



Orange Christian School

Child Protection Policy

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| Prepared by | Elaine Cooper |
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| | | |

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Orange Christian Schools Ltd

Vision

*To raise up effective leaders of godly character who will
blend academic achievement and biblical truth,
to influence society for the glory of God*

Mission

In partnership with parents, Orange Christian School
provides affordable education that brings
honour and glory to God.

OCS gives each child a Christ-centred education
as a complete person created by God in His image:

- Academically to see the world from God's view
- Spiritually to view themselves in relation to God
- Socially to see others as God sees them

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IMPORTANT RELATED DOCUMENTS

Orange Christian School:

Employment Policy suite

Staff Code of Conduct

Code of Conduct for Parents and Visitors

Anti-Bullying Policy 1-1 Student

Welfare Policy

Sexual Harassment Policy

Discipline Policy

Privacy Policy

Chaplaincy Policy

1 INTRODUCTION

Orange Christian School endeavours to ensure that the school is a safe environment where children are free of the risk of any form of abuse, or any other danger, by:

- Taking the necessary precautions to minimize harm;
- Ensuring safety networks are in place;
- Responding to indication or report of harm, abuse or danger to children;
- And acting in accordance with the legal obligation on all schools.

The school is committed to achieving the highest standards of education while fostering the dignity and integrity of the whole school community. The maintenance of a safe and supportive learning environment is essential to ensure that each student entrusted to our care is affirmed in his or her dignity and self esteem as a person.

All staff must therefore endorse and embrace the principles of child protection as a fundamental responsibility.

2 CHRISTIAN RATIONALE

Orange Christian School has a commitment to honour and glorify God and to raise up effective leaders who will influence society for the glory of God.

Child Protection is part of the outworking of the Great Commandment to 'love the Lord your God with all your heart and with all your soul and with all your strength and with all your mind; and love your neighbour as yourself'. (Luke 10:27)

In the context of OCS, this love seeks to nurture and protect all people: with special regard to the children and young people placed into the School's care by parents and guardians; but also fostering the welfare of staff, volunteers and visitors to the School, the families and friends that form the community of the School, and the greater community. The education of students within OCS aims to protect them from harm, and to train them to live according to the principles of God's love in their future careers, families and communities.

Love honours each person as precious to God and desires their well-being in all ways. Therefore the School's procedures seek to embody patience and kindness, honouring and serving others without prejudice or partiality. 'Love does not delight in evil but rejoices with the truth. It always protects, always trusts, always hopes, always perseveres.' (1 Corinthians 13:4-7)

Orange Christian School honours the authority God has given to the government of our nation, and upholds the laws of the land for the protection of children and young people, and the systems for the implementation of those laws. The School's procedures in respect to these laws will be followed with compassion, sensitivity and humility towards all persons involved, as 'love does no harm to a neighbour. Therefore love is the fulfilment of the law.' (Romans 13:10)

3 PURPOSE OF THIS DOCUMENT

This document sets out the policy and procedures of Orange Christian School (“the School”) to assist staff in understanding and fulfilling their legal and professional obligations in the critical area of Child Protection. This Policy gives both a prevention and response perspective.

This Policy will:

- identify to staff their legal obligations in relation to child protection;
- explain to staff what is required of them to comply with, and implement, those obligations at a practical level; and
- explain the procedures to be followed in the employment of staff in child-related positions.

4 WHO MUST COMPLY

| <i>Responsibilities</i> | <i>Evidence of Compliance</i> |
|--|---|
| Principal | |
| Ensure compliance with the processes and polices set out in this document | Secure files; CPL Policy & calendar |
| Review of this document as changes are made to the relevant laws | Version history |
| Ensure all relevant staff have current ‘Working With Children Check’ clearance | Recruitment Policy |
| Compliance with guidelines and procedures as Head of Agency | Records of investigations |
| Maintain systems for a safe environment for students | Welfare Policy |
| Ensure systems for reporting & investigating incidents | This document |
| Ensure adequate record keeping for audit or inspection by government authorities or CEN | Records of investigations; reports to CEN |
| Deputy Principal | |
| Compliance with guidelines and procedures as Authorised Investigator | Records of investigations |
| All School Staff | |
| Read and agree to comply with the practices of Child Protection and their responsibilities under the law, as set out in this Policy, at the commencement of their employment | Annual CPL register; Staff Induction Policy; CPL Policy |
| Read and agree to comply with the Staff Code of Conduct (annually) | Employee files |
| Report according to the provisions of the law | SchoolPro |
| School community | |
| Comply with requirements of this policy | Code of Conduct for Parents & Visitors |
| Cooperate with any investigation | Records of investigations |

5 LEGAL OBLIGATIONS

The legal obligations to ensure the safety of children at school are effected through:

- (a) **Common Law Duty of Care** – that a person is not injured as the result of the negligence of another; (Appendix 1)
- (b) Three complementary components in the New South Wales legislative scheme: (Appendix 2)
 - Children and Young Persons (Care and Protection) Act 1998** – Provision for reporting and investigating disclosures of child abuse to NSW Family and Community Services (FACS) www.community.nsw.gov.au
 - Ombudsman Act 1974 (NSW) [Part 3A]** – Provision for reporting to the Ombudsman regarding in-house systems for handling allegations of child abuse by employees www.ombo.nsw.gov.au; and
 - Child Protection (Working With Children) Act 2012** - Screening staff in child-related employment, administered by the Office of the Children’s Guardian (CG)www.kids.nsw.gov.au
- (c) Other requirements under **NSW law**

6 DEFINITIONS

The following terms have the following meanings in this policy:

Child - a person under the age of 16 years

Young person - a person aged 16 or 17 years

'Child abuse' or **'abuse'** - can include sexual abuse, physical assault, emotional abuse and neglect, whether or not, in any case, with the consent of the child.

(Sexual abuse does not include sexual activity between consenting peers.)

Assault - an act committed intentionally or recklessly, which puts another person in fear of unlawful bodily harm

'Reasonable grounds' - refers to objective evidence for suspecting a 'risk of significant harm' based on:

- first hand observations of the child, young person or family;
- disclosure from the child, young person, parent or another person;
- inference based on professional training and /or experience.

'At risk 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.

'Significant' implies harm:

- that is sufficiently serious to warrant a response irrespective of a family's consent;
- that is not minor or trivial;
- that may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or well-being;
- that can result from a single act or omission, or an accumulation of these.

