the content of the Ombudsman notification form or other investigation material that reveals all information provided by other employees or witnesses.
- 3.49 The WWC Act enables a person who has a finding referred to the Office of the Children's Guardian (the OCG) under the Act to request access to the records held by the College in relation to the finding of misconduct involving children (see Part C section 3).

Disciplinary Action

- 3.50 As a result of the allegations, investigation or final findings, the College may take disciplinary action against the PSOA (including but not limited to termination of employment).
- 3.51 In relation to any disciplinary action the College will:
- (a) give the PSOA details of the proposed disciplinary action; and
 - (b) give the PSOA a reasonable opportunity to respond before a final decision is made.

Confidentiality

- 3.52 It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible.
- 3.53 The College requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.
- 3.54 Records about allegations of reportable conduct against employees will be kept in a secure area and will be accessible by the Head of Agency (Principal) or with the Head of Agency's express authority.
- 3.55 No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the Principal to do so.
- 3.56 If you become aware of a breach of confidentiality in relation to a reportable conduct allegation you must advise the Principal.

4. CHILD PROTECTION (WORKING WITH CHILDREN) ACT 2012

General

- 4.1 The Office of the Children’s Guardian (OCG) is responsible for employment screening for child related employment and promoting and regulating quality, child safe organisations and services. According to Section 8 of the WWC Act, a worker must not engage in child-related work unless they hold a Working with Children Check Clearance of a class applicable to the work or there is a current application by the worker to the Commission for a clearance of a class applicable to that work. A worker must not engage in child-related work at any time that the worker is subject to an interim bar (see definitions in Part C: Section 3 of this policy).
- 4.2 A Working with Children Check (Check) is a prerequisite for anyone in child-related work. It involves a national criminal history check and review of reported workplace misconduct findings. The result of a Check is either a clearance to work with children for five years, or a bar against working with children. Cleared applicants are subject to ongoing monitoring by the OCG, and any relevant new records which appear against a cleared applicant's name may lead to the Check being revoked.
- 4.3 It is the responsibility of the child-related worker to ensure that when they are eligible to apply for a Check or when their Check is up for renewal that they do so.
- 4.4 If you are an existing employee, employed at this College in paid child-related work prior to the commencement of the new Working with Children systemⁱ, or you are a volunteer, your requirement to obtain a Check will be phased in over a five year period, according to the phase in schedule developed by the OCG.

Responsibilities

- 4.5 The object of the WWC Act is to protect children:
- (a) by not permitting certain persons to engage in child-related work; and
 - (b) by requiring persons engaged in child-related work to have working with children check clearances.
- 4.6 The College is required to:
- (a) verify online and record the status of each child-related worker’s Check;
 - (b) only employⁱⁱ or engage child-related workers or eligible volunteers who have a valid Check; and
 - (c) report findings of misconduct involving children made against child-related workers or volunteers.

- 4.7 Child-related workers and all volunteers are required to:
- (a) hold and maintain a valid Check;
 - (b) not engage in child-related work at any time that they are subjected to an interim bar or a bar; and
 - (c) report to the Principal if they are no longer eligible for a Check, the status of their Check changes or are notified by the OCG that they are subjected to a risk assessment.

save for the following classes of volunteers:

- (a) a parent, or close relative, of a child who attends the school when volunteering at or for activities of the school;
- (b) a parent, or close relative, of a child when volunteering in connection with a team, program or other activity of which the child is a member or in which the child usually participates;
- (c) a worker who is under the age of 18 years.

- 4.8 All volunteers are required to:
- (a) sign the Volunteer Statutory Declaration. Some volunteers engaged in high risk roles may be required to have a Check;
 - (b) to be aware and follow the expectations of conduct expressed in the College Staff Code of Professional Conduct.

Relevant Definitions

Bars

- 4.9 Final bar
- 4.10 This bar is applied based on a decision made by the OCG, following a risk assessment. This person is barred against working with children.
- 4.11 Interim bar
- 4.12 An interim bar is issued to high risk individuals to prevent them from continuing to work with children while a risk assessment is conducted.

- 4.13 An interim bar ceases to have effect:
- (a) on notification in writing by the Children’s Guardian to the applicant or holder that the interim bar is revoked, or
 - (b) in the case of an applicant for a clearance, if the applicant is granted a clearance, or
 - (c) 12 months after the interim bar takes effect, whichever occurs first.
- 4.14 If an interim bar remains in place for six months or longer, it may be appealed against through the Administrative Decisions Tribunal.
- 4.15 Not everyone who is subject to a risk assessment will receive an interim bar; only those representing a serious and immediate risk to children.
- 4.16 Interim bars are issued only for risks considered likely to result in a final bar.
- 4.17 The College reserves its right to withdraw an offer of employment to any applicant that receives a final or interim bar.

