

# CHILD PROTECTION

## Table of Contents

<b>PURPOSE &amp; SCOPE.....</b>	<b>2</b>
<b>1 INTRODUCTION.....</b>	<b>3</b>
1.1 Definitions .....	3
1.2 Key Contacts.....	3
1.3 Key Legislation.....	4
1.4 Obligation to Report.....	4
1.5 Other policies .....	4
<b>2 THE CARE AND PROTECTION ACT .....</b>	<b>5</b>
2.1 Who is a mandatory reporter? .....	5
2.2 When must a report be made Community Services? .....	5
2.3 What to do if it is considered that a mandatory report is required.....	7
2.4 Concerns that are below the mandatory reporting threshold.....	7
<b>3 THE OMBUDSMAN ACT .....</b>	<b>8</b>
3.1 Responsibilities.....	8
3.2 What is reportable conduct?.....	9
3.3 What happens when an allegation of reportable conduct is made? .....	12
3.4 Risk management .....	13
3.5 What information will be provided to the PSOA?.....	14
3.6 Disciplinary Action .....	14
3.7 Confidentiality .....	14
<b>4 WWC Act.....</b>	<b>15</b>
4.1 General .....	15
4.2 Responsibilities.....	15
4.3 Relevant definitions for WWC .....	15

November 2020

Page 1 of 17



## Christian Community Ministries – New South Wales Colleges Child Protection Policy

# The Lakes Christian College



# Purpose & Scope

<b>Purpose</b>	<p>The purpose of this policy is to eliminate and minimise risk to child safety, to ensure the safety and wellbeing of all students and to provide written processes about the health and safety and appropriate conduct of the College staff and students to comply with accreditation requirements.</p> <p>This policy document is intended to be provided and made available to staff including employees and contractors during their employment or engagement with the school to ensure a clear understanding of their duties and obligations under the key items of child protection legislation in NSW.</p> <p>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</p>
<b>Scope</b>	Students and employees (including full-time, part-time, permanent, fixed-term and casual employees), as well as contractors, volunteers and people undertaking work experience or vocational placements.
<b>Policy Owner</b>	CCM Board of Directors (Governing Body)
<b>Responsible Officer</b>	Chief Executive Officer

Revision Record					
Version	Approval Date	Authorised by	Effective Date	Review Cycle	Next Review
1.1a	12/11/2020	CEO	12/11/2020	Biennial	November 2022
1.1	27/10/2017	CCM Board	11/12/2017	Biennial	November 2019
1.0	16/12/2015	TLCC Principal	22/01/2016	Biennial	December 2017

# 1 Introduction

The safety, protection and well-being of all students is of fundamental importance to the College. Both individuals 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.

## 1.1 Definitions

“College” refers to:  
The Lakes Christian College  
*Street Address:* 206 East Wilchard Road, Castlereagh NSW 2749  
*Postal Address:* Locked Bag 8040, Penrith NSW 2751  
*Telephone:* (02) 4777 4057  
*Email:* office@thelakescc.nsw.edu.au

“Student” refers to a child aged under 18 years of age who is formally enrolled at the College.

“Staff Member” refers to a person working in any capacity for the College (paid or volunteer) including those involved in teaching or administration, bus drivers, cleaners, property services workers, VET trainers, sporting coaches or referees, teacher assistants or teacher aides, early childhood educators, and volunteer roles.

“Teacher” means a person who is employed as such at the College, who holds valid teacher registration with the New South Wales Education Standards Authority (NESA), and may be appointed on a full-time, part-time, fixed-term or casual basis.

## 1.2 Key Contacts

“Principal” means the most senior staff member at the College who has local responsibility for the day to day operations of the College. The current Principal is **Mr Darren Dick** who can be contacted via the College contact details listed above.

“Chief Executive Officer” (or CEO) refers to the person appointed to that position or role for the company Christian Community Ministries Ltd. The current CEO is **Mr John Lyndon** who can be contacted as follows:

*Street Address:* Groves Place, Kingston QLD 4114  
*Postal Address:* PO Box 147, Kingston QLD 4114  
*Telephone:* (07) 3827 6571  
*Email:* ccmoffice@ccmschools.edu.au

### **1.3 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 *Ombudsman Act 1974 (NSW)* (the **Ombudsman Act**).

### **1.4 Obligation to Report**

Set out below are circumstances in which legislation requires reporting of particular child protection issues. Regardless of legislative requirement, the College requires all staff members to promptly report to the Principal any concerns about the safety, welfare or wellbeing of a student, child or young person.

