

# Child Protection Policy

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## 1. Rationale

In all their ministries, the Missionaries of the Sacred Heart value every human person and hold as precious the healthy growth of body, mind and spirit of each individual. For Chevalier College (the college), these values resonate particularly to the care and protection of the children and young people in its care.

The safety, protection and wellbeing of all students is of fundamental importance to the college.

Staff members 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.

Child protection is a community responsibility.

## 2. Aims

The purpose of this policy is to summarise the obligations imposed by child protection legislation on the college and its workers, and to provide guidelines as to how the college will deal with certain matters.

To provide clear set clear guidelines and expectations regarding complaints or allegations of staff misconduct or reportable conduct.

## 3. Definitions

Principal:	The Principal of Chevalier College or their delegate
Principal's delegate:	A member of the Leadership Team acting as Principal in the Principal's absence
Head of Entity:	The Head of Entity at Chevalier College is the Principal

## 4. Introduction

### 4.1. Purpose and scope

This policy sets out staff responsibilities for child protection and processes that staff must follow in relation to child protection matters. This policy applies to all staff members, which includes staff, contractors and volunteers.

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

### 4.2. Key legislation

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

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

### 4.3. Compliance and records

The Principal is responsible for monitoring compliance with this policy and for the secure maintenance of college records relevant to this policy, which includes:

- a register of staff members who have undertaken child protection training
- working with children check clearance (WWCC clearance) verifications;
- mandatory reports to the Department of Communities and Justice (DCJ), previously known as Family and Communities Services; and
- reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions.

## 5. Child Protection and Wellbeing

The safety, protection and welfare of college students is the responsibility of all staff members and encompasses:

- a duty of care to ensure that reasonable steps are taken to prevent harm to students, which could have reasonably been foreseen
- obligations under child protection legislation.

### 5.1. Child protection concerns

Children and young people form one of the most vulnerable groups in our society. It is essential that children and young people at risk of significant harm are protected. Common reasons for children and young people to be at risk of significant harm include:

- **Neglect** is the continued failure by a parent or caregiver to provide a child with the basic things needed for his or her proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.
- **Sexual abuse** is when someone involves a child or young person in a sexual activity by using their power over them or taking advantage of their trust. Often children are bribed or threatened physically and psychologically to make them participate in the activity. Child sexual abuse is a crime.
- **Physical abuse** is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation.

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

Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or 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.

## 5.2. 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.

## 6. Mandatory Reporting

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

### 6.1. Mandatory reporters

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

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

All staff who have direct contact with students at Chevalier College are mandatory reporters. Any queries about the mandatory reporting status of a staff member should be directed to the Principal.

### 6.2. Obligation to report

The Care and Protection Act outlines a mandatory reporter's obligation to report concerns about risk of significant harm to the NSW Department of Communities and Justice (DCJ). 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 NSW Department of Communities and Justice (DCJ) as soon as practicable. The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

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

Staff members who are unsure as to whether a matter meets the threshold of 'risk of significant harm' should report their concern to the Principal regardless. The Principal may choose to make a report to the DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and wellbeing of the young person.

Staff members are required to deal with all reports regarding the safety, welfare or wellbeing of a student confidentially and only disclose it to the Principal and any other person the Principal nominates.

### 6.2.1. Reasonable grounds

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

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

'Reasonable grounds' does not mean a person is required to confirm their suspicions or have clear proof before making a report.

### 6.2.2. Significant harm

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

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

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

What is significant, is not minor or trivial and, may reasonably be expected to produce a substantial and demonstrably adverse impact on the child 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. Mandatory reporting process**

#### **6.3.1. Staff members**

All staff with direct contact with students at Chevalier College are obligated by law to report issues in relation to child safety. Staff members must raise concerns about a child or young person who may be at risk of significant harm with the Principal as soon as possible to discuss whether the matter meets the threshold of 'risk of significant harm' and the steps required to report the matter.

If an allegation or concern involves the Principal, a report is to be made to the Director of MSC Education and/or the police and/or the Department of Communities and Justice.

Where there is an immediate danger to the child or young person, and the Principal or next most senior member of staff 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 college 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 Principal or Department of Communities and Justice 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 College**

In general, the Principal will report matters to the Department of Communities and Justice (DJC) and, where necessary, the police. This is supported by the DCJ in accordance with best practice principles.

