

Child Protection Policy and Procedures

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Purpose and Scope

1. Introduction

1.1 Purpose and scope

This policy sets out the key elements of Meriden School's ('the School') approach to child protection as a child safe organisation. The purpose of this policy is to set out staff obligations and responsibilities for child protection and the processes that staff must follow in relation to child protection matters.

Child protection is a community responsibility. This policy applies to all staff members, which includes employees, contractors and volunteers. It applies in all Meriden environments, both physical and online, during and out of school hours and on-site and off-site Meriden grounds (e.g. camps, excursions and tours).

Some volunteers and contractors may not be required under the relevant legislation to hold a Working with Children Check Clearance, for the purposes of their engagement with the School (see Section 5).

Staff members who fail to adhere to this policy may be in breach of their terms of employment, contract or terms of engagement.

When the term students is used in this policy, it refers to all students enrolled at Meriden regardless of age.

1.2 Meriden's commitment to child safety

The safety, protection, welfare and wellbeing of all students is of fundamental importance to Meriden. Meriden, as a child safe organisation, is committed to creating and embedding a child safe culture into its practices and processes in order to create conditions that reduce the likelihood of children being harmed, increase the likelihood of identifying and reporting harm and respond appropriately when disclosures, allegations or suspicions of harm are raised.

Meriden is committed to providing and maintaining a safe and supportive environment for all its students – one where students feel, and are, safe and respected and one where staff are equipped with the knowledge, skills and awareness to keep students safe.

Meriden is committed to understanding and fully implementing all legislation applicable to the care and protection of children and young people. Meriden has zero tolerance for child abuse. All staff employed by Meriden are responsible for the care and protection of the students and are to report information about suspected child abuse.

Within its Christian context, Meriden values the unique and immeasurable worth of each child and seeks to nurture and promote the wellbeing and development of each student who comes into its care.

Meriden accepts its duty of care to the children and young people within the School and seeks to diligently uphold all its duty of care obligations through educating and supporting staff, students and the school community in appropriate and safe dealings with students.

Meriden places high priority on the exercise of procedural fairness and natural justice, and on the support of students and employees involved in matters of reportable conduct.

1.3 Key legislation

There are four key pieces of child protection legislation in New South Wales:

- a. the *Children and Young Persons (Care and Protection) Act 1998* (NSW) ('Care and Protection Act')
- b. the *Child Protection (Working with Children) Act 2012* (NSW) ('WWC Act')

- c. the *Children's Guardian Act 2019* ('Children's Guardian Act')
- d. the *Crimes Act 1990* (NSW) ('Crimes Act').

Child Safe Scheme and the Child Safe Standards

Part 3A of the Children's Guardian Act establishes the Child Safe Scheme which gives the Office of the Children's Guardian (OCG) additional powers to monitor and investigate how organisations implement the Child Safe Standards to support the safety and wellbeing of children and young people. Under the Scheme, certain child-related organisations including in the Education, Early Childhood, Health and Youth Justice sectors, must implement the Child Safe Standards.

The Office of the Children's Guardian is an independent statutory body that promotes the interests, safety and rights of children and young people in NSW. The core functions of the Office of the Children's Guardian include administering Working With Children Checks, Reportable Conduct Scheme and implementation of the Child Safe Standards.

The Child Safe Standards are:

- a. Child safety is embedded in organisational leadership, governance and culture.
- b. Children participate in decisions affecting them and are taken seriously.
- c. Families and communities are informed and involved.
- d. Equity is upheld, and diverse needs are taken into account.
- e. People working with children are suitable and supported.
- f. Processes to respond to complaints of child abuse are child focused.
- g. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
- h. Physical and online environments minimise the opportunity for abuse to occur.
- i. Implementation of the Child Safe Standards is continuously reviewed and improved.
- j. Policies and procedures document how the organisation is child safe.

1.4 Related policies

There are a number of other Meriden policies that relate to child protection that staff members must be aware of and understand including (but not limited to):

