

CHILD PROTECTION POLICY

SAFE AND SUPPORTIVE ENVIRONMENT



Northside Montessori School is committed to the safety, wellbeing and support of all children and young people. It embeds the National Principles for Child Safe Organisations and promotes a culture of safety and wellbeing to minimise the risk of child abuse or harm to children whilst promoting children's sense of security and belonging. Management, staff and volunteers will treat all children with the utmost respect and understanding.

Our School believes that:

- Children are capable of the same range of emotions as adults.
- Children's emotions are real and need to be accepted by adults.
- A reaction given to a child from an adult throughout their development can be positive or detrimental depending on the adult's behaviour.
- Children, who preserve, enhance and better understand their body's response to an emotion are more able to predict the outcome of a situation and evade them or ask for help.

National Quality Standard (NQS)

Quality Area 2: Children's Health and Safety		
2.2	Safety	Each child is respected
2.2.1	Supervision	At all times, reasonable precautions and diligent supervision ensure children are protected from harm and hazard
2.2.2	Incident and emergency management	Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practiced and implemented
2.2.3	Child Protection	Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse or neglect

Education and Care Services National Regulations

Children (Education and Care Services) National Law NSW	
84	Awareness of child protection law
155	Interactions with children
175	Prescribed information to be notified to Regulatory Authority
176	Time to notify certain information to Regulatory Authority
S162 (A)	Persons in day-to-day charge and nominated supervisors to have child protection training
84	Awareness of child protection law

CHILD PROTECTION POLICY

1. INTRODUCTION

1.1. GENERAL

The safety, protection and well-being of all students is of fundamental importance to Northside Montessori School.

All staff 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 required by child protection legislation on the School and on employees, contractors and volunteers (collectively referred to in this policy as employees unless the context requires otherwise) at the School and to provide guidelines as to how the School 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 *Child Protection (Working With Children) Act 2012* (NSW) (the **WWC Act**); and
- c. the *Children's Guardian Act 2019* ("Children's Guardian Act") (OCG)
- d. Part 3A Child safe scheme ("Children's Guardian Act")
- e. The *Crimes Act 1990* ("Crimes Act")

Child Safe Scheme and the Child Safe Standards

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

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

The Child Safe Standards are—

1. Child safety is embedded in organisational leadership, governance and culture.
2. Children participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved.
4. Equity is upheld, and diverse needs are taken into account.
5. People working with children are suitable and supported.
6. Processes to respond to complaints of child abuse are child focused.
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
8. Physical and online environments minimise the opportunity for abuse to occur.
9. Implementation of the Child Safe Standards is continuously reviewed and improved.
10. Policies and procedures document how the organisation is child safe.

1.3 TRAINING

The School will provide all staff members with a copy of this policy and will provide all staff members with the opportunity to participate in child protection training annually.

The Child Protection training will generally occur in one of the two professional Development Days at the commencement of Term 1 each year. As a staff we will go through this Policy and highlight the key responsibilities of staff as outlined within. We will highlight any amendments that have occurred in the past 12 months to the policy. (This will be recorded in the WWCC register)

Staff members who are absent for this session will meet with either the Principal or Deputy principal to go over the policy and key items as discussed with the whole staff.

From time to time (bi-annually) we will seek input from organisations such as AIS to provide programs such as 'Creating Safer Schools' alongside our Child Protection Training.

All new staff members must read this policy and sign the acknowledgement that they have read and understand the policy.

All staff members must participate in annual child protection training and additional training, as directed by the Principal. The training compliments this policy and provides information to staff about their legal responsibilities related to child protection and school expectations, including:

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

1.4 YOUR OBLIGATIONS TO REPORT

While we set out below circumstances in which the **legislation** requires reporting of particular child protection issues, the School 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 **Chairperson of the Board**.

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

1.5 OTHER POLICIES

Please note that there are a number of other School 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** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the School;
- b. the **Work Health and Safety Statement** which summarises the obligations required by work health and safety legislation on the school and workers; and
- c. the **Discrimination, Harassment and Bullying Statement** which summarises your obligations in relation to unlawful discrimination, harassment and bullying; and
- d. The school's **Anti Bullying Policy** and **Behaviour Management Policy**.