## **7. Reporting student welfare or wellbeing concerns**

As part of the college's overall commitment to the protection of children, all staff are required to report any welfare or wellbeing concern about a student regardless of whether it meets the threshold of mandatory reporting or not. If a concern does not meet the threshold, staff should report their concerns to the student's Stage Coordinator. This will enable early intervention and help prevent problems escalating.

Staff members are required to deal with all reports regarding the safety, welfare or wellbeing of a student confidentially.

## **8. Training**

Training enhances the skills of staff and provides them with support and information to carry out their duties and help minimise harm to the students under the care of the college. The college will ensure that all staff who have direct contact with students, including casual staff, are informed on employment and annually of their legal responsibilities related to child protection, mandatory reporting obligations, reportable conduct and other relevant college expectations.

Annual child protection training is mandatory for all staff with direct contact with students. The training complements this policy and provides information to staff about college expectations, their legal responsibilities and obligations related to child protection, including:

- mandatory reporting
- reportable conduct
- working with children checks, and
- professional boundaries.

Staff participation in training will be recorded and the records maintained. A staff member who is recorded as having completed child protection training is considered to have understood the content of that training, unless the staff member reports otherwise in writing to the Deputy Principal.

## **8.1. Procedures**

This policy is published on the college website and is available to staff through the Staff Handbook, which is located on the Teams – All Staff Team.

The college provides annual mandatory child protection training for all staff with direct access to students.

### **8.1.1. Face-to-face Training (full- and part-time staff)**

Where face-to-face child protection training is utilised, it is the responsibility of the Deputy Principal to ensure the preparation of sign-on training sheets. Sign-on sheets must include:

- an alphabetical list of all current full- and part-time staff
- a description of the training session
- the name of the facilitator
- date of the session

Staff must sign in at the beginning of the training session. At the conclusion of training, the Deputy Principal will provide the sign-on sheets to the Compliance Administration Manager, who will ensure that staff who were not present at the session are enrolled into the online equivalent course.

### **8.1.2. Online Training (full- and part-time staff)**

The Compliance Administration Manager will ensure that any full- and part-time staff not present for face-to-face training will be informed of the requirement to complete child protection online training within two (2) weeks of their return to work. Staff who have not completed the task within the required timeframe will be managed by the Deputy Principal under college employee management processes.

Completion records of online training are automatically generated.



### 8.1.3. Casual Staff

It is the responsibility of the Compliance Administration Manager to:

- consult with the Administration Coordinator to identify the casual staff the college will retain on its casual list prior to the start of the school year
- enrol those casual staff into online child protection training
- notify those casual staff of the requirement to complete child protection training as a prerequisite of employment in the new school year
- monitor training records and ensure the Administration Coordinator is aware of any casual who has not completed the necessary training.

It is the responsibility of the Administration Coordinator to ensure casuals who have not received annual training are not engaged by the college.

### 8.1.4. Staff returning from leave

It is the responsibility of the Compliance Administration Manager to ensure that all staff returning from leave meet the annual child protection training requirements. The Compliance Administration Manager must:

- review child protection training records to identify outstanding training needs
- consult with relevant personnel to identify the return dates of staff
- notify relevant staff on their return to work of the requirement to complete child protection training within two weeks of their return
- monitor training records and report any non-compliance to the Deputy Principal.

### 8.1.5. New Staff (full- and part-time, and casual staff)

New staff who have direct contact with students are required to complete child protection training as part of the employment process. Staff with responsibilities for employment processes should refer to the relevant employment procedures for further details.

### 8.1.6. Recordkeeping

Record	Process	Record Location (if applicable)	Responsibility
Sign-on training records (in-house training)	Scanned copy storage	S:\ADMINISTRATION\Compliance Administration\TRAINING\Child Protection	Comp Admin Mgr
	Hard copy storage	Compliance Office Cabinet	Comp Admin Mgr
Online training courses	Storage	Archival Records – Teams>Human Resources>Training>Training Data from Learning Manager	Comp Admin Mgr
		Canvas>Staff Training>Quizzes>Child Protection Training Acknowledgement Canvas>Staff Training>Quizzes>Code of Conduct Acknowledgement	Comp Admin Mgr

## 9. Working With Children

The Working With Children Act requires that a child-related worker must hold a current Working With Children Check (WWCC) clearance or has a current application in place to engage in child-related work. Failure to do so may result in a fine or imprisonment.