'Reportable conduct' - conduct by a person in child-related employment which offends against proper standards of care and behaviour involving children and young people

Head of Agency is The Principal, in terms of the relevant Acts, and has responsibility for mandatory notification, arrangement of investigation, reporting and managing outcomes and risk management of situation

Authorised Investigator is The Deputy Principal, or delegated authority

7 CHILD PROTECTION POLICY

7.1 Orange Christian School Commitment:

Orange Christian School is committed to:

- Providing a safe environment for students;
- Preventing harm to a student within the school;
- Dealing promptly with any report of a student at risk of harm in an appropriate manner;
- Educating students regarding their rights, and equipping them with appropriate skills for avoiding or reporting uncomfortable or abusive situations;
- Training staff to recognize and appropriately handle and report situations where a student may be at risk of harm

7.2 The Principal's Responsibilities

The Principal is responsible for the administration and conduct of the school and all that relates to it. In terms of the relevant Acts, the Principal as the Head of Agency:

- Must be informed promptly of any case where a student may be at risk of harm.
- Will consult as necessary to determine whether there are reasonable grounds for further action.
- Must notify Family and Community Services (FACS) if there are reasonable grounds to suspect that a child is at risk of harm.
- Must report allegations of child sexual assault to FACS. (Other staff members may also report to FACS).
- May report concerns regarding a young person to FACS.
- must inform the reporting teacher of the action which has been taken.
- Must notify the Ombudsman in the event of an allegation of reportable conduct by staff, or any conviction or disciplinary action in relation to reportable conduct by an employee of which he/ she becomes aware.
- Has the duty to investigate, or delegate the investigation of, an allegation of reportable conduct of a staff member.
- Will set up systems for providing a safe environment for children in the School's care, to prevent reportable conduct from happening.
- Will ensure systems for recording and responding to allegations or convictions of a child protection nature against employees.
- Will make arrangements within the School to require all staff to inform the Head of Agency of any allegations or conviction of a child protection nature against an employee, of which they become aware as soon as practicable.

7.3 A Complaint Against the Principal

If the Principal is the subject of a complaint, the Chairman of the Board must be informed, who will delegate authority to the Deputy Principal as Authorised Investigator under the Act, or another suitable person to initiate a report.

7.4 Mandatory Reporters

All staff are Mandatory Reporters under the Care and Protection Act, 1998.

All staff:

- Must be familiar with the School's Code of Conduct in relation to Child Protection.
- Must take the necessary steps to prevent and protect students from being harmed or exposed to harm, in consultation with the school Principal or, where the school Principal is unavailable, in consultation with a designated teacher.
- Must report any suspicion, or disclosure, that a student is at risk of harm to the Principal, who must determine whether there are reasonable grounds for further action.
- In the event that the Principal determines there are not reasonable grounds to report, and the teacher disagrees, that teacher is responsible to notify FACS themselves.
- In the event that no one is available to consult with, the teacher must take the necessary steps as required; and must make a written report to the Principal.
- Must report all allegations of reportable conduct, prior conviction for, or disciplinary proceedings in relation to, reportable conduct by staff to the Principal.

7.5 Documentation

Accurate documentation must be kept by all parties concerning:

- Reports made of any possible case of a student suspected to be at risk of harm, including:
 - details of any notification;
 - actions taken by the school as a result of such notification; and
 - any other details related to the report
- All details relating to any investigation undertaken by the Principal, or authorised investigator

All records will be kept in a secure confidential file at the school.

7.6 Confidentiality

Staff who have access to information regarding:

- students suspected to be at risk of harm
- allegations of reportable conduct by a staff member
- details of any investigation into a complaint,

are to observe strict confidentiality in relation to the entire matter unless required by the Principal to disclose that information.

7.7 Curriculum

Child Protection curriculum will be incorporated and implemented within the school curriculum.

7.8 Employment Policy

OCS requires that Staff who are appointed to positions in the school are fit and proper persons to occupy those positions, and understand their responsibilities in this area.

- (a) The school will undertake that all child-related staff have clearance under the Working With Children Check.
- (b) Any child-related worker, paid or voluntary, who is subsequently barred under the Working With Children Check will be immediately removed from child-related work upon notification by letter to the School.

7.9 Staff Code of Conduct

All staff are required to agree to the Staff Code of Conduct, and sign accordingly at the commencement of employment and at the commencement of each year.

Staff members whom the Board reasonably believe, on the face of evidence presented by all concerned, to have breached this code, or any part of this policy, may be suspended pending the outcome of investigation, or summarily dismissed from employment.

7.10 In-Service Policy

In-service and induction processes will ensure that all staff are thoroughly conversant with this policy and related procedures; and informed regarding changes and updates.

7.11 Volunteers

The School will ensure that all volunteers, tutors, contractors and other outside providers are informed of their obligations relating to child protection.

7.12 Protection of Staff

The School recognises that there is a danger that its staff could be seriously affected by false, vexatious or misconceived allegations against them. The School is therefore also committed to investigating all allegations promptly and fairly.

7.13 Counselling

To the extent possible, Orange Christian School will attempt to support students and staff who are the victims or the accused in cases of alleged child abuse by directing persons toward counselling and, if necessary, legal representation.

7.14 Review

This policy and associated procedures will be reviewed on a regular basis as part of the general review of policies, and as required by changes to the relevant legislation.

8 PROCEDURES RELATING TO SIGNIFICANT RISK OF HARM TO A CHILD

NOTE: If there is immediate danger to the student, contact the Police (000) and/ or Helpline (133 627) directly.

Reporting to FACS

Under the Care and Protection Act, **all staff in schools are mandatory reporters.**

Although the legislative requirement ends at age 16, Orange Christian School considers a 'child' to mean any student enrolled at school thereby extending the duty of staff to report concerns to cover all students.

8.1 Where a staff member suspects significant risk of harm to child:

- (a) Any member of staff who in the course of their work suspects that a child or young person has been, or is, at risk of significant harm from abuse or neglect, should as soon as practicable notify the Principal
- (b) If the staff member is uncertain whether there are 'reasonable grounds' the Principal will determine whether there are reasonable grounds to suspect the child is at significant risk of harm.
- (c) The Principal or his/her agent will use the Mandatory Reporter Guidance Tool (at www.keepthemsafe.nsw.gov.au) in order to help ascertain whether or not the child is at significant risk of harm.
- (d) If it has been determined there **are** 'reasonable grounds' to suspect the child has been, or is, at significant risk of harm the Principal must promptly notify or authorise notification to FACS.