- a. **Staff Code of Conduct (AS14)** which sets out information about the standards of behaviour expected of all staff members. Volunteers are also required to be aware of the expectations of conduct expressed in the Staff Code of Conduct.
- b. **Work Health and Safety Statement (AS16)** which identifies the obligations imposed by work health and safety legislation on the School and staff members
- c. **Discrimination, Harassment and Bullying Statement for Employees, Contractors and Volunteers (AS04)** which summarises obligations in relation to unlawful discrimination, harassment and bullying
- d. **Complaints Handling Policy and Procedures (AS08)** which provides the steps to be taken by the School in relation to complaints. , It should be noted that allegations of reportable conduct by staff are to be addressed by the procedures in this document (see Section 7 below).
- e. **Social Networking Policy (AS19)** which sets out directions to staff regarding the use of social networking platforms in the course of their employment or dealings with the School and its students
- f. **Driving Students in Vehicles Policy and Procedures (AS09)**– which sets out the child safety requirements if staff are required to transport students in a school bus, private vehicle or taxi.
- g. **Student Discipline/Behaviour Management Plan/Student Code of Conduct/Student Welfare Policies and Procedures including Anti-bullying policies and procedures.**
- h. **Working with Children Check Policy and Procedures (AS34)** which sets out the procedures to be followed to ensure that all persons engaged in child-related work at the School have a Working with Children Check clearance that is verified and recorded by the School.

1.5 Compliance and records

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

- a. records of staff members being informed of their legal obligations for child protection and other relevant School expectations, mandatory reporting and how to prevent, identify and report allegations of reportable conduct
- b. copies of Working with Children Check clearance ('WWCC clearance') verifications
- c. mandatory reports to the Department of Communities and Justice ('DCJ'), previously known as Family and Community Services and
- d. 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. a duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen, and
- b. 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 of a child means, in accordance with the Children's Guardian Act, a significant failure by a person with parental responsibility for the child, or an authorised carer or an employee if the child is in the employee's care, to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, that causes or is likely to cause harm to the child.

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 punishing 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 are safety, welfare or wellbeing concerns for a child or young person that do not meet the mandatory reporting threshold of risk of significant harm in section 6 (below).

2.3 Staff member responsibilities

Key legislation requires reporting of particular child protection concerns. However, as part of the School'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 of Junior School or Head of Student Wellbeing who is then responsible for notifying the Principal.

If the allegation involves the Principal, a report should be made to the Head Student Wellbeing who will be responsible for notifying the Chairman of School Council.

If the allegation involves the Head of Junior School or Head of Student Wellbeing, a report should be made directly to the Principal.

3. Recruitment

3.1 Recruitment procedures

Meriden adopts rigorous and consistent recruitment procedures to ensure child safety through pre-employment recruitment, screening and selection including in the following ways:

- a. The recruitment section of Meriden's website provides a statement of Meriden's commitment to child protection, that preferred candidates will be screened in accordance with the requirements of the WWC Act and that disqualified persons are ineligible to apply for employment at Meriden.
- b. By conducting interviews and referee checks of applicants before employment. The referee checks include questions about child protection.
- c. Meriden's website publishes a copy of this policy.
- d. By following the School's Working with Children Check Policy and Procedures
- e. It is a condition of employment at Meriden that all staff obtain and maintain a valid WWCC clearance during their employment. This condition is included in employment contracts.
- f. Meriden will not employ, or continue to employ, a person in child-related work that the School knows or has reasonable cause to believe that the person:
 - i. is not a holder of a WWCC clearance
 - ii. is subject to a bar or
 - iii. is a disqualified person (see section 5.2 below).

4. Staff training and information about responsibilities and expectations

4.1 The School

The School ensures that at least every 12 months:

- a. staff who have direct contact with students are informed of their legal responsibilities related to child protection and other relevant School expectations
- b. staff are informed about the School's policies and procedures to prevent, identify and report allegations of employee reportable conduct in compliance with the Children's Guardian Act and
- c. staff who are mandatory reporters under the Care and Protection Act are informed of their obligations and the School's procedure for making reports for students at risk of significant harm.

4.2 Staff members

The School adopts the following processes in relation to training and informing staff about child protection, mandatory reporting, reportable conduct and other School expectations in relation to child safety:

- a. **Induction:** as they are appointed, all new staff are provided with a copy of this policy, the Staff Code of Conduct and other policies and procedures that set out the School's expectations in relation to child safety. They must also attend child protection induction training in relation to the policies and procedures and the School's expectations. The Employment Relations Department, overseen by the Director of HR, is responsible for ensuring that all staff receive an induction that includes child protection training. Induction training sessions are held at least once a month during term time .
- b. **Annual training:** all ongoing staff must complete mandatory child protection training at least every 12 months and additional training as directed by the Principal. The Director of HR is responsible for ensuring that all staff receive annual training. The annual training for permanent staff is usually held on a mandatory staff day at the beginning of a term. All permanent staff are required to attend that day regardless of whether it is their usual work day. In addition, training is usually held once a month during term time for casual staff or any permanent staff who were absent on the mandatory staff day.
- c. **Publication of Policies:** The School's policies and procedures in relation to child protection, mandatory reporting and other relevant expectations are reviewed at least biennially and are available for staff to access on the School's intranet.

