



ST PIUS X COLLEGE

CHATSWOOD

CHILD PROTECTION POLICY

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

Acknowledgement

This policy has been adopted from the Association of Independent Colleges (AIS) Child Protection Policy for Colleges.

Introduction and Purpose

All organisations that care for and educate children and young people have major responsibilities towards them. Society has high expectations regarding these responsibilities. Because of their particular mission, Catholic organisations have strong imperatives for committing themselves to fostering the wellbeing of children and young people, and to protecting them from any form of neglect or abuse. This commitment extends to providing a safe environment for employees.

St Pius X College is totally committed to maintaining practices that create a culture of safety where children and young people are supported and protected. The College has processes in place to ensure that all NSW Child Protection legislative requirements are met. Including Working With Children Checks consistent with guidelines from the Office of Childrens' Guardian.

A staff member who becomes aware of a possible breach of this document or legislation by another staff member must report this to their Principal. Failure to do so may result in disciplinary action.

Within the College, our approach to creating a safe environment and our procedures for responding to allegations and disclosure of abuse of children and young people, are based on the following principles:

- All children and young people have a right to safety and freedom from abuse of any kind.
- All adults working with children and young people have a responsibility (duty) to care for them, to promote their wellbeing and to protect them from any form of abuse.

- When any action is taken to prevent or respond to abuse, the welfare and wellbeing of the child or young person are the primary concerns.
- The integrity of the family unit is respected but not to the detriment of the child or young person.
- The dignity of persons involved in situations where abuse is suspected or disclosed should be respected; they should be treated with sensitivity.
- In the interests of justice, appropriate confidentiality should be maintained, with information that relates to suspected or disclosed abuse being provided only to those who have a right and need to be informed.

CHILD PROTECTION POLICY

1. Introduction

1.1. General

The safety, protection and well-being of all students is of fundamental importance to St Pius X College.

Both you and the College have a range of different obligations relating to the safety, protection and welfare of students including:

- a) a duty of care to ensure that reasonable steps are taken to prevent harm to students;
- b) obligations under child protection legislation; and
- c) obligations under work health and safety legislation.

The purpose of this Policy is to summarise the obligations imposed by child protection legislation on the College and on employees, contractors and volunteers at the College and to provide guidelines as to how the College will deal with certain matters.

Child protection is a community responsibility.

1.2. Key legislation

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

- a) the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the **Care and Protection Act**);
- b) the *Ombudsman Act 1974* (NSW) (the **Ombudsman Act**).
- c) the *Child Protection (Working With Children) Act 2012* (NSW) (the **WWC Act**).

Each is dealt with in the following sections.

1.3. Your obligations to report

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

If the allegation involves the **Principal**, you are required to report to the **EREA Director of Regional Services via Ann Marie Bolster** (07) 3737 6712 or annmarie.bolster@erea.edu.au

This obligation is part of the College's overall commitment to the safety, welfare and well-being of children.

1.4. Other policies

Please note that there are a number of other College policies that relate to child protection which you need to be aware of and understand including (but not limited to):

- a) the **Code of Conduct for Edmund Rice Colleges (EREA)** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the College;
- b) the **Work Health and Safety Policy** which summarises the obligations imposed by work health and safety legislation on the College and workers; and
- c) the Induction of New Staff and Inservice of Existing Staff Policy, The Recruitment and Employment Policy for Teaching and General Staff, The Anti Bullying Policy, the Anti Sexual Harassment Policy which summarise your obligations in relation to unlawful discrimination, harassment and bullying.

Policy Review

Last Reviewed 29 May 2015

Approved by Principal

Renewal Date November 2016 or following any new legislation

2. THE CARE AND PROTECTION ACT

The Care and Protection Act provides for mandatory reporting of children at risk of significant harm.

NOTE: Any concern regarding the safety, welfare or well being of a student must be reported to **the Principal**.

2.1 Who is a mandatory reporter?

Under the Care and Protection Act persons who:

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

All teachers are mandatory reporters. Other College employees may also be mandatory reporters. If you are not sure whether you are a mandatory reporter you should speak to the Principal.

2.2 When must a report be made Community Services?

2.2.1 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 Community Services as soon as practicable, the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

In addition, while not mandatory, the College considers that a report should also be made to Community Services where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

2.2.2 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:

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

'Reasonable grounds' does not mean that you are required to confirm your suspicions or have clear proof before making a report.