(Appendix 3 – 'Circumstances which indicate a risk of significant harm')

Appendix 4 – 'Staff response to disclosure of abuse by a student')

8.2 Procedure for reporting to FACS

Step 1 – Refer to the interactive on-line Mandatory Reporter Guide

To assess whether concerns meet the risk of significant harm threshold for reporting.

(www.keepthemsafe.nsw.gov.au)

Step 2 – Prepare information for report

If risk of significant harm is indicated after following the Mandatory Reporter Guide. The quality and detail of the information will help with decision-making and action that follows.

The information provided must include details about:

The risk of significant harm;

- The child or young person;
- The family background;
- The reporter; and
- The context of the report.

The information provided in the report must be submitted to the Principal and the Accredited Investigator.

Staff preparing the report or with access to the information must observe strict confidentiality in relation to the entire matter.

Step 3 – The Principal or Accredited Investigator must contact the Child Protection Helpline:

- Phone 133627;
- Fax 9633 7666;
- eReport (where available).

They must also make written notification to FACS on the prescribed form.

If the Principal declines to report, and the staff member has a current concern of risk of significant harm, the staff member should make the report.

Step 4 – File documentation

The Principal must ensure that documentation is completed and filed confidentially.

Step 5 – Provide information to FACS

The Principal must comply with a direction from FACS to provide information about the student who is the subject of an investigation following a notification of risk of significant harm.

Note: Reports to Community Services are confidential and the reporter's identity is protected by law if the report is made in good faith. (Appendix 5 -'Safeguards for Reporters')

8.3 Other matters to be aware of regarding a disclosure

- (a) Once a report is made to the Child Protection Helpline, no further report needs to be made unless new information comes to hand.
- (b) Reports should be made in one form only, i.e. by phone or fax or eReport. Confirmation in writing is unnecessary. The summary page or the decision report from the online Mandatory Reporter Guide can be printed and filed in the School records.
- (c) Further investigation is normally left to FACS or the Police. If there is some aspect of the case that directly involves the School, investigation must be in consultation with FACS, and with care to avoid contaminating evidence.
- (d) The Principal or staff members **MUST NOT** inform parents/ care givers that a notification has been made. This is the responsibility of FACS.
- (e) The Principal must inform a student who is to be interviewed by FACS officers, or any other person, that they have the right to refuse the interview; and the right to have a support person attend any interview granted by the student.
- (f) The Principal **MUST NOT** inform parents/ care givers of an interview with the student, where suspected abuse involves a family member or close family friend. This is the responsibility of FACS.

- (g) If the alleged offender is not a family member or close family friend, a student MUST NOT be interviewed unless a parent/ care giver or their nominated representative is present.
- (h) The Principal or staff member should not attend as a nominee of the parents or care givers.
- (i) If the concerns do not fall within the category of 'significant harm' but are still matters of concern, the school may wish to deal with the matter internally or take action including discuss the matter with the School counsellor and/ or parents. If appropriate in the circumstances, refer the matter to a Family Referral Service.
- (j) The Principal will follow up with FACS if, after a reasonable time, feedback has not occurred, particularly to ensure parents have been informed and to facilitate any general counselling that may be necessary at school.

8.4 Confidentiality and privacy

- (a) The Principal must ensure accurate documentation is made (and kept strictly confidential and securely filed) concerning:
 - reports made to the Principal about possible risk of harm to a child and any decisions made and action taken;
 - details of any notification to FACS;
 - details of any feedback or requests from FACS following notification;
 - any actions taken by the school in relation to a notification.
- (b) At all stages it is essential that:
 - the student's right to privacy and confidentiality is respected;
 - the anonymity of the notifier is maintained;
 - the rights of any person implicated in the allegation are respected;
 - where the accusation is of a criminal nature the legal principle of *presumption of innocence* of the accused must be maintained
- (c) In general any person making an enquiry or complaint about a notification or interview with a student should be referred to FACS.

8.5 Failure to report

There is no longer any criminal penalty for a mandatory reporter who fails to make a report to FACS.

However, reporting is still a legal obligation. Orange Christian School expects that a mandatory reporter will fulfil their duty to all students. Failure to report may result in disciplinary action.

8.6 Information sharing between schools

Schools are required to exchange information relating to a child or young person's well being. The Care and Protection Act also requires that reasonable steps are taken to co-ordinate decision making and service delivery regarding children and young people.

9 REPORTING TO THE OMBUDSMAN

Ombudsman Amendment (Child Protection and Community Services) Act 1998

The role of the Ombudsman's office is to oversee child protection systems in designated agencies, including schools; and their handling of 'reportable allegations', including the investigation of allegations.

All notifications of 'reportable conduct' must be reported to the Ombudsman who will monitor the School's response and investigations, and may undertake their own investigation.

9.1 When to Report

A report to the Ombudsman is required to be made by the Principal, as Head of Agency, when an employee of the school is implicated in any allegation of reportable conduct; or is discovered to have a conviction for, or to have been subject to any disciplinary proceeding in relation to reportable conduct.

Reportable conduct is:

- any sexual offence or sexual misconduct, committed against, with or in the presence of a child (including child pornography), or
- any assault, ill treatment, or neglect of a child, or
- any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child; where a 'child' is a person under the age of 18 years

It excludes conduct that is reasonable for the purposes of the discipline, management or care of children (Class in Kind Agreement between the Ombudsman and CEN schools), as prescribed in the Staff Code of Conduct.

9.2 Procedure for reporting

Step 1

When an allegation of a child protection nature is made against an employee, the Head of Agency is required to record and respond to the allegation. This process includes clarifying, on the face of it, if the allegation is reportable to the Ombudsman.

The Ombudsman's office will be contacted for advice about any incidents which may involve reportable conduct. Records of contact with the Ombudsman's office will be maintained separately of the review.

Step 2

If the allegation is reportable, the Head of Agency is required to make a notification to the Ombudsman on the prescribed for within 30 days of becoming aware of a reportable allegation or conviction.

The notification must include details of the reportable allegation or conviction and what the agency proposes to do about it. It is not a requirement that the investigation be completed within 30 days of becoming aware of the allegation.