The Office of the Children's Guardian (OCG) is responsible for determining applications for a WWCC clearance. It involves a national criminal history check and review of reported workplace misconduct findings. The determination of an application will be either the:

- granting of a WWCC clearance (generally valid for 5 years); or
- refusal of a WWCC clearance (further applications cannot be made for 5 years).

In addition, the OGC may impose an interim bar on engaging in child-related work for both applicants and WWCC clearance holders.

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

### 9.1. Working with Children Check

A Working With Children Check (WWCC) clearance is authorisation under the Working With Children Act for a person to engage in child-related work.

#### 9.1.1. Child-related work

Child-related work involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work. Child related work includes, but is not limited to work in the following sectors:

- early education and child-care including education and care service, child-care centres and other child care;
- colleges and other educational institutions and private coaching or tuition of children;
- religious services;
- residential services including boarding colleges, homestays more than three weeks, residential services and overnight camps;
- transport services for children including college bus services, taxi services for children with disability and supervision of college road crossings; and
- 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.

#### 9.1.2. Application/Renewal

An application or renewal can be made through Service NSW. The process for applying for and renewing a WWCC clearance with the OGC involves a national police check and a review of findings of misconduct. If the OGC grants or renews a WWCC clearance the

holder will be issued with a number which is to be provided to the College to verify the status of a staff member's WWCC clearance.

### **9.1.3. 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 OGC and instructed to remove such persons from child-related work.

### **9.1.4. Interim bar**

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

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

### **9.1.5. 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 Working With Children Act. A disqualified person cannot be granted a WWCC clearance and is therefore restricted from engaging in child related work.

## **9.2. Ongoing monitoring**

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

### **9.2.1. 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 or sexual misconduct representing a risk to children and findings of misconduct involving children.

## **9.3. Responsibilities for working with children checks**

### **9.3.1. The College**

The College is required to:

- conduct online verification and record the status of each child-related worker's WWCC clearance;
- only employ or engage child-related workers or eligible volunteers who have a valid WWCC clearance; and

- 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.

### 9.3.2. Staff members

Staff members who engage in child-related work and eligible volunteers are required to:

- hold and maintain a valid WWCC clearance;
- not engage in child-related work at any time that they are subjected to an interim bar or a bar;
- report to the 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
- notify the OCG of any change to their personal details within 3 months of the change occurring. Failure to do so may result in a fine.

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

## 10. Reportable Conduct

Section 29 of the Children's Guardian Act 2019 requires the Heads of Entities, including non-government schools in New South Wales, to notify the Office of the Children's Guardian of all allegations of reportable conduct and convictions involving an 'employee' and the outcome of the school's investigation of these allegations. Under the Children's Guardian Act 2019, allegations of child abuse only fall within the reportable conduct jurisdiction if the involved individual is an employee of the relevant entity at the time the allegation becomes known by the Head of Entity.

Reportable conduct:

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

The Office of the Children's Guardian:

- must keep under scrutiny the systems for preventing reportable conduct by staff 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 Office of the Children's Guardian considers it appropriate to do so.

## 10.1. Reportable conduct

Under the Children's Guardian Act 2019 *reportable conduct* is defined as:

- a sexual offence
- sexual misconduct
- an assault against a child
- ill-treatment of a child
- neglect of a child
- an offence under section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act 1900; 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; or
- the use of physical force that, in all the circumstances, is trivial or negligible and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures; or
- conduct of a class or kind exempted from being reportable conduct by the Children's Guardian Act under section 30.

### 10.1.1. 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 Working With Children Act, grooming is recognised as a form of sexual misconduct. The Children's Guardian Act 2019 and this Child Protection Policy reflect 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 staff 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.

## 10.2. Process for reporting of reportable conduct allegations or convictions

### 10.2.1. Staff members

Any concerns about an 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, the matter must also be reported.

Staff members must also report to the Principal when they become aware that a staff member 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 staff member themselves.

If an allegation involves the Principal, the staff member must report the matter to the Director of MSC Education.

### **10.2.2. 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 their delegate. All such reports will be dealt with in accordance with college complaint handling procedures.

### **10.2.3. The College**

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

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

The notification should include the following information:

- (a) that a report has been received in relation to an employee of the College, and
- (b) the type of reportable conduct, and
- (c) the name of the employee, and
- (d) the name and contact details of College 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.