2. THE CARE AND PROTECTION ACT

The Care and Protection Act outlines the rules and procedures for mandatory reporting of children at risk of significant harm.

Child abuse is any action towards a child or young person that harms or puts at risk their physical, psychological or emotional health or development. Child abuse can be a single incident or can be a number of different incidents that take place over time.

NSW Communities and Justice identify different forms of child abuse which include- neglect, sexual, physical and emotional abuse or psychological harm.

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

2.1 WHO IS A MANDATORY REPORTER?

Under the Care and Protection Act a mandatory reporter is a person 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.

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

WHEN MUST A REPORT BE MADE DEPARTMENT OF COMMUNITIES AND JUSTICE (DCJ)?

2.2 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 Department of Communities and Justice (DCJ) 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 School considers that a report should also be made to DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

These concerns should be reported to the Principal. Reports to DCJ will be done by the Principal. All reports made by the Deputy Principal need to be communicated to the Principal.

2.3 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. firsthand 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. Significant harm

2.4 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 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,
- 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.

2.5 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.

INDICATORS OF ABUSE

There are common physical and behavioural signs that may indicate abuse or neglect. The presence of one of these signs does not necessarily mean abuse or neglect. Behavioural or physical signs which assist in recognising harm to children are known as indicators. *The following is a guide only.* One indicator on its own may not imply abuse or neglect. However, a single indicator can be as important as the presence of several indicators. Each indicator needs to be deliberated in the perspective of other indicators and the child's circumstances. A child's behaviour is likely to be affected if he/she is under stress. There can be many causes of stress and it is important to find out specifically what is causing the stress. Abuse and neglect can be single incidents or ongoing and may be intentional or unintentional.

GENERAL INDICATORS OF ABUSE AND NEGLECT MAY INCLUDE:

- marked delay between injury and seeking medical assistance
- history of injury
- the child gives some indication that the injury did not occur as stated
- the child tells you someone has hurt him/her
- the child tells you about someone he/she knows who has been hurt
- someone (relative, friend, acquaintance, and sibling) tells you that the child may have been abused.

NEGLECT

Child neglect is the continuous failure by a parent or caregiver to provide a child with the basic requirements needed for their growth and development, such as food, clothing, shelter, medical and dental care, and adequate supervision. Some examples are:

- inability to respond emotionally to the child
- child abandonment

- unable or unwilling to provide adequate food, shelter, clothing, medical attention safe home conditions
- depriving or withholding physical contact
- failure to provide psychological nurturing
- treating one child differently to the others

INDICATORS OF NEGLECT IN CHILDREN

- low weight for age and failure to thrive or develop
- child not adequately supervised for their age
- poor standard of hygiene leading to social isolation
- scavenging or stealing food
- extreme longing for adult affection
- lacking a sense of genuine interaction with others
- acute separation anxiety
- self-comforting behaviours, e.g., rocking, sucking
- delay in development milestones
- untreated physical problems, such as sores, serious nappy rash and urine scalds, dental decay

PHYSICAL ABUSE

Physical abuse is when a child has suffered, or is at risk of suffering, non-accidental trauma or injury, caused by a parent, caregiver or other person. Educators will be particularly aware of looking for possible physical abuse if parents or caregivers:

- make direct admissions about fear of hurting their children
- have a family history of violence
- have a history of their own maltreatment as a child
- make repeated visits for medical assistance
- use excessive discipline

INDICATORS OF PHYSICAL ABUSE

- facial, head and neck bruising
- lacerations and welts
- drowsiness, vomiting, fits or pooling of blood in the eyes that may suggest head injury
- explanations are not consistent with injury
- bruising or marks that may show the shape of an object
- adult bite marks or scratches
- multiple injuries or bruises
- ingestion of poisonous substances, alcohol or drugs
- sprains, twists, dislocations
- bone fractures
- burns and scalds
- general indicators of female genital mutilation, such as having a 'special operation'.