[This requirement enables the Ombudsman to intervene early in matters where an agency, as evidenced by its initial response to an allegation, risks compromising the safety of the child, the integrity of the investigation or fair processes for the employee.]

Step 3

At the end of the internal investigation by the Authorised Investigator (Deputy Principal), the Head of Agency must send a report to the Ombudsman concerning the investigation. This report must include the agency's findings in relation to the allegations, details of any action taken or to be taken, copies of documents on which the report is based and any comments on the report.

Step 4

Once the notification and/or report is completed, the Ombudsman will assess the information and provide feedback. In doing so, it may be necessary to provide further information, as required by the Ombudsman.

9.3 Further Information

Staff must, as soon as practicable, inform the Principal if they:

- (a) Become aware of any conduct, allegation or complaint that may involve reportable conduct by another employee, and report the circumstances;
- (b) Become aware of any allegation of a conviction or disciplinary action in relation to reportable conduct, against another employee, or themselves, and report the circumstances.
- (c) In the case of an allegation against the Principal, which may involve reportable conduct, or of a conviction or disciplinary action in relation to reportable conduct, staff must as soon as is practicable inform the Chairman of the School Board of the circumstances.
- (d) On receiving an allegation which may involve reportable conduct against an employee the Principal shall consult with the 'Authorised Investigator' (Deputy Principal) to promptly decide whether or not, on the face of the information provided, the matter is reportable to the Ombudsman. In deciding this, the Authorised Investigator may seek clarification and record the details, but should not commence an investigation.
- (e) If, on the face of it:
 - the alleged behaviour was reasonable for the purposes of discipline, management or care of children and in line with the agency's code of conduct, then the matter is not reportable to the Ombudsman, but needs to be recorded by the agency and dealt with as a complaint
 - the alleged behaviour involves the use of physical force that, in all the circumstances, is trivial or negligible, then the matter should be investigated and the result of the investigation recorded under workplace employment procedures
- (f) Records shall be maintained of all complaints and allegations, not just those deemed reportable.

A 'proforma' for inquiries, notifications, interviews etc will be kept in a secure file for the creation of file notes.

- (g) In the event the alleged behaviour constituted reportable conduct, i.e. sexual offences, sexual misconduct, assault, ill-treatment, neglect or behaviour that causes psychological harm, the **matter must be reported to the Ombudsman within 30 days of the Head of Agency** becoming aware of the allegation, and the matter investigated by the Authorised Investigator.
- (h) In the case of reportable conduct the Authorised Investigator shall:
- Seek a signed written statement detailing the nature of the allegation and any other relevant information;
 - If the person making the allegation is unable or unwilling to make or sign a written statement, record details of the allegation as reported, using as far as possible the words used by the person making the allegation;
 - Direct the person making the allegation to maintain confidentiality;
 - Conduct, or instigate, an investigation of the allegation;
 - Make any notifications to FACS, police, Ombudsman, CCYP as required.
- (i) The Principal as Head of Agency shall, as soon as practicable and in any case within 30 days, notify the Ombudsman (Notification Form Part B) of:
- any allegation of reportable conduct or conviction or disciplinary action related to reportable conduct against an employee of the school;
 - the findings of the investigation into the allegation;
 - whether or not the School plans to take any disciplinary or other action in relation to the employee;
 - any written submissions that the employee wishes to have considered in relation to the above.
- (j) At the conclusion of the investigation the Principal shall notify the Commission for Children and Young People of the disciplinary proceedings unless the allegation was found to be false, vexatious or misconceived.

9.4 Conduct of an Investigation

- (a) Any investigation will normally include the following steps:
- Clarify the allegation
 - Carry out a risk assessment
 - Collect all available relevant information (ensure adequate documentation)
 - Interview all relevant witnesses (ensure all interviews are adequately recorded)
 - Inform the employee who is the subject of the allegation of the substance of the allegation
 - Give the employee access to any relevant documents which do not need to be kept confidential
 - Interview the employee ensuring procedural fairness
 - Consider all the evidence and make a preliminary finding whether the allegation is sustained or not
 - Decide on disciplinary action, if any, to be taken against the employee

- (b) All investigations must be conducted in an impartial, independent and objective manner, in regard to the alleged victim, the accused person and the reputation of the School.
- (c) The Authorised Investigator will normally conduct an investigation but may ask another person to undertake the investigation, e.g. in cases where a conflict of interest may arise. (i.e. a clear history of conflict between the proposed investigator and the accused.)
- (d) All persons involved in the investigation must maintain a high level of confidentiality throughout the investigation. (It may, in some circumstances, be inappropriate to advise the accused person of the identity of the person making the allegation.)
- (e) The accused employee must not discuss the allegations with students (including the alleged victim) or with the parents without the approval of the school.
- (f) The School should, as far as possible, make available counselling and support to all those involved in an investigation, particularly the victim and accused.
- (g) All communication with the Ombudsman, records and reports of allegations and investigations, will be kept in secure confidential files, with access limited to authorised staff; and cross-referenced to student files.
- (h) If key personnel leave or become unavailable during an investigation, all files will be handed over to the incoming staff member.

9.5 Risk Assessment:

- (a) The purpose of a risk assessment is to identify and minimise the risk to:
 - the child or children who are alleged to have been victims of the abuse;
 - the employee against whom the allegation was made;
 - other children whom the employee may contact;
 - the proper investigation of the allegation.
- (b) Action may include: the employee being temporarily relieved of some duties; being required to avoid certain pupils; or in special cases, being suspended from duty.
- (c) Any decision taken as a result of a risk assessment is in no way an indication of the guilt of the employee concerned.
- (d) The factors to be considered during the risk assessment include:
 - the nature of the allegation;
 - the vulnerability of the children;
 - the nature of the position occupied by the employee;
 - the level of supervision of the employee;
 - the disciplinary history of the employee;
 - the safety of the employee;
 - any comment made by the employee.
- (e) Risk should be continually monitored throughout the investigation.

9.6 Notifying and Interviewing the Employee who is the Subject of an Allegation

- (a) If FACS or the police are investigating an allegation, advice should be received from them about when to inform an employee about the details of an allegation.
- (b) Otherwise, the decision of when to inform the employee will depend on the protection of notifiers and witnesses, the quality of evidence to be obtained and the possibility of prejudicing the conduct of the investigation.
- (c) Within these constraints the employee should be told as soon as possible of the allegation made. Where possible employees should be given reasonable advance notice of an interview with the investigator; sufficient details of the allegation to allow the employee to respond; and advised they may have a witness at the interview.
- (d) Employees may have someone to support them during the interview process. A support person is there as a witness only: not as an advocate or to take an active role in the proceedings.
- (e) A record must be kept of the meeting. This could be a tape recording, a full written record or short minutes.