2.2.3 Significant harm

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

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

2.2.4 Other relevant definitions

Policy definition of significant harm

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well-being of the child or young person are present to a significant extent.

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

What is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or well-being.

In the case of an unborn child, what is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child's birth.

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

Child is a person under the age of 16 years for the purposes of the Care and Protection Act.

Child abuse and neglect

There are different forms of child abuse. These include neglect, sexual, physical and emotional abuse.

Neglect is the continued failure by a parent or caregiver to provide a child with the basic things needed for his or her proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.

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.

Serious psychological harm can occur where the behaviour of their parent or caregiver damages the confidence and self esteem of the child or young person, resulting in serious emotional deprivation or trauma.

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.

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.

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

Young person means a person who is aged 16 years or above but who is under the age of 18 years for the purposes of the Care and Protection Act.

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

Reporting by the College about these matters to Community Services and, where necessary, the police, is generally undertaken by **the Principal**. This is in accordance with best practice principles and is the expectation of the College.

If you have a concern that a child or young person is at risk of significant harm you should contact **the Principal** as soon as possible to discuss whether the case reaches the threshold of 'risk of significant harm' and the steps required to report the matter.

However, if there is an immediate danger to the child or young person and the Principal or next most senior member of staff is not contactable you should speak to the Police and/or the Child Protection Helpline directly and then advise the Principal or next most senior member of staff at the College as soon as possible.

You are not required to, and must not, undertake any investigation of the matter yourself.

You are not to inform the parents or caregivers that a report to Community Services has been made.

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

2.4 What should you do if you have a concern that is below the mandatory reporting threshold?

While the Care and Protection Act outlines a mandatory reporter's obligation to report to Community Services, as an employee of this College, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Principal.

You 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 and any other person the Principal nominates. Failure to do so will be a breach of this policy.

3: THE OMBUDSMAN ACT

3.1 Responsibilities

3.1.1 General

Part 3A of the Ombudsman Act requires the heads of certain agencies, including non government Colleges in New South Wales, to notify the New South Wales Ombudsman of all allegations of reportable conduct by an 'employee' and the outcome of the College's investigation of these allegations.

An 'employee' includes employees, contractors, volunteers, work experience participants, clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services. In this part where there is a reference to an employee it includes all of these persons.

3.1.2 The Ombudsman

The Ombudsman:

- a) must keep under scrutiny the systems for preventing reportable conduct by employees of non government Colleges and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions;
- b) must receive and assess notifications from non government Colleges concerning reportable conduct or reportable convictions;
- c) is required to oversee or monitor the conduct of investigations by non government Colleges into allegations of reportable or reportable convictions;
- d) must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation;
- e) may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non government College, or the handling of or response to such a matter (eg arising out of complaints by the person who is the subject of an allegation); and
- f) may undertake 'own motion' investigations of non government Colleges where the Ombudsman considers it appropriate to do so, including where there is evidence of systemic failure or serious conflict of interests.

3.1.3 Head of Agency

The Head of Agency is the Principal of the College.

Under the Ombudsman Act the Head of Agency must:

- a) set up systems within their organisation to ensure that they are advised of any allegations of reportable conduct against employees;
- b) notify the Ombudsman as soon as possible and no later than thirty days after being made aware of an allegation;

- c) notify the Ombudsman whether or not the College plans to take disciplinary or other action in relation to an employee who is the subject of a reportable allegation or conviction, and the reasons for taking or not taking any such action as soon as practicable; and
- d) provide the Ombudsman with any documentary and other information as the Ombudsman may from time to time request to assist in the Ombudsman's monitoring of an investigation.

3.1.4 Your obligations to report

You must report any concerns you may have about any other employee engaging in reportable conduct or any allegation of 'reportable conduct' that has been made to you, to the Principal, including information about yourself. If you are not sure whether the conduct is reportable conduct but consider that it is inappropriate behaviour you must still report it.

You must also report to the Principal if you become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct.

This includes information relating to yourself.

If the allegation involves the Principal, you are required to report to the EREA Director Regional Support.

3.1.5 Contact for parents

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

3.2 What is reportable conduct?

3.2.1 Definition of reportable conduct

Reportable conduct is defined as:

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

Reportable conduct does not extend to:

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

3.2.2 Other relevant definitions

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

Behaviour that causes **psychological harm** to a child is behaviour that is obviously or very clearly unreasonable and results in significant harm or trauma to a child. There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.