EMOTIONAL AND PSYCHOLOGICAL ABUSE

Psychological harm occurs where the behaviour of the parent or caregiver damages the confidence and self-esteem of the child, resulting in serious emotional deficiency or trauma. In general, it is the frequency and duration of this behaviour that causes harm. Some examples are:

- constant or excessive criticism, condescending, teasing of a child or ignoring or withholding admiration and affection
- excessive or unreasonable demands
- persistent hostility, severe verbal abuse, and rejection
- belief that a specific child is bad or 'evil'
- using inappropriate physical or social isolation as punishment
- exposure to domestic violence
- intimidating or threatening behaviour.

INDICATORS OF PSYCHOLOGICAL ABUSE

- feeling of worthlessness about themselves and life
- inability to value others
- lack of trust in people and expectations
- lack of 'people skills' necessary for daily functioning
- extreme attention seeking behaviours
- extremely eager to please or obey adults
- may take extreme risks, is markedly disruptive, bullying, or aggressive
- other behavioural disorders (disruptiveness, aggressiveness, bullying)
- suicide threats (in young people)
- running away from home.

SEXUAL ABUSE

Sexual abuse is when someone involves a child in a sexual activity by using their authority over them or takes advantage of their trust. Children are often bribed or threatened physically and psychologically to make them participate in the activity. Sexual abuse includes:

- exposing the child to the sexual behaviours of others
- coercing the child to engage in sexual behaviour with other children or adults
- verbal threats of sexual abuse
- exposing the child to pornography or prostitution or using a child for pornographic purposes
- previous conviction or suspicion of child sexual abuse

INDICATORS OF SEXUAL ABUSE

- bruising or bleeding in the genital area
- bruising to buttocks, lower abdomen or thighs
- injuries such as tears to the genitalia
- the child describes sexual acts
- direct or indirect disclosures
- age-inappropriate behaviour and/or persistent sexual behaviour
- self-destructive behaviour- self-mutilation
- regression in developmental achievements
- child being in contact with a suspected or known perpetrator of sexual assault

DOMESTIC VIOLENCE

Domestic violence, or intimate partner violence, is a violation of human rights. It involves violent, abusive or intimidating behaviour carried out by an adult against a partner or former partner to control and dominate that person.

Domestic violence causes fear, physical, and/or psychological harm. It is most often violent, abusive, or intimidating behaviour. Living with domestic violence has a profound effect upon children and young people and therefore constitutes a form of child abuse. (*The NSW Domestic and Family Violence Action Plan*, June 2010).

INDICATORS OF DOMESTIC VIOLENCE

The child may:

- demonstrate aggressive behaviour
- develop phobias & insomnia
- experience anxiety
- show signs of depression
- have diminished self esteem
- demonstrate poor academic performance and problem-solving skills
- have reduced social skills including low levels of empathy
- show emotional distress
- have physical complaints

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.

2.6 WHAT SHOULD YOU DO IF YOU CONSIDER THAT A MANDATORY REPORT IS REQUIRED?

Reporting by the School about these matters to the DCJ and, where necessary, the police, is generally undertaken by **the Principal**. This is supported by DCJ in accordance with best practice principles and is the expectation of the School. Reports should be made of any incidents or allegations of physical or sexual abuse **within 24 hours** to the regulatory authority (DCJ / NQITS).

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. If the Principal is unavailable then the employee should contact the Deputy Principal.

The Principal or Deputy Principal will use the Mandatory Reporter Guide (MRG) to identify whether there are reasonable grounds to suspect that the child is at risk of significant harm and whether the Child Protection Helpline (132 111) and/or the Police should be contacted. The Guide works by posing specific questions that help reporters work systematically through the issues relating to concerns they have about a child. At the end of the process, a decision report will guide the reporter as to what action to take.

If there is an immediate danger to the child or young person and the Principal or Deputy Principal is not contactable employees should use the MRG to identify whether there are reasonable grounds to suspect that the child is at risk of significant harm and then follow the directions in the final report generated by the MRG. You should advise the Principal or next most senior member of staff at the School as soon as possible of the concern and the action taken.