9.7 Findings and disciplinary proceedings:

- (a) At the conclusion of the investigation a preliminary finding will be made on the balance of probabilities that:
 - the allegation was false; or
 - the allegation was vexatious, i.e. made without substance; or malicious; or
 - the allegation was misconceived, i.e. it was made in good faith, but either without substance or based upon a misunderstanding, or the incident could not reasonably be considered reportable conduct; or
 - the allegation was not sustained; or
 - the allegation was not one of reportable conduct, but might constitute a breach of professional behaviour or judgement, which requires further professional disciplinary action; or
 - the allegation was sustained, and the matter required further disciplinary action, and reported to CCYP.
- (b) As a result of findings of the investigation the Principal or Board may take disciplinary proceedings against the employee. Such proceedings will have regard to procedural fairness and will usually involve:
 - Giving the employee details of the final findings;
 - Informing the employee of the possible action the Principal or Board may take;
 - Giving the employee the right to respond.
- (c) The employee is entitled to ask the Ombudsman to review the investigation and findings if the employee believes the investigation was unfair, biased, incomplete or suffered from some deficiency giving rise to an incorrect finding.
- (d) The employee must be advised if the employer has notified completed disciplinary proceedings to the Commission for Children and Young People.

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

9.8 Procedure with Regard to Class or Kind Agreement

(a) **Responsibilities of CEN:**

- Encourage accreditation and ongoing training of Authorised Investigator/s
- Facilitate and monitor the use of formalised support during investigations
- Facilitate provision of further child protection resources to schools
- Monitor school's compliance with child protection responsibilities; and give feedback on investigations
- Maintain a data base of 'Completed Class or Kind Investigation Notifications'; and records of accreditation and training of investigators
- Ensure that the school and Authorised Investigator/s maintain adequate records of advice given or information received during investigations

(b) **Responsibilities of the School:**

- Notify CEN of any allegations
- Use only accredited Authorised Investigator
- Seek advice; and follow advice given via formal support mechanisms provided by CEN
- Outsource investigations where required by Ombudsman Determination
- Take appropriate action following investigations; and document rationale and actions taken
- Authorise the finalisation of an investigation in signed final report
- Retain adequate records of matters covered by Ombudsman Determination
- Ensure all relevant employees receive basic training of their responsibilities in identifying, and reporting allegations of reportable conduct to the Head of Agency
- Retain a separate register of all Class or Kind Agreement investigations
- Forward all completed Class or Kind Investigation Notifications to the CEN State Executive Officer, including:
 - name of school
 - name of Investigator
 - date of investigation
 - acknowledgement that the matter complies with the Ombudsman Determination
 - any other necessary identifying information
- Authorise the Ombudsman to access records of allegations of reportable conduct made against an employee of the school

(c) **Record Keeping**

- Complete all records accurately and honestly at regular intervals, as required
- Make records available to CEN State Executive Officer or Ombudsman, as required
- Provide any reports about the fulfilment of the school's child protection responsibilities, as required
- Hard copy of files are kept in secure locked cabinet
- Electronic files are kept in secure files with authorised access only

(d) **Inspection and Audit**

- Following reasonable notice, the CEN State Executive Officer shall have the right to inspect and/ or conduct an audit of the schools records to ensure compliance with this Agreement
- The school shall cooperate with a request for an inspection, and give access to its records
- Any audit or inspection as specified above shall be at the cost of CEN

Further Information:

www.ombo.nsw.gov.au/ Facts Sheets

10 SCREENING STAFF IN CHILD-RELATED EMPLOYMENT

The CCYP through the Child Protection (Working with Children) Act 2012 (WWC Act) aims to reduce the risk of abuse to children by establishing working with children check clearance. This check is a screening mechanism reduce the likelihood that unsuitable people be employed or engaged in child-related employment.

The check applies to paid and unpaid child related workers alike. 'Worker' is defined comprehensively to include paid, unpaid and other roles.

10.1 Definition of child-related work

Child related work is defined as work that involves direct contact by the worker with children; and work that is in one of the sectors of:

Child development & family welfare services; child protection; early education & child care; education; transport services for children; youth workers; children's health services; disability services; entertainment for children; justice services; religious services

Further information: Part 2, Child-related Work, Child Protection (Working With Children) Regulation 2013, (under the Child Protection (Working With Children) Act 2012)

10.2 Regulations for employers

From 15 June, 2013, employers must:

- Register online with the new Working With Children Check at: www.newcheck.kids.nsw.gov.au
- Verify the Check status of every new paid employee before hiring them to ensure they have a clearance or a completed application for a Check
- Ensure current paid workers and all volunteers apply for the new Check in accordance with the phase in schedule
- Remove any barred person from child-related work
- The School needs to establish whether a Working With Children Check is necessary for the position being filled, and may not ask for one if it is not required

10.3 Compliance for employees in child-related work

- A child-related employee or volunteer is responsible for applying for his or her own Working With Children Check.
- An employer cannot apply on behalf of a worker.
- Child-related workers **starting a new job** must apply for a Check before they begin their new role.
- Paid child-related workers who are **currently employed** do not need to apply straight away; they will be phased in over a five year period. (Secondary 2016; Early childhood/ Primary 2017)
- **Volunteers (new and current)** will also be phased in. (Secondary 2016; Early childhood/ Primary 2017)

- **Self employed people** who hold a Certificate for Self Employed People (CSEP) may continue to use their CSEP until it expires; and must apply for the Check once their CSEP expires.

10.4 To apply for a Check

STEP 1

- Applicants fill in an online form at www.newcheck.kids.nsw.gov.au
- Once they have submitted the form, they will receive an application number.
- This application number **cannot** be used for online verification until STEP 2 is completed.

STEP 2

- Applicants must take their application number and proof of their identity to a NSW motor registry or NSW Council Agency.
- Proof of identity for the Working With Children Check is the same as for a NSW driver's licence.
- Paid workers pay an \$80 fee for a five year clearance.
- The application number can then be used in the online verification process, pending the final outcome of the Working With Children Check application.
- An applicant must appear in person to prove their identity; this task cannot be delegated to a third party.
- Proof of identity must be performed in NSW; it cannot be completed from interstate or overseas.