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

### 10.3. 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.

#### 10.3.1. Initial steps

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

- determine whether it is an allegation of reportable conduct;
- assess whether the DCJ or the Police need to be notified (i.e., if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek clearance from these statutory agencies prior to the college proceeding with the reportable conduct investigation;
- notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by the DCJ or police);
- notify the OCG within 7 business days of receiving the allegation;
- carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- provide an initial letter to the employee advising that an allegation of reportable conduct has been made against them and the College's responsibility to investigate this matter under Section 34 of the Children's Guardian Act 2019; and
- investigate the allegation or appoint someone to investigate the allegation.

#### 10.3.2. Investigation principles

During the investigation of a reportable conduct allegation, the college will:

- follow the principles of procedural fairness;
- inform the employee of the substance of any allegations made against them, at the appropriate time in the investigation, and provide them with a reasonable opportunity to respond to the allegations;
- make reasonable enquiries or investigations before making a decision;
- avoid conflicts of interest;
- conduct the investigation without unjustifiable delay;
- handle the matter as confidentially as possible; and
- provide appropriate support for all parties including the child/children, witnesses and the employee who is the subject of the reportable allegation.

### 10.3.3. Investigation steps

In an investigation the Principal or appointed investigator will generally:

- interview relevant witnesses and gather relevant documentation
- provide a letter of allegation to the employee who is the subject of the allegation
- provide the employee with the opportunity to provide a response to the allegations either in writing or at Interview
- consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines
- inform the employee in writing by the Head of Entity of the preliminary finding and provide them with a further opportunity to respond or make a further submission prior to the matter moving to final findings
- consider any response provided by the employee
- make a final finding in accordance with the OCG guidelines
- decide on the disciplinary action, if any, to be taken against the employee
- send the final report to the OCG within 30 days after having received the allegation, as per section 36 of the Children’s Guardian Act 2019.

If the final report is not finished within the 30-day period, as per section 38 of the Children’s Guardian Act 2019, the Head of Entity must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation. Submission of the 30-day 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
- include 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 College's possession, including transcripts of interviews and copies of evidence.

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

The employee who is the subject of the allegation 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 in the proceedings.

#### **10.4. 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 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.

##### **10.4.1. Initial risk assessment**

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

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

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

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

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

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 an indication that the alleged conduct by the employee did occur.

#### **10.4.2. Ongoing risk assessment**

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

#### **10.4.3. Findings**

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

#### **10.4.4. Information for the employee who is the subject of a reportable allegation**

An employee who is the subject of a reportable allegation 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 employee does not automatically have the right to:

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

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

#### **10.4.5. Disciplinary action**

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

In relation to any disciplinary action, the college will give the employee:

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

#### **10.4.6. Confidentiality**

It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible. The college requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.

Records about allegations of reportable conduct against staff will be kept in a secure area and will be accessible by the Head of Entity or with the Head of Entity'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.

## **11. Criminal Offences**

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

### **11.1. Failure to protect offence**

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

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

### **11.2. Failure to report offence**

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.

## **12. The Education Act**

### **12.1. General**

The Education Act provides for the registration and accreditation of colleges. The regulatory body under this Act is the NSW Education Standards Authority (NESA). The NESA Registered and Accredited Individual Non-government schools (NSW) Manual requires that the college must have in place and implement policies and procedures to:

- ensure that requirements to notify and investigate allegations of reportable conduct in compliance with the Ombudsman Act 1974 are made known to staff
- ensure that the college meets the requirements of the Child Protection (Working with Children) Act 2012 in relation to working with children check clearances for all persons in child-related work, as required
- ensure that all staff, volunteers and outside tutors are informed annually of their obligations under the Child Protection (Working with Children) Act 2012
- ensure that the college has documented processes for being assured that any external provider accessed by the college complies with the Child Protection (Working with Children) Act 2012

- respond to reportable matters in accordance with legislative requirements
- ensure that all staff who are mandatory reporters under the Children and Young Persons (Care and Protection) Act 1998 are informed annually of their obligations and the manner in which the college expects them to comply
- ensure that all staff have up-to-date staff handbooks and undertake professional development as determined by the Principal.

### **13. Related Documents**

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

- a) the Code of Conduct for Staff, which sets out information about the standards of behaviour expected of all staff; and
- b) the Work Health and Safety Policy.

### **14. Further information**

For more information, please refer to the following websites:

- Association of Independent Colleges NSW (AIS) <http://www.aisnsw.edu.au/>
- Catholic Commission for Employment Relations (CCER) <https://www.cer.catholic.org.au/>
- Independent Education Union NSW (IEU) <http://www.ieu.asn.au/>

**End of Policy**