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

Where the concern relates to the parents or caregiver you are not to inform them that a report to DCJ has been made.

In other circumstances where a student is at risk of significant harm the Principal or Deputy Principal must as soon as practical advise the student's parents unless they are satisfied that:

- a. DCJ intend to notify the parents promptly; and
- b. The school will not be in breach of its duty of care to the student or to other students by not advising the student's parents.

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.

2.7 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 DCJ, as an employee of this School, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Principal or Deputy Principal if the Principal is unavailable immediately.

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

3. PROCESS FOR REPORTING TO THE OCG

RESPONSIBILITIES

3.1 GENERAL

Section 29 of the Children's Guardian Act, 2019, requires the heads of certain agencies, including non-government schools in New South Wales, to notify the Office of the Children's Guardian (OCG) of all allegations of reportable conduct by an 'employee' and the outcome of the School'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.

3.2 THE OCG

The Office of Children's Guardian:

- a. must keep under scrutiny the systems for preventing reportable conduct by employees of non-government schools and the handling of, or response to, reportable allegations including allegations which are exempt from notification) or convictions;
- b. must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions;
- c. is required to oversee or monitor the conduct of investigations by non-government schools 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 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
- f. may undertake 'own motion' investigations of non-government schools where the OCG considers it appropriate to do so, including where there is evidence of systemic failure or serious conflict of interests.

3.3 HEADS OF ENTITY

The Head of Entity is the Principal of the School.

Under the Children's Guardian Act 2019, the Head of Entity must:

- a. Ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions.
- b. Submit a 24 hour notification form to the OCG within 24 hours of becoming aware of a reportable allegation or conviction against an employee of the entity (unless the Head of the Entity has a reasonable excuse),

The notification should include the following information:

- that a report has been received in relation to an employee of the School, and
 - the type of reportable conduct, and
 - the name of the employee, and
 - the name and contact details of School and the Head of Entity, and
 - for a reportable allegation, whether it has been reported to Police, and
 - if a report has been made to the Child Protection Helpline, that a report has been made, and
 - the nature of the relevant entity's initial risk assessment and risk management action,
- c. The notice must also include the following, if known to the Head of Entity:
 - details of the reportable allegation or conviction considered to be a reportable conviction,
 - the date of birth and working with children number, if any, of the employee the subject of the report,
 - the police report reference number (if Police were notified),
 - the report reference number if reported to the Child Protection Helpline,
 - the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.
 - d. Maximum penalty for failure to notify within 24 hours — 10 penalty units.

3.4 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 or if not available the Deputy 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 or if not available Deputy 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.

At Northside Montessori School, the Principal encourages immediate reporting in person or if this is not possible then employees should request a meeting via the receptionist as soon as possible. The Principal may be contacted by phone at school on 91442835.

If the allegation involves the Principal, you must report to the Chair of the School Board chair@northsidemontessori.nsw.edu.au. In this circumstance, the Chair of the Board will assume the responsibilities of the Head of Entity and follow the process as outlined.

Where an allegation of Reportable Conduct has been made regarding an employee the Principal will communicate this to the Board Chair in a timely manner. The principal will also then report to the Board that a matter of reportable conduct had been raised excluding identifiable details unless required.

3.5 CONTACT FOR PARENTS

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

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

At Northside Montessori School the Principal encourages immediate reporting in person or if this is not possible then parents should request a meeting via the receptionist as soon as possible. The Principal may be contacted by phone at school on 9144 2835.