The induction and annual staff child protection training sessions are conducted face to face (occasionally online) by a senior member of staff (e.g. Dean of Staff (Junior or Senior School), Director of Sport or Director of Compliance) or a suitably qualified external agency (e.g. the NSW Association of Independent Schools).

The child protection training complements this policy and procedures and provides information to staff about their legal responsibilities related to child protection and the School's expectations, including:

- a. mandatory reporting
- b. reportable conduct
- c. working with children checks
- d. Staff Code of Conduct including professional boundaries, and
- e. other School policies and procedures relating to child safety.

Records of the induction and annual training attendance (e.g. signed attendance sheets and training materials) are maintained by the staff member who conducted the training and a hard copy is provided to the Employment Relations Department and is filed by the Human Resources Coordinator on the School's shared I:drive (I:Admin-WWWC and CP).

The Human Resources Coordinator is responsible for entering the date of training into each employee's record on the HR Payroll system (TASS).

The Director of HR is responsible for maintaining a refreshable spreadsheet of staff names and training dates downloaded from TASS and filing the spreadsheet on the School's I:drive (I:Admin-WWWC and CP). The Director of HR is responsible for monitoring, and ensuring, that staff attend induction and annual child protection training.

The Director of HR is responsible for overseeing the delivery of child protection induction and annual training to all staff including following up staff who are absent on the mandatory staff day or fail to attend their induction or annual training sessions.

5. Working with children

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

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

- a. grant a WWCC clearance (generally valid for 5 years) or
- b. refuse a WWCC clearance (further applications cannot be made for 5 years)

In addition, the OCG may impose a 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.

5.1 Responsibilities for working with children checks

5.1.1 Staff members

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

- a. hold and maintain a valid WWCC clearance
- b. not engage in child-related work at any time that they are subjected to an interim bar or a bar
- c. report to the Principal if they are no longer eligible for a WWCC clearance, the status of their WWCC clearance changes or are notified by the OCG that they are subjected to a risk assessment and
- d. 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 a condition of employment at the School that staff obtain and maintain a valid WWCC clearance. It is the responsibility of the staff member to renew their WWCC prior to expiry. The staff member is responsible for paying for the cost of the WWCC. The School will not reimburse staff.

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.

5.1.2 The School

The School is required to:

- a. verify online and record the status of each child-related worker's WWCC clearance. Online verification is the responsibility of the Executive Assistant to the Principal.
- b. only employ or engage child-related workers or eligible volunteers who have a valid WWCC clearance and
- c. 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 who does not hold a WWCC clearance or who has a bar.

The School has a Working with Children Check Policy and Procedures (available on the School's intranet and website) that sets out the School's procedures for meeting the requirements of the WWCC Act.

5.2 Working with children check clearance

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

5.2.1 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:

- a. early education and child-care including education and care service, child-care centres and other child care
- b. schools and other educational institutions and private coaching or tuition of children
- c. religious services
- d. residential services including boarding schools, homestays more than three weeks, residential services and overnight camps
- e. transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings and
- f. 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 Principal

5.2.2 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 must be provided to the School to verify the status of a staff member's WWCC clearance.

The School follows its Working with Children Check Procedures (AS34) to verify WWCC clearances, including renewals.

5.2.3 Refusal/Cancellation

The OCG can refuse to grant a WWCC 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.

5.2.4 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 NSW Civil and Administrative 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.

5.2.5 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 WWCC clearance and is therefore restricted from engaging in child-related work.

5.3 Ongoing monitoring

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

5.3.1 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 or notification made to the OCG by the Ombudsman.

5.4 Process for reporting to OCG

5.4.1 The School

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

The School is required to advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. 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 by the OCG to its 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 Principal is responsible for making such notifications. The Principal may delegate some or all of their duties to another suitable employee however is still ultimately accountable for the obligations being met.

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

5.4.2 Finding of misconduct involving children

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

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

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the School in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

5.4.3 Other information

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

6. Mandatory reporting

6.1 Who is a mandatory reporter?

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

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

- 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.

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

6.2 Reports to Department of Communities and Justice

6.2.1 What is the threshold?

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

In addition, the School may choose to make a report to the DCJ where there are reasonable grounds to suspect a young person (aged 16 years or above but under the age of 18 years) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

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

6.2.2 Reasonable grounds

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

- first-hand observations of the child, young person or family
- what the child, young person, parent 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.