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

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

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

Neglect includes either an action or inaction by a person who has care responsibility towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

1. Supervisory neglect:

- An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
- An intentional or reckless failure to adequately supervise a child or a significantly careless act or failure to act, that:
 - Involves a gross breach of professional standards, and
 - Has the potential to result in the death or significant harm to a child.

2. Carer neglect:

- Grossly inadequate care that involves depriving a child of the basic necessities of life: such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.

3. Failure to protect from abuse:

- An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.

4. Reckless act (or failure to act):

- A reckless act, or failure to act, that:
 - Involves a gross breach of professional standards, and
 - Has the potential to result in the death of, or significant harm to, a child.

Physical Assault is any act by which a person intentionally inflicts unjustified use of physical force against another. An assault can also occur if a person causes another person to reasonably apprehend that unjustified force is going to be used against them. Even if a person who inflicts physical harm or causes another person to reasonably apprehend physical harm does not actually intend to inflict the harm or cause fear, they may still have committed an assault if they acted 'recklessly'.

'Recklessness' in this context relates to circumstances when the person ought to have known that their actions would cause a person physical harm or cause them to fear injury.

Assaults can include hitting, pushing, shoving, throwing objects or making threats to physically harm a child.

PSOA 'person subject of the allegation'.

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

Sexual Misconduct has two categories which include:

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

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

Crossing professional boundaries

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

- relationship with;
- conduct towards; or
- focus on;

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

Codes of conduct that outline the nature of the professional boundaries which should exist between employees and children/young people can be particularly useful. For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be necessary to provide more detailed written advice about what constitutes appropriate behaviour.

Sexually explicit comments and other overtly sexual behaviour

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

- a) inappropriate conversations of a sexual nature
- b) comments that express a desire to act in a sexual manner
- c) unwarranted and inappropriate touching

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

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

These offences include (but are not limited to) the following:

- (a) indecent assault
- (b) sexual assault
- (c) aggravated sexual assault
- (d) sexual intercourse and attempted sexual intercourse
- (e) possession/ dissemination/ production of child pornography or child abuse material
- (f) using children to produce pornography
- (g) grooming or procuring children under the age of 16 years for unlawful sexual activity
- (h) deemed non-consensual sexual activity on the basis of special care relationships

3.3 What happens when an allegation of reportable conduct is made?

3.3.1 Initial steps

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

- (a) determine on face value whether it is an allegation of reportable conduct;
- (b) assess whether Community Services or the Police need to be notified (ie, if reasonable grounds to suspect that a child is at risk of significant harm or criminal offence);
- (c) notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by Community Services or the Police);
- (d) notify the Ombudsman within 30 days of receiving the allegation;
- (e) carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- (f) investigate the allegation or appoint someone to investigate the allegation.

3.3.2 Investigation principles

The College will:

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

3.3.3 Investigation steps

In an investigation the Head of Agency or appointed investigator will generally:

- (a) interview relevant witnesses and gather relevant documentation;
- (b) provide a letter of allegation to the person subject of the allegation (PSOA);
- (c) interview the person subject of the allegation (PSOA);
- (d) consider relevant evidence and make a preliminary finding in accordance with the NSW Ombudsman guidelines;
- (e) inform the person subject of the allegation (PSOA) of the preliminary finding and provide them with an opportunity to respond;
- (f) consider any response provided by the person subject of the allegation (PSOA);
- (g) make a final finding in accordance with the NSW Ombudsman Guidelines;
- (h) decide on the disciplinary action, if any, to be taken against the person subject of the allegation (PSOA);
- (i) apply the NSW Office of the Children's Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG; and
- (j) send the final report to the Ombudsman and report to the OCG (where required) (see Working with Children Act Part C).

The steps followed in the investigative process will be guided by the "Recommended Protocols for Internal Investigative and Disciplinary Proceedings, 2001" (IEU/AIS) as updated from time to time (See Attachment 1.)

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 Community Services or the NSW Police.

A person subject of the allegation (PSOA) may have an appropriate support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.

3.4 **Risk Management**

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

The Head of Agency 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.

3.4.1 **Initial Risk Assessment**

One of the first steps following an allegation of reportable conduct against an employee is for the Head of Agency to conduct a risk assessment. The purpose of this initial risk assessment is to identify and minimise the risks to:

- (a) the child(ren) who are the subject of the allegation;
- (b) other children with whom the employee may have contact;
- (c) the person subject of the allegation (PSOA);
- (d) the College, and
- (e) the proper investigation of the allegation.