4. WHAT IS REPORTABLE CONDUCT?

4.1 DEFINITION OF REPORTABLE CONDUCT

Under the Children's Guardian Act, 2019, Reportable conduct is defined as:

- a. A sexual offence
- b. Sexual misconduct
- c. any assault against a child
- d. ill-treatment of a child
- e. neglect of a child

- f. an offence under section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act 1900; and
- g. behaviour that causes significant emotional or psychological harm to a 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 Children's Guardian Act under section 30

4.2 OTHER RELEVANT DEFINITIONS

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

The following definitions relate to *reportable conduct*:

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

Definitions of 'grooming', within child protection legislation, are complex. Under the Crimes Act, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual offence. The Crimes Act (s73) also extends the age of consent to 18 years when a child is in a 'special care' relationship. Under Schedule 1(2) of the WWC Act, grooming is recognised as a form of sexual misconduct. The Children's Guardian Act 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 employees knew or ought to have known was unacceptable, and
- Evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, and
- An alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.
- **Reportable allegation** is an allegation that an employee has engaged in conduct that may be reportable conduct.
- **Reportable conviction** means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.
- **Employee** of an entity includes:
 - an individual employed by, or in, the entity
 - a volunteer providing services to children
 - a contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold, a WWCC clearance for the purposes of their work with an entity; and
 - a person engaged by a religious body where that person holds, or is required to hold, a WWCC clearance for the purposes of their work with the religious body.
- **PSOA** (Person Subject of the Allegation).

5. WHAT HAPPENS WHEN AN ALLEGATION OF REPORTABLE CONDUCT IS MADE?

5.1 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 DCJ or the Police need to be notified (i.e., if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek clearance from these statutory agencies prior to the school proceeding with the Reportable Conduct investigation;
- c. notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by DCJ or the Police);
- d. The Principal to notify the Board Chair and then follow up by notifying the Board that a reportable conduct matter is underway.
- e. notify the OCG within 24 hours of receiving the allegation;
- f. carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- g. provide an initial letter to the PSOA advising that an allegation of reportable conduct has been made against them and the School's responsibility to investigate this matter under section 34 of the Children's Guardian Act 2019; and
- h. investigate the allegation or appoint someone to investigate the allegation.

5.2 INVESTIGATION PRINCIPLES

The School will:

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

5.3 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 PSOA;
- provide the PSOA 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 PSOA of the preliminary finding in writing by the Head of Entity and provide them with a further opportunity to respond or make a further submission prior to the matter moving to final findings;
- consider any response provided by the PSOA;
- make a final finding in accordance with the OCG guidelines;
- decide on the disciplinary action, if any, to be taken against the PSOA;
- if it is completed, send the final report to the OCG within 30 days after having received the allegation, as per section 36 of the Children's Guardian Act 2019.
- should the final report be unfinished within 30 days, the Head of Entity must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as per section 38 of the Children's Guardian Act 2019.

Submission of an interim report must include;

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

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

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

5.4. 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 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.

5.5 INITIAL RISK ASSESSMENT

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

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

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

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

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

5.6 ONGOING RISK MANAGEMENT

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

5.7 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 Principal regarding what action, if any, is required in relation to the PSOA, the child(ren) involved and any other parties.

5.8 WHAT INFORMATION WILL BE PROVIDED TO THE PSOA?

The PSOA will be advised:

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

The PSOA does not automatically have the right to:

- a. know or have confirmed the identity of the person who made the allegation; or
- b. be shown the content of the OCG 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 sustained finding referred to the OCG to request access to the records held by the school in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

5.9 DISCIPLINARY ACTION

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

In relation to any disciplinary action the School will:

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

5.10 CONFIDENTIALITY

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

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

Records about allegations of reportable conduct against employees will be kept [in a secure area] and will be accessible by [the Head of Agency or with the Head of Agency'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.

6. WWC ACT

6.1 GENERAL

All employees of the school are required to have and maintain a cleared Working with Children Check during their employment at the school.

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 they 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 school in paid child-related work prior to the commencement of the new Working With Children system, 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.

PROCESS OF CLEARANCE

The school will ensure that all employees have and maintain a cleared Working with Children Check. Prior to employment future staff are asked for documentation relating to qualifications and their WWCC (including DOB). These are stored on the staff file and the WWCC is verified either by the Business Manager or Principal. The verification is printed for the staff file and all details of the check are entered into the WWCC register on the Schools Server.

Each Term the Principal or Business Manager will highlight (in orange) any staff member whose WWCC will expire within the next 6 months and email to notify them as such. When the due date is within 3 months the staff member will be highlighted (in red) and another email sent as reminder.