6.2.3 Significant harm

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

- the 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* (NSW) —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 wellbeing.

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

6.3 Process for mandatory reporting

6.3.1 Staff members

Staff members must raise concerns about a child or young person who may be at risk of significant harm with the Principal or Head of Junior School or Head of Student Wellbeing 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. The Principal must be advised of any mandatory report made.

However, if there is an immediate danger to the child or young person and the Principal or Head of Junior School or Head of Student Wellbeing is not contactable, staff members should contact the Police and/or the Child Protection Helpline (13 21 11) directly and then advise the Principal or next most senior member of staff at the School as soon as possible.

Staff members are not required to, and must not, undertake any investigation of the matter.

Staff members are not permitted to inform the parents or caregivers that a report to the DCJ has been made.

Staff members are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy but could incite potential civil proceedings for defamation.

6.3.2 The School

In general, the Principal or the Head of Junior School/Head of Student Wellbeing as her delegate will report these matters to the DCJ and, where necessary, the police. This is supported by the DCJ in accordance with best practice principles.

6.4 Process for reporting concerns about students

6.4.1 Staff members

The Care and Protection Act outlines a mandatory reporter's obligation to report to the DCJ concerns about risk of significant harm. However, to ensure centralised reporting, all staff members are required to report any concern regarding the safety, welfare and wellbeing of a student to the Head of Junior School or Head of Student Wellbeing. Staff members who are unsure as to whether a matter meets the threshold of 'risk of significant harm' should report their concern to the Head of Junior School or Head of Student Wellbeing regardless.

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 Principal, Head of Junior School or Head of Student Wellbeing and any other person the Principal nominates.

6.5 Records of mandatory reports

Records about mandatory reports are kept in a secure area in the Principal's office and are only accessible by the Principal or with the Principal's express authority.

7. Reportable conduct

Section 29 of the Children's Guardian Act requires the Heads of Entities, including non-government schools in New South Wales, to notify the OCG of all allegations of reportable conduct and convictions involving an 'employee' and the outcome of the School's investigation of these allegations. Under the Children's Guardian Act, 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 (i.e. the Principal).

Reportable Conduct:

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

The OCG:

- must keep under scrutiny the systems for preventing reportable conduct by employees of non-government schools and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions
- must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions
- is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable conduct or reportable convictions
- must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation

- may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government school, or the handling of or response to such a matter (e.g. arising out of complaints by the person who is the subject of an allegation) and
- 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.

7.1 What is reportable conduct?

7.1.1 Definition of reportable conduct

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

- a sexual offence
- sexual misconduct
- an assault against a child
- ill-treatment of a child
- neglect of a child
- an offence under section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act and
- behaviour that causes significant emotional or psychological harm to a child.

Reportable conduct does not extend to:

- conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards e.g. a teacher raising their voice in order to attract or restore order in a classroom or the use of physical force that, in all the circumstances, is trivial or negligible and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures e.g. touching a child in order to attract the child's attention, momentarily restraining a child to prevent the child hurting themselves or others, touching a child to guide the child.

7.1.2 Definitions

The following definitions relate to reportable conduct:

- **Sexual offence:** an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child, such as:
 - sexual touching of a child
 - a child grooming offence
 - production, dissemination or possession of child abuse material.

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

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

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

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

- **Assault:** an assault can occur when a person intentionally or recklessly (i.e. knows the assault is possible but ignores the risk):
 - applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force) or
 - causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words and/or gestures regardless of whether the person actually intends to apply any force (apprehension of physical force)
- **Ill-treatment:** is defined as conduct towards a child that is:
 - unreasonable and
 - seriously inappropriate, improper, inhumane or cruel.

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

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

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

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

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

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

7.2 Process for reporting of reportable conduct allegations or convictions

7.2.1 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 Principal. Where it is uncertain if the conduct is reportable conduct but is considered inappropriate behaviour, this must also be reported.

Staff members must also report to the Principal when they become aware that an employee has been charged with, or convicted of, an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct. This includes information relating to the employee themselves.

If the allegation involves the Principal, the staff member must report to the Head of Student Wellbeing who will notify the Chairman of the School Council.

7.2.2 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 Principal or her delegate. All such reports will be dealt with in accordance with the School's Complaints Handling Policy and Procedures .

7.2.3 The School

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

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

The notification should include the following information:

- a. that a report has been received in relation to an employee of the School, and
- b. the type of reportable conduct, and
- c. the name of the employee, and
- d. the name and contact details of School and the Head of Entity, and
- e. for a reportable allegation, whether it has been reported to Police, and
- f. if a report has been made to the Child Protection Helpline, that a report has been made, and
- g. the nature of the relevant entity's initial risk assessment and risk management action.