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

- (i) the nature and seriousness of the allegations;
- (ii) the vulnerability of the child(ren) the person subject of the allegation (PSOA) has contact with at work;
- (iii) the nature of the position occupied by the person subject of the allegation (PSOA);
- (iv) the level of supervision of the person subject of the allegation (PSOA); and
- (v) the disciplinary history or safety of the person subject of the allegation (PSOA) and possible risks to the investigation.

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

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

3.4.2 Ongoing Risk Management

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

3.4.3 Risk Management at the Conclusion of the Investigation

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

3.5 What information will be provided to the PSOA?

The person subject of the allegation (PSOA) will be advised:

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

The person subject of the allegation (PSOA) does not automatically have the right to:

- (i) know or have confirmed the identity of the person who made the allegation; or
- (ii) be shown the content of the Ombudsman notification form or other investigation material that reveals all information provided by other employees or witnesses.

The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the College in relation to the finding of misconduct involving children (see Part C section 3 of the Working with Children Act – [Page 18-19]).

3.6 Disciplinary Action

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

In relation to any disciplinary action the College will:

- (a) give the person subject of the allegation (PSOA) details of the proposed disciplinary action; and
- (b) give the person subject of the allegation (PSOA) a reasonable opportunity to respond before a final decision is made.

3.7 Confidentiality

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

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

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

If you become aware of a breach of confidentiality in relation to a reportable conduct allegation you must advise the Principal.

PART 4: Working with Children Act

4.1 General

The Office of the Children's Guardian (OCG) is responsible for employment screening for child-related employment. A Working With Children Check (Check) is a prerequisite for anyone in child-related work. It involves a national criminal history check and review of reported workplace misconduct findings. The result of a Check is either a clearance to work with children for five years, or a bar against working with children. Cleared applicants are subject to ongoing monitoring by the OCG, and any relevant new records which appear against a cleared applicant's name may lead to the Check being revoked.

It is the responsibility of the child-related worker to ensure that when they are eligible to apply for a Check or when their Check is up for renewal that they do so.

If you are an existing employee, employed at this College in paid child-related work prior to the commencement of the new Working With Children system⁽¹⁾, or you are a volunteer, your requirement to obtain a Check will be phased in over a five year period, according to the phase in schedule developed by the OCG (Attachment 2).

4.2 Responsibilities

The object of the WWC Act is to protect children:

- (a) by not permitting certain persons to engage in child-related work; and
- (b) by requiring persons engaged in child-related work to have working with children check clearances.

Colleges are required to:

- (a) verify online and record the status of each child-related worker's Check;
- (b) only employ or engage child-related workers or eligible volunteers who have a valid Check; and
- (c) report findings of misconduct involving children made against child-related workers or volunteers.

Child-related workers and eligible volunteers are required to:

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

All volunteers are required to:

- (a) All volunteers are to undergo the new Working with Children Check according to the guidelines as expressed by the Office of the Children's Guardian;
- (b) to be aware and follow the expectations of conduct expressed in the EREA Code of Conduct.

4.3 **Relevant Definitions**

4.3.1 **Bars**

Final bar

This bar is applied based on a decision made by the OCG, following a risk assessment. This person is barred against working with children.

Interim bar

An interim bar is issued to high risk individuals to prevent them from continuing to work with children while a risk assessment is conducted. An interim bar may be applied for up to 12 months. If an interim bar remains in place for six months or longer, it may be appealed against through 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.

Interim bars are issued only for risks considered likely to result in a final bar.

4.3.2 **Child-related work**

Child-related work includes, but not limited to work in the following sectors¹:

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

4.3.3 **Child-related worker**

A person who has physical contact or face to face contact with children in work outlined above in 3.2, including Colleges. This may include volunteer work.

A child-related worker may commence work once they have completed the Check application process. An application is completed when the online application form is complete and the worker's identity has been proven at the NSW motor registry or Council Agency and the fee has been paid (if in paid work).

If you are unclear if your role is child-related you should speak with the Principal.

4.3.4 Disqualified person

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of Working with Children Act.⁽²⁾

A disqualified person is a person who has a bar preventing them from working with children in child-related work.

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

It is an offence for an employee to engage in child-related worker when they do not hold a Check or has a bar or an interim bar.