Child-related work

- 4.18 Child-related work includes, but is not limited to work in the following sectorsⁱⁱⁱ:
- (a) early education and child care including education and care service, child care centres and other child care;
 - (b) education Colleges and other educational institutions and private coaching or tuition of children;
 - (c) religious services;
 - (d) residential services including boarding Colleges, homestays more than three weeks, residential services and overnight camps; or
 - (e) transport services for children including College bus services, taxi services for Children with disability and supervision of College road crossings.

Child-related worker

- 4.19 A person who has physical contact or face to face contact with children in work outlined above in 3.2, including Colleges. This may include volunteer work.
- 4.20 A child-related worker may commence work once they have completed the Check application process. An application is completed when the online application form is complete and the worker’s identity has been proven at the NSW motor registry or Council Agency and the fee has been paid (if in paid work).
- 4.21 If you are unclear if your role is child-related you should speak with the Principal.

Disqualified person

- 4.22 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.
- 4.23 A disqualified person also includes a person who has a bar preventing them from working with children in child-related work.
- 4.24 It is an offence for an employer to knowingly engage a child-related worker when they do not hold a Check or who has a bar or an interim bar.
- 4.25 It is an offence for an employee to knowingly engage in child-related worker when they do not hold a Check or has a bar or an interim bar.

Findings of misconduct involving children

- 4.26 The College will report to the OCG when a finding has been made that the person (an employee of the College) subject to the finding engaged in:
- (a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
 - (b) any serious physical assault of a child;^{iv} or
 - (c) any other assessment requirement trigger(s) listed in Schedule 1 of the WWC Act; or
 - (d) A person has been convicted of, or proceedings have been commenced against a person for, offences involving violence or sexual misconduct listed in Schedule 1 or Schedule 2.
 - (e) A person has been convicted of, or proceedings have been commenced against a person for, offences involving violence or sexual misconduct whether or not listed in Schedule 1 or Schedule 2 sufficient to indicate a pattern of behaviour that warrants investigation as to whether it may cause a risk to the safety of children.
- 4.27 The College will advise the person that the OCG has been notified of a finding of misconduct involving children or is otherwise in breach of the above provisions (a) to (e).
- 4.28 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.

Reporting body

- 4.29 Independent Colleges which are members of the AISNSW are defined as a reporting body by the WWC Act.
- 4.30 Section 35 of the WWC Act requires this College to notify the OCG findings of misconduct involving children made against a child-related worker. The College may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act.

Risk assessment

- 4.31 Risk assessment is an evaluation of an individual's suitability for child-related work.
- 4.32 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, but is not limited to an offence under Schedule 1 of the WWC Act, pattern of behaviour or offences involving violence or sexual misconduct representing a risk to children, findings of misconduct involving children or notification made to OCG by the Ombudsman.

Working With Children Check Clearance

- 4.33 A Working with Children Check Clearance means authorisation under the WWC Act to engage in child-related work. An employee will be issued with a number which is to be provided to the College to verify the status of an employee's Check.
- 4.34 Duration of Working with Children Check Clearance
- 4.35 A working with children check clearance ceases to have effect 5 years after the date it is granted, unless it is sooner cancelled or surrendered.
- 4.36 The holder of a clearance may apply for a new clearance at any time within the period beginning 3 months before the expiry of the clearance.
- 4.37 Child-related workers and volunteers are required to hold and maintain a valid check clearance at all times while engaged in child-related work.

REFERENCES

NSW Family and Community Services

www.community.nsw.gov.au

NSW Ombudsman

www.ombo.nsw.gov.au

The Children's Guardian (formerly the NSW Commission for Children and Young People)

www.kids.nsw.gov.au

Department of Premier and Cabinet – Keep Them Safe

www.keepthemsafe.nsw.gov.au

The Structured Decision Making System – New South Wales Mandatory Report Guide” published by the Department of Family and Community Services and accessible at the following url address:

http://www.community.nsw.gov.au/kts/guidelines/documents/mandatory_reporter_guide.pdf

www.childwise.net/news/17/groomingdec13

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

ⁱⁱ As of 15 June 2013, existing employees and volunteers are subjected to a phase in schedule developed by the OCG. This can be found at www.kids.gov.nsw.au or at appendix XX (which may be updated from time to time by the OCG).

ⁱⁱⁱ Further information at Part 2 Division 1 Section 6 Child Protection (Working With Children) Act 2012 found at <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+51+2012+cd+0+N>

^{iv} 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