The notice must also include the following, if known to the Head of Entity:

- a. details of the reportable allegation or conviction considered to be a reportable conviction,
- b. the date of birth and working with children number, if any, of the employee the subject of the report,
- c. the police report reference number (if Police were notified),
- d. the report reference number if reported to the Child Protection Helpline,
- e. the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.

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

7.3 Process for investigating an allegation of reportable conduct

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

7.3.1 Initial steps

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

- a. determine whether it is an allegation of reportable conduct
- b. assess whether the DCJ or the Police need to be notified (i.e. if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek clearance from these statutory agencies prior to the school proceeding with the reportable conduct investigation

- c. notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by the DCJ or Police)
- d. notify the OCG within 7 business days of receiving the allegation
- e. carry out a risk assessment and take action to reduce/remove risk, where appropriate
- f. provide an initial letter to the employee the subject of the allegation ('ESOA') advising that an allegation of reportable conduct has been made against them and the School's responsibility to investigate this matter under section 34 of the Children's Guardian Act and
- g. investigate the allegation or appoint someone to investigate the allegation.

7.3.2 Investigation principles

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

- a. follow the principles of procedural fairness
- b. 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
- 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 ESOA.

7.3.3 Investigation steps

In an investigation the Principal or appointed investigator will generally:

- a. interview relevant witnesses and gather relevant documentation
- b. provide a letter of allegation to the ESOA
- c. provide the ESOA with the opportunity to provide a response to the allegations either in writing or at an interview
- d. consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines
- e. 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
- f. consider any response provided by the ESOA
- g. make a final finding in accordance with the OCG guidelines
- h. decide on the disciplinary action, if any, to be taken against the ESOA
- i. 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.
- j. should the final report be unfinished within 30 days, the Head of Entity must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as per section 38 of the Children's Guardian Act.

Submission of an interim report must include:

- a reason for not providing the final report within 30 days and an estimated time frame for completion of the report.
- specific information, including (if known) the facts and circumstances of the reportable allegation, any known information about a reportable conviction, action taken since the OCG received a notification about the reportable allegation or reportable conviction, further action the Head of Entity proposes to take in relation to the reportable allegation or reportable conviction (including if the Head of Entity proposes to take no further action), the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action, other information prescribed by the regulations; and

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

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

An ESOA may have 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.

7.4 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 Principal, as Head of Entity, is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

7.4.1 Initial risk assessment

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

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

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

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

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

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

7.4.2 Ongoing risk assessment

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

7.4.3 Findings

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

7.4.4 Information for the ESOA

The ESOA will be advised:

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

The ESOA does not automatically have the right to:

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

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the school in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

7.4.5 Disciplinary action

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

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

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

7.4.6 Confidentiality

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

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

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

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

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

8. Criminal offences

In 2018, the Crimes Act was amended to adopt recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. As a result, there are three criminal offences that apply to adults working with children. The offences are designed to prevent child abuse and to bring abuse that has already occurred to the attention of the Police. The offences are:

8.1 Failure to protect offence – s43B Crimes Act

An adult working in a school, therefore all staff members, will commit an offence if they know another adult working there poses a serious risk of committing a child abuse offence and they have the power to reduce or remove the risk, and they negligently fail to do so either by acts and/or omissions.

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

8.2 Failure to report offence – s316A Crimes Act

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

8.3 Special Care Relationships – s73 Crimes Act

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 Crimes 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 offence under s73A expands special care offences to also apply to non-penetrative sexual touching. The offence protects children aged 16-17 years from inappropriate sexual contact with teachers and others who have special care of the child.

9. Review of policies and procedures

After the conclusion of reportable conduct investigations, the School will undertake a review of any matters arising, to identify contributing factors to minimise the chance of reoccurrence and any policies or procedures that may need amendment..

REFERENCES

NSW Department of Communities and Justice - www.dcj.nsw.gov.au

The Office of the Children's Guardian – www.ocg.nsw.gov.au

Related documents

Complaints Handling Policy and Procedures (AS08)

Driving Students in Vehicles Policy and Procedures (AS09)

Employee Support Person Protocols (AS06)

Information Technology, Computer, Telephone and Equipment Code of Use (AS18)

Social Networking Policy (AS19)

Staff Code of Conduct (AS14)

Working with Children Check Policy and Procedures (AS34)