6.2 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.

Schools 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. 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.

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 at Northside are required to:

- a. to be aware and follow the expectations of conduct expressed in the School Staff Code of Conduct.
- b. Volunteers are encouraged to obtain a volunteer WWCC.
- c. Parents and volunteers who work with small groups of children or attend camps and excursions must have a valid WWCC.
- d. All visitors to site including volunteers need to sign in at the school office.
- e. School Support Hours tasks not requiring a WWCC are identified as such.

DEFINITIONS

6.3 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.

6.4 CHILD-RELATED WORK

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

- a. early education and childcare including education and care service, childcare centres and other childcare;
- b. education schools and other educational institutions and private coaching or tuition of children;
- c. religious services;
- d. residential services including boarding schools, homestays more than three weeks, residential services and overnight camps; or
- e. transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings.
- f. Counselling, mentoring or distance education not involving direct contact.

6.5 CHILD-RELATED WORKER

A person who has physical contact or face to face contact with children in work outlined above in 3.2, including schools. 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.

6.6 DISQUALIFIED PERSON

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

A disqualified person 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 have a bar or an interim bar.

6.7 FINDINGS OF MISCONDUCT INVOLVING CHILDREN

The school will report to the OCG when a finding has been made that the person (an employee of the school) 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.

The School 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 School in relation to the finding of misconduct involving children.

6.8 REPORTING BODY

Independent Schools which are members of the AISNSW are defined as a reporting body by the WWC Act.

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

6.9 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.

6.10 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 School to verify the status of an employee's Check.

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.

7.0 CRIMINAL OFFENCES

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

7.1 FAILURE TO PROTECT OFFENCE

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

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

7.2 FAILURE TO REPORT OFFENCE

Any adult, 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.

7.3 SPECIAL CARE RELATIONSHIPS (CRIMES ACT 1900 – NSW)

It is a crime in NSW for a staff member, volunteer or contractor to have a sexual relationship with a student where there is a special care relationship. The Act provides that a young person is under an adult's special care if the adult is a member of the teaching staff of the School at which the young person is a student; or has an established personal relationship with the young person in connection with the provision of religious, sporting, musical or other instruction.

The Special Care (sexual intercourse) offence under s73 was supplemented by an additional special care offence involving sexual touching now under s73A of the Crimes Act. The new offence under s73A will expand special care offences to also apply to non-penetrative sexual

touching. The offence will protect children aged 16-17 years from inappropriate sexual contact with teachers and others who have special care of the child.

8.0 SHARING INFORMATION

Chapter 16A of the [*NSW Children and Young Person \(Care and Protection\) Act 1998*](#) provides for the exchange of information and cooperation between prescribed bodies, if the information relates to the safety, welfare or wellbeing of a child or young person.

Sharing personal information about children and their families must be lawful, which means either gaining consent, or working within relevant legislation. Information sharing by consent, where possible, is important to meaningful work with families to facilitate change. Consent may be obtained verbally or in writing; however, you should not seek consent if doing so might compromise the safety of a child or any other person.

Information can only be shared between prescribed bodies. Prescribed bodies or organisations include:

- NSW Police
- public service agencies or public authorities
- private and public schools, and TAFE establishments
- health care providers
- OOHC providers
- organisations that have direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly to children or their parent/s.

To provide or request information it must relate to the safety, welfare or wellbeing of a particular child or class of children. The information must be for the purposes of assisting a prescribed body to:

- make any decision, assessment or plan or to initiate or conduct any investigation, or to provide any service, relating to the safety and welfare of the child or class of children, or
- manage any risk to the child or class of children that might arise in the prescribed body's capacity as an employer or designated agency.

NSW Health has developed templates and resources [Fact Sheets](#) regarding sharing of information relating to Child Protection with other professionals.

REFERENCES

NSW Department of Communities and Justice: <https://www.dcj.nsw.gov.au>

The Office of the Children's Guardian: <https://www.kidsguardian.nsw.gov.au>

Department of Premier and Cabinet – Keep Them Safe: www.keepthemsafe.nsw.gov.au

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