4.3.5 Findings of misconduct involving children

The College will report to the OCG when a finding has been made that the person (an employee of the College) subject to the finding engaged in:

- (a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
- (b) any serious physical assault of a child.⁽³⁾

The College will advise the person that the OCG has been notified of a finding of misconduct involving children.

The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the College in relation to the finding of misconduct involving children.

4.3.6 Reporting body

Independent Colleges such as St Pius X College Chatswood are defined as a reporting body by the WWC Act.

Section 35 of the WWC Act requires this College to notify the OCG findings of misconduct involving children made against a child-related worker. The College may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act.

4.3.7 Risk assessment

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 OCG by the Ombudsman.

4.3.8 Working With Children Check Clearance

A Working with Children Check (Check) means authorisation under the WWC Act to engage in child-related work. An employee will be issued with a number which is to be provided to the College to verify the status of an employee's Check.

ATTACHMENTS:

1. The Association of Independent Schools NSW and the Independent Education Union of Australia, Recommended Protocols for Internal Investigative and Disciplinary Proceedings – 2001;
2. The new Working With Children Fact Sheet: *Phase in schedule for existing workers* (valid until 31 Dec 2017)

REFERENCES:

NSW Family and Community Services

www.community.nsw.gov.au

NSW Ombudsman

www.ombo.nsw.gov.au

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

www.kids.nsw.gov.au

Department of Premier and Cabinet – Keep Them Safe

www.keepthemsafe.nsw.gov.au

St Pius X College Work Health and Safety Policy

St Pius X College Induction of New Staff and Inservice of Existing Staff Policy,

St Pius X College Recruitment and Employment Policy for Teaching and General Staff,

St Pius X College Anti Sexual Harassment

St Pius X College Anti Bullying Policy

⁽¹⁾ (P18) The New Working With Children system commenced in NSW on 15 June 2013. The previous Working With Children system ceased 7 June 2013.

⁽²⁾ (P20) Schedule 2 disqualifying offence can be found at:
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+51+2012+cd+0+N>

⁽³⁾ (P20) Further information at Part 2 Division 1 Section 6 Child Protection (Working With Children) Act 2012 found at
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+51+2012+cd+0+N>

Policy Review:

Last Reviewed 29 May 2015

Approved by Principal

Renewal Date November 2016 or following any new legislation

The Association of Independent Schools N.S.W. and The Independent Education Union of Australia

Recommended Protocols for Internal Investigative and Disciplinary Proceedings - 2001

Introduction

It is acknowledged that each case of alleged reportable conduct which requires internal investigation and possible disciplinary action will be quite different. These protocols have been compiled to advise how investigations and disciplinary proceedings may be conducted. They are guidelines only and in applying them one should always bear in mind the primary objectives of the relevant legislation. If adopted by a school this document should be provided to teachers who are the subject of an internal investigation into reportable conduct.

Outline of Obligations under the Legislation

Upon receipt of an allegation of reportable conduct against an employee, the head of agency should determine whether or not it is an allegation about reportable conduct or misconduct that may involve reportable conduct.

All allegations against employees that involve reportable conduct or misconduct that may involve reportable conduct must be reported within 30 days of receipt of the allegation to the Ombudsman. The allegations should also be reported to the Department of Community Services (DOCS) if there is a current concern for the safety, welfare and well being of the child. The head of agency will need to:

- conduct or cause to be conducted, an investigation of the allegation;
- decide as to whether on the balance of probabilities the allegation has been sustained or not sustained;
- decide on the disciplinary action, if any, to be taken against the employee.

At the conclusion of the investigation and the decision regarding disciplinary action, a complete report including the findings, disciplinary action decided upon and any other recommendations must be forwarded to the Ombudsman together with any information which the accused person requires to be included.

Completed relevant disciplinary proceedings should be reported to the Commission for Children and Young People unless the allegation was found to be false, vexatious or misconceived.

Risk Assessment

Upon the receipt of an allegation of reportable conduct against an employee, the head of agency is responsible for carrying out an initial risk assessment prior to the investigation of the allegation. The purpose of the risk assessment is to identify and minimise the risk:

- to a child or children who are alleged to have been victims of the abuse;
- to the employee against whom the allegation has been made;
- to other children with whom the employee may have contact;
- to the proper investigation of the allegation.

This may result, for example, in the employee being temporarily relieved of some duties, being required to avoid certain pupils or, in some special cases, being suspended from duty.