Exemptions

There are specified exemptions from the Working With Children Check under Part 4, Clause 20 of the [Child Protection \(Working With Children\) Regulation 2013](#).

Exemptions relate to administrative and maintenance staff, parental helpers in class, visiting speakers.

People covered by these exemptions are not required to have a Working With Children Check. (Appendix F 'Specified exemptions from Working With Children Check')

10.5 Results of a Check

- If the worker receives a clearance, the Check is valid for five years and may be used for any child-related work in NSW.
- Cleared applicants will be subject to ongoing monitoring for relevant new records which could lead to a bar and the clearance being revoked before the five year expiry date.
- Barred applicants must not engage in any child-related work (paid or unpaid). It is an offence for them to do so and penalties apply.
- It is an offence to hire a barred worker for child-related work.

10.6 Verifying a child-related worker

Before hiring a new paid child-related worker, Working With Children Check status must be verified to ensure they have a clearance to work with children, or have completed an application for a Check.

- Verification can only be completed online – a worker cannot present their Working With Children Check number and clearance on paper, due to possible fraudulence or obsolescence.
- Current employees and volunteers are being phased in (Secondary 2016; Early childhood/ Primary 2017)

To verify a Working With Children Check status:

1. Go to www.newcheck.kids.nsw.gov.au / *Child-related employers*
2. Click the *Start here* button
3. Click the *Employer login* button.
4. Click the *Verify Working With Children status* tab.
5. Enter the worker's:
 - Full name
 - Date of birth
 - Working With Children Check number (or application no.) and click *Verify*A brief report will appear on-screen.

10.7 Working With Children Check status

These are the possible results and their meaning:

Application in progress - A Working With Children Check application is being processed and the applicant may work with children.

If the applicant becomes barred, you will be contacted and advised on what to do next.

Cleared - This applicant has a Working With Children Check clearance that is valid until the listed expiry date. The applicant may work with children.

Barred - The applicant has been barred from working with children and it is an offence to engage this person for child-related work.

Interim barred - The applicant has been barred from working with children during the course of a risk assessment. It is an offence to engage this person for child-related work.

Not found - The database cannot find a matching Working With Children Check for any one of these reasons:

- The data entered for verification has errors;
- The person's application has been withdrawn or terminated without an outcome;
- An application has not been completed by this individual.

It is an offence to engage this person in child-related work or child-related roles.

If the outcome of your online verification of a worker is:

- barred
- interim barred
- not found

You cannot employ them to work with children – paid or unpaid.

10.8 Records considered in the Working With Children Check

A Working With Children Check includes a national police check and review of findings of misconduct involving children.

Further information: www.newcheck.kids.nsw.gov.au or [FACT SHEET: Records used to assess risk](#)

Only significant sexual misconduct and serious physical assault will be considered in the Working With Children Check.

Findings of misconduct can only be reported by “reporting bodies” and the [Child Protection \(Working With Children\) Act 2012](#) nominates the categories of agency that will be required to report Disciplinary Matters.

10.9 Risk assessment

A risk assessment is an evaluation of an individual’s suitability for child-related work.

(a) It will be triggered by:

- an offence listed in Schedule 1 of the [Child Protection \(Working With Children\) Act 2012](#) (and equivalent records from other states and territories)
- a pattern of behaviour or offences involving violence or sexual misconduct that represents a potential risk to children (even if not listed on Schedule 1 or 2)
- findings of misconduct reported by a reporting body.
- notifications by the Ombudsman.

Schedule 1 records are listed in the [FACT SHEET: Records used to assess risk](#) from www.newcheck.kids.nsw.gov.au

When assessing risk, factors set out in section 15 of the [Child Protection \(Working With Children\) Act 2012](#) are considered. These factors relate to the conduct of the offence, the applicant, and likely recurrence of the offence.

The Commission must also take into consideration any information given in or in relation to the application, and any other matters considered necessary.

- (b) The Commission will keep the applicant informed during the risk assessment process. If a bar is being considered, the Commission will contact the applicant to inform him or her of the potential decision and invite them to submit information which may affect the outcome of the final decision.
- (c) If the final outcome is a bar, notification will be issued by post. In most cases, barred workers can apply for a review of the decision to the Administrative Decisions Tribunal.

Further information: [Fact Sheet: Bars and Appeals](#) (www.newcheck.kids.nsw.gov.au)

10.10 Record keeping

Employers are required to keep records of child-related workers which include:

- Full name
- Working With Children Check number
- Date and outcome of the Check verification
- Check expiry date.

These records may be electronic or in hard copy format, but must be made available if required for audit and monitoring purposes.

- Workers will be reminded to renew their Check three months before it expires
- Workers are responsible for applying and renewing their own Working With Children Checks
- No notification will be sent to employers
- Employers have responsibility for verifying the status of Working With Children Checks

10.11 Notifications

If a worker becomes barred, the employer will be contacted, using details provided during the online verification process.

Only the worker's barred status will be shared with the employer. Details of work or criminal records will NOT be shared.

Notification will be sent by letter, addressed to the individual who verified the worker. The letter will outline the legal implications of a barred status and the action required by the employer.

10.12 When notification is received

If you receive a letter advising you that a current employee or volunteer has become barred, you must immediately remove them from child-related work. It doesn't matter whether they are paid or unpaid; supervised or unsupervised.

Your options are:

- dismiss the worker
- suspend them from child-related work pending the outcome of an appeal
- transfer them to a non child-related role within the business (although you are under no legal obligation to find an alternative position for a barred worker).

The courts cannot order the re-employment of a person for child-related work if the person is barred from working with children.

Damages or compensation are not payable to a worker who has been removed from child-related work because they are barred from working with children.

See: [FACT SHEET: Bars and appeals](http://www.newcheck.kids.nsw.gov.au) from www.newcheck.kids.nsw.gov.au

10.13 Privacy and confidentiality

The Office of the Children’s Guardian will maintain a register for Working With Children Checks.

Information about a person that may be shared

The following information about a person contained in this register may be made available by the Children’s Guardian to an employer or proposed employer on request by the employer or proposed employer:

- The Working With Children Check application number of any worker;
- The current Check status of a child-related worker;
- The number, type (volunteer or non-volunteer) and expiry date of a Working With Children Check held by a child-related worker.