If a child safety concern or allegation involves the Principal, staff members are required to report to the Chairman of the College Board via the CCM Chief Executive Officer.

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

### **1.5 Other policies**

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

- a) the **Staff Code of Conduct** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the College;
- b) the **Work Health and Safety Statement** which summarises the obligations imposed by work health and safety legislation on the College 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 **Student Bullying Policy**.

## 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 promptly reported to the Principal.*

### 2.1 Who is a mandatory reporter?

Under the Care and Protection Act, a mandatory reporter is any 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 College staff members 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 Threshold for reporting

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 there is a requirement to confirm 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.

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.

#### **2.2.4   *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 to do if it is considered 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 supported by Community Services in accordance with best practice principles and is the expectation of the College.

If a staff member has a concern that a child or young person is at risk of significant harm, they 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 the staff member 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.

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

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

A staff member is 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 the staff member to potential civil proceedings for defamation.

### **2.4 Concerns that are below the mandatory reporting threshold**

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

Staff members are required to deal with all reports regarding the safety, welfare or wellbeing of a student with confidentiality and only disclose it to the Principal 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 schools 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 school's investigation of these allegations.

In the context of the Ombudsman Act, the term 'employee' includes paid employees or staff members, contractors, volunteers, work experience participants, clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services.

### 3.1.2 The Ombudsman

The Ombudsman:

- 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 (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 schools 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 Employee obligations to report**

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

An employee 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 employees themselves.

If the allegation involves the Principal, the report is required to be given the Chairman of the College Board via the CCM Chief Executive Officer.

### **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** means 'person subject to 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 (a) relationship with or (b) conduct towards or (c) 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

- **Grooming** refers to patterns of behaviour or conduct aimed at engaging with an alleged victim for sexual activity. Types of grooming behaviours may include:

- Persuading child/children that there is a 'special' relationship'

- Inappropriate gift giving
- Special favours / breaking rules
- Inappropriate amounts of time
- Secret relationship, tactics to keep relationship secret
- Testing boundaries (touching, physical contact, undressing in front of child, talking about sex)
- Extending relationship outside of work
- Personal communication about personal or intimate feelings

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 *Child Protection (Working With Children) Act*, grooming is recognised as a form of **sexual misconduct**. The *NSW Ombudsman Act, 1974* and this Child Protection Policy reflect all of these definitions within the context of the Reportable Conduct Scheme (Part 3A).

### **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 (that is, if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek clearance from these statutory agencies prior to the College proceeding with the Reportable Conduct investigation;
- (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 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 PSOA;

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

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

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 (or children) 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 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 (or children) 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.

#### **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 PSOA, the child (or children) involved and any other parties.

### **3.5 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 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.

### **3.6 Disciplinary Action**

As a result of the allegations, investigation or final findings, the College may take disciplinary action against the PSOA (including termination of employment). In relation to any disciplinary action the College will:

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

### **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 (Head of Agency) 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 an employee becomes aware of a breach of confidentiality in relation to a reportable conduct allegation they must immediately advise the Principal.

## **4 WWC 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.

For existing staff members (including employees and volunteers) engaged at this College in child-related work prior to the commencement of the new Working With Children system<sup>i</sup>, the requirement to obtain a Check will be phased in over a five year period, according to the phase in schedule developed by the OCG.

### **4.2 Responsibilities**

The object of the WWC Act is to protect children by:

- (a) not permitting certain persons to engage in child-related work; and
- (b) 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<sup>ii</sup> 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 be aware and follow the expectations of conduct expressed in the College Staff Code of Conduct.

### **4.3 Relevant definitions for WWC**

#### **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 sectors<sup>iii</sup>:

- (a) early education and child care including education and care service, child care centres and other child care;
- (b) education schools or colleges 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 or college bus services, taxi services for children with disability and supervision of school or 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 4.3.2, 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 WWC Act.<sup>iv</sup>

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.<sup>v</sup>

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 which are members of the AISNSW 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 or 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.

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

<sup>ii</sup> As of 15 June 2013, existing employees and volunteers are subjected to a phase in schedule developed by the OCG. This can be found at [www.kids.gov.nsw.au](http://www.kids.gov.nsw.au) (which may be updated from time to time by the OCG).

<sup>iii</sup> 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>

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

<sup>v</sup> Further details of obligations of employers can be found in the *Information for Employers* guidelines and/or *Information for reporting bodies* factsheet developed by the OCG found at [www.kids.gov.au](http://www.kids.gov.au)