Any decision to take action as a result of a risk assessment is in no way an indication of the guilt of the employee concerned.

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

- the nature of the allegation;
- vulnerability of children;
- nature of the position occupied by the employee;
- the level of supervision of the employee;
- disciplinary history of the employee;
- safety of the employee;
- any comments made by the employee.

Risk should be continually monitored throughout the investigation.

The Investigation

In conducting an investigation into allegations of reportable conduct, the head of agency should be guided by the following principles.

1. Conflict of Interest and Appointment of Investigator

All investigations must be conducted in an impartial, independent and objective manner and be open and transparent. The investigator must not show bias or favour to the alleged victim(s), the person the subject of the allegation, nor in outcomes which might affect the reputations of the particular agency.

In some instances the head of agency may call on an external expert to undertake the investigation. This may be the case where the agency determines that it does not have the expertise to satisfactorily conduct the investigation or in cases where a conflict of interest or bias may arise.

The mere perception of a conflict of interest by an accused person is not sufficient in itself to require the appointment of an external investigator. However, if there is a clear history of conflict between the proposed investigator and the employee it would be advisable for another investigator to be appointed.

2. Confidentiality

Heads of agency and persons conducting investigations should maintain a high level of confidentiality throughout the investigation phase. Action for defamation could result in situations in which agencies have published allegations of reportable conduct against an employee. The person making the allegation also has a right to protection, and if appropriate, confidentiality. In a limited number of circumstances it may be inappropriate to advise the accused person of the identity of the person making the allegation.

The employee should not discuss the allegations with students (including the alleged victim) nor with parents without the approval of the school.

Steps in the Investigative Process

A proper investigation usually requires that an employee against whom an allegation has been made, be told promptly the substance of the allegation and be given the right to reply to the allegation.

If DOCS or police are investigating the allegation, advice should be received from them about when to inform the employee about details of the allegation. Otherwise, the decision of when to inform the employee will depend on the protection of notifiers and witnesses, the quality of evidence to be obtained and the possibility of prejudicing the conduct of the investigation.

Where possible employees should be given advance notice of an interview with the head of agency or an appointed investigator, details of the allegation (sufficient to allow the employee to respond) and be advised that they may have a witness at the interview.

While it is desirable for an employee to be given reasonable notice before being required to respond to an allegation, what constitutes reasonable notice will depend on the circumstances of the situation.

Employees may wish to have someone support them during the interview process. The support person may be a friend on staff or the chapter representative. However, 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.

A record should be kept of the meeting, this could be made by a tape recording, a full written record or short minutes. The form of record may be dependent on the seriousness of the allegation.

Listed below are fundamental steps in the investigative process. These may need to be varied on occasions to meet particular circumstances. The employer should normally:

- (a) clarify the allegation and determine that it is an allegation of reportable conduct;
- (b) make appropriate notifications to DoCS, police, Ombudsman;
- (c) carry out a risk assessment;
- (d) collect all available relevant information (ensure full documentation);
- (e) interview all relevant witnesses (ensure all interviews are adequately recorded);
- (f) make the employee fully aware of the allegations;
- (g) possibly give the employee access to relevant documents on which the employer is relying, unless such documentation needs to be kept confidential;
- (h) interview the person the subject of the allegations (ensure procedural fairness);
- (i) consider all the evidence and make a preliminary finding as to whether the allegation is sustained or not sustained.

Findings

At the conclusion of the investigation, the investigator will make a preliminary finding on the balance of probabilities that:

1. the allegation was false; or
2. the allegation was vexatious, that is, was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made; or
3. the allegation was misconceived, that is, whilst the allegation was made in good faith it was either without substance or a misunderstanding on behalf of the person making the allegation occurred or the incident would not reasonably be considered as reportable conduct (irrespective of the definition), sexual misconduct or an act of violence; or
4. the allegation was not sustained; or
5. the allegation was not one of reportable conduct, but might constitute a breach of professional behaviour or judgment which requires further professional disciplinary action; or
6. the allegation was sustained and the matter required disciplinary action.

A finding of 'not sustained' means that the investigator considers that there is insufficient evidence to determine that the alleged event occurred, on the balance of probabilities. The employee should be told of the preliminary finding and given an opportunity to respond including, if they wish, in writing.