The Children’s Guardian must not make this information available unless the request is made in an approved format and contains the particulars required by the Children’s Guardian.

Information about an employer that may be shared

The following information about an employer contained in the register may be made publicly available by the Children’s Guardian:

- the trading name or registered business name of the employer
- the child-related work for which the employer engages a child-related worker
- the postcode or name of the place in which the employer’s business is located;
- whether any requests for information regarding a Check status were made to the Children’s Guardian by the employer within a specified period.

11 FURTHER INFORMATION

| | |
|---|---|
| <p>Community Services FACS General Enquiries: 02 9716 2222 Help Line:132 111 (for all reporting) TTY: 1800 212 936 www.community.nsw.gov.au</p> | <p>Commission for Children & Young People General Enquiries: 02 9286 7276 Fax: 02 9286 7267 Email: kids@kids.nsw.gov.au</p> |
| <p>Working with Children Check Phone: 02 9286 7219 Email: check@kids.nsw.gov.au www.kids.nsw.gov.au</p> | <p>NSW Ombudsman General Enquiries: 02 9286 1000 TTY: 02 9264 8050 Email: nswombo@ombo.nsw.gov.au www.ombo.nsw.gov.au</p> |

References:

Child Protection in NSW Christian Schools: Responding to Complaints and Investigating Reportable Conduct *ESPC Services Pty Ltd 2011*; www.espcservices.com

Ombudsman Act: www.ombo.nsw.gov.au

Working With Children Check: Office of the Children’s Guardian (Commission for Children and Young People); www.newcheck.kids.nsw.gov.au

12 APPENDIX A - COMMON LAW DUTY OF CARE

Common Law Duty of Care

- A person owes a duty not to injure another as a result of his or her negligent action. This means that a person may be negligent if another person suffers damage as a result of the failure of the first person to observe their duty of care in a manner that is reasonable in all the circumstances.
- The law imposes an overriding duty of care on schools to ensure that all reasonable care is taken to afford students a safe environment at school. Staff have a duty to protect their students against foreseeable risks of injury or harm.
- The duty of care is the most important obligation a school has towards its students and underpins every aspect of a school's role in its interaction with the students.
- The duty of care applies to the classroom, school grounds, sports fields; in relation to before and after school care; and during after-school activities.
- In complying with the school's duty of care, the biggest risk factors are knowledge and foreseeability. Once any form of harm or danger comes to the school's attention or ought to have come to the school's attention, then it has a responsibility to act and take reasonable steps to protect students by preventing the harm, danger or abuse from occurring or re-occurring.
- The School must be constantly vigilant, have an efficient system of supervision, and ensure that all school policies and practices recognise and give effect to this underlying duty of care.

Examples of situations where the school has a duty of care towards students:

- **Duty of general supervision:** Complying with the duty of care requires that school authorities and teachers owe students a duty of care of general supervision concerning their physical and emotional safety while students are on school premises or involved in a school related activity outside school premises.
- **Duty to avoid foreseeable risks:** The duty of care extends to circumstances where there is a foreseeable risk of harm or danger requiring the school to take all reasonable care to avoid such risks.
- **Duty to prevent bullying:** The duty of care also requires the school to take the necessary steps to protect students from psychological or emotional damage arising from issues such as bullying, and to take the necessary steps to avoid foreseeable risks of such behaviour. Non compliance with this duty of care can result in expensive litigation and damages claims. (NB: In a recent case, damages in excess of \$450,000 were ordered by the Supreme Court of NSW where it was held that a school had failed to provide adequate protection from bullying to a student.)
- **Duty of care outside school:** There have been cases where courts have extended the schools duty of care outside the school gates. In one such case where a student was injured when another student threw a stick at him as he boarded a bus outside the school, the court found that the existence of the school's duty of care depended on the relationship between the school and the student, the foresee-ability of injury to the student and the failure to do what was reasonable in the circumstances.

Cyber bullying is harder to tackle as most anecdotal evidence is that it occurs outside school.

13 APPENDIX B - STATE LEGISLATURE

State Legislature Summary

Children and Young Persons (Care and Protection) Act 1998 (NSW), administered by the NSW Family and Community Services (FACS):

- (a) Staff must report to FACS if:
 - They have reasonable grounds to suspect that a child has been or is at significant risk of harm
 - These grounds arise in the course of their work
- (b) Staff should as soon as practical report to FACS (via the Principal) providing:
 - The name or a description of the child
 - The grounds for suspecting the child is at risk of harm.
- (c) Reporting of risk of harm in respect of children (under 16) is mandatory and of young persons (between 16 & 18) is discretionary.
- (d) “Significant Risk of harm” can arise because of the presence of one or more of the following:
 - A person's basic physical or psychological needs are not being met or are at risk of not being met,
 - The parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
 - The child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
 - The child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm, and
 - 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 emotional or psychological harm (i.e. of such a kind that the emotional or intellectual development of the child or young person is, or is likely to be, significantly damaged.)
 - Significant risk of harm can be either result from a single act or an accumulation of a number of smaller incidents.
- (e) “Reasonable grounds” take into consideration factors such as:
 - Personal knowledge of the child
 - Age
 - Whether the information is directly from the child
 - The nature and seriousness of any allegations
 - The source of the allegations
 - Awareness of the family background and any known factors that would cause a reasonable person to be concerned as to the suitability of the environment for a child or young person
 - Any previous matters of a similar nature with regard to the child or siblings

- (f) The Act provides for the legal protection of notifiers. For any person who notifies or furnishes information in good faith on the basis of having reasonable grounds to suspect:
- The notification does not breach professional etiquette, ethics or conduct;
 - There is no liability for defamation arising out of the notification;
 - There will not be no basis for court action alleging malicious prosecution or conspiracy with some exceptions the notification will not be admissible in evidence in any court, tribunal or committee proceedings

Notifications to FACS are generally confidential and FACS will normally take all possible steps to preserve the anonymity of the notifier. However, the information may be sought by way of subpoena in legal proceedings.

Commission for Children and Young People Act 1998 (NSW) (CCYP Act)

This Act makes employment screening mandatory for preferred applicants for child-related employment.