Disciplinary Proceedings

For the purpose of this recommended protocol disciplinary proceedings are defined as the action taken as a consequence of the findings arising out of the investigation. When conducting disciplinary proceedings the employer should have regard to procedural fairness. This will usually involve:

- giving the employee details of the final finding;
- informing the employee of the possible action the employer may take; and
- giving the employee a right to respond including, if they wish, in writing.

When the investigation has been completed

The employee is entitled to ask the Ombudsman to review the investigation and findings if the employee believes the investigation was unfair, biased, incomplete or suffered some other deficiency giving rise to an incorrect finding.

The employee must be advised if the employer has notified completed disciplinary proceedings to the Commission for Children and Young People.

If the completed disciplinary proceedings are notified to the Commission for Children and Young People, the employee is entitled to inspect the employer file in accordance with Freedom of Information Principles, subject to any exemptions which may apply under that Act.

Notification to the Commission for Children and Young People (CCYP)

The Commission for Children and Young People Act requires all completed investigations into allegations of reportable conduct to be reported to it. It is an offence under the Act to fail to report unless the allegation is found to be either:

- false (the alleged conduct did not occur);
- vexatious (without substance, malicious intent);
- misconceived (not reasonably be considered to be reportable conduct).

In the findings listed above only findings 4 and 6 need be reported to the CCYP.

ATTACHMENT 2

Fact sheet 2

Phase-in schedule for existing workers

January 2015



**the working
with children
check**

- Already working with children?** You will be phased in between now and 2018. Find your industry sector in the chart below.
- Volunteering?** You will also be phased in. Find your industry sector on the chart below.
- Self-employed?** Apply when your Certificate for Self-Employed People (CSEP) expires, or if you do not have a CSEP, when your sector is phased in
- Starting a new job?** Apply before you start work.

Not sure which sector you belong to? See [FACT SHEET: Which sector do I belong to?](#) at www.kidsguardian.nsw.gov.au/check.

INDUSTRY SECTORS – Phase-in dates				
15 Jun 2013 to 31 Mar 2014	1 Apr 2014 to 31 Mar 2015	1 Apr 2015 to 31 Mar 2016	1 Apr 2016 to 31 Mar 2017	1 Apr 2017 to 31 Mar 2018
<ul style="list-style-type: none"> Child protection Disability services Justice services Religious services (work as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of the organisation) Youth workers Authorised carers* Adults who reside in the home of an authorised carer or family day care service provider or home-based education and care service provider 	<ul style="list-style-type: none"> Child development and family welfare services Religious services (work in roles including youth groups, youth camps, teaching children and child care) Residential services Transport services for children Principal Officer of <ul style="list-style-type: none"> a designated agency registered agency that provides voluntary out-of-home care (not those that arrange voluntary out of home care) accredited adoption service provider Members of governing body of <ul style="list-style-type: none"> a registered agency that provides voluntary out-of-home care (not those that arrange voluntary out of home care) designated agency accredited adoption service provider 	<ul style="list-style-type: none"> Clubs or other bodies providing services to children (including sporting bodies and dance schools) Entertainment for children Assessment of reportable matters (assessment officer) 	<ul style="list-style-type: none"> Children's health services (Local Health Districts) <ul style="list-style-type: none"> - Central Coast LHD - Hunter New England LHD - Illawarra Shoalhaven LHD - Mid North Coast LHD - Northern NSW LHD - South Eastern LHD Education - Secondary schools Education - Vocational Education - Private tuition and coaching 	<ul style="list-style-type: none"> Children's health services - All remaining LHDs The Sydney Children's Hospitals Network (Randwick and Westmead) Justice Health and Forensic Mental Health Network Ambulance Service of NSW Children's Health – remaining services Early education and child care Education – all remaining services Education and care service – approved provider, manager or certified supervisor

*Foster carers and other authorised carers of children in statutory and supported out-of-home care.

Disclaimer: The material provided in this Fact Sheet is for guidance only. Every effort has been made to ensure the information is accurate, current and not misleading. However, this cannot always be guaranteed and no warranty is given that the information is free from error or omission. Users should exercise their own skill and care with respect to the use of the material. The information is also not a substitute for independent legal or other professional advice and users should obtain appropriate professional advice relevant to their particular circumstances. The Office of the Children's Guardian does not guarantee, and accepts no legal liability whatsoever for any act done, omission made, loss, damage, cost or inconvenience arising from, connected to, or as a consequence of, using or relying on the material contained in this Fact Sheet.

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