- (a) New employees:
- Must obtain “Working with Children Check” clearance
 - Should also conduct structured referee checks of past employers for new employees.
 - Must undertake a risk assessment based on the above
 - Must notify the Commission of any applicant rejected on the basis of such a risk assessment
- (b) Existing employees:
- Are responsible to apply for and renew their own “Working with Children Check” (phased in 2016/2017)
 - Must notify Commission of any completed disciplinary proceedings and may notify on request sufficient details to another employer or Commission for the employment screening purposes of the other party.
- (c) Unauthorised disclosure of employee screening information is an offence unless the disclosure:
- Was made in good faith for employee screening;
 - Is made with the consent of the person from whom the information was obtained;
 - Is ordered by a court;
 - Is made with other lawful excuse.

Child Protection (Prohibited Employment) Act 1998

- (a) Prohibits persons with convictions for serious sexual offences from working in positions of child-related employment i.e. employment which involves direct contact with children (i.e. person under 18) if contact is not directly supervised.

- (b) No person, either paid or unpaid (voluntary), may be engaged on behalf of the School in child-related employment unless he/she has clearance under the 'Working With Children Check' which searches relevant records.

Ombudsman Amendment (Child Protection and Community Services) Act 1998 (NSW)

- (a) The Ombudsman must keep under scrutiny systems for preventing risk of significant harm by employees, and handling and responding to allegations of reportable conduct or discovery of a conviction of, or disciplinary action in relation to reportable conduct by employees.
- (b) The Principal must notify Ombudsman as soon as possible of:
- Any allegation of reportable conduct or conviction or disciplinary action in relation to reportable conduct against an employee;
 - Whether or not he/she intends to take any action and why;
 - Any written submissions made to the Principal that the employee wanted to be considered in determining what disciplinary action should be taken in relation to the employee.
- (c) The Ombudsman must oversee or monitor the conduct of an investigation into allegations and determine whether it has been conducted properly, and whether appropriate action has been taken as a result.
- (d) If the Ombudsman decides to monitor an investigation the Principal must, as soon as practicable after the investigation is completed, forward to the Ombudsman:
- a copy of any reports prepared by the Principal
 - copies of all statements and other documents on which the report is based
 - any comments the Principal thinks fit
 - information about any action taken or to be taken
- (e) The Ombudsman may conduct its own investigation of reportable conduct against an employee. The Principal is to defer an investigation if he/she is notified the Ombudsman intends to investigate the matter
- (f) Employers must ensure staff are not exposed to an organisational culture which encourages vexatious complaints.

As part of their in-service development program staff should have the opportunity to identify how to balance the demands of students and avoid placing themselves at risk

The Government of NSW has reviewed the way family and community services are delivered to improve the safety, welfare and wellbeing of children and young people resulting in the Keep Them Safe five year Action Plan.

The Action Plan gives effect to the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 (NSW) (Wood Amendments) which made notable changes to the legislative scheme dealing with child protection.

Other Relevant NSW Legislation

Privacy Law

- Privacy is relevant in the context of child protection because the availability of personal information in the public forum can place a child in circumstances of potential harm and injury.
- With the internet becoming a popular tool for, and about children and with the ever increasing number of children participating in social networking websites, schools and staff must be aware of how to enhance the safety of children and young people, irrespective of legal responsibilities.
- The Privacy Act 1988 (Cth) protects the privacy of people's personal information, ie information that identifies or could identify a person in organizations that have a turnover of over 3 million dollars. It covers how personal information is collected, used and disclosed, its accuracy and the right to general access and how sensitive information, such as health or medical information, ought to be managed.
- Where the law requires that certain information be made available in the interests of the safety and welfare of children, divulging such information will not be illegal. Thus, the information sharing requirement imposed by the Care and Protection Act does not contradict the principles of the Privacy Act as its primary object is ensuring the safety, welfare and well being of children.
- All staff have a duty of care towards students and are therefore required to take all reasonable steps and be able to demonstrate that they have made all reasonable effort to ensure that students are not exposed to harm by unauthorised intrusions to their privacy.

Work Health and Safety

- The Work Health and Safety Act 2011 (NSW) (WHS Act) provides that employers must ensure so far as is reasonably practicable, the health and safety of workers, which includes volunteers; and that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking. This includes students
- An officer of the school staff must exercise due diligence to ensure that the school complies with their duties and obligations.
- The Work Health and Safety Regulation 2011 prescribes additional duties on an employer to manage risk to health and safety by identifying hazards and eliminating or minimizing risks with effective control measures, to have elected health and safety representatives and to allow for their training. Failure to comply with any of these duties can result in a prosecution of the employer.

Criminal law

- A person who knows or believes that a Serious Indictable Offence has been committed and who has information which might be of material assistance in apprehending or convicting the offender must provide the information to the Police or other authority (such as FACS).
- Concealing information about a serious indictable offence is an offence under the Crimes Act 1900 (NSW).

Serious Indictable Offence

Defined by s.4 of the Crimes Act 1900, is an indictable offence that is punishable by imprisonment for life or a term of 5 years or more; and includes such offences as:

- (a) Refusing or neglecting to provide food, clothing or lodging to a child for whom the person is legally liable
- (b) Performing, procuring, aiding, abetting or counselling female genital mutilation
- (c) Sexual assault (or aggravated sexual assault if the victim is under 16 years of age)
- (d) Indecent assault (or aggravated indecent assault if the victim is under 16 years of age)
- (e) Committing an act of indecency on a child under the age of 10 years
- (f) Having sexual intercourse with a child under 10 years or between the ages of 10 and 16 years
- (g) Persistent sexual abuse of a child under 18 years old
- (h) Sexual intercourse with a person with intellectual disability
- (i) Carnal knowledge or attempted carnal knowledge by a father or step-father of a daughter or step-daughter 16 or 17 years of age
- (j) Carnal knowledge or attempted carnal knowledge by a father or step-father of a daughter or step-daughter 16 or 17 years of age
- (k) Incest

Serious Sex Offence

Defined by s.33B of the CCYP Act; includes:

- (a) An offence involving activity or acts of indecency (of any kind not just those related to children), whether committed in New South Wales or elsewhere, which is punishable by penal servitude or imprisonment for 12 months or more
- (b) An offence involving child prostitution or child pornography
- (c) An offence of attempting, conspiring or inciting others to commit such offences.

14 APPENDIX C - INDICATORS OF ABUSE OR HARM

Circumstances Which Indicate A Risk of Significant Harm

According to the Care and Protection Act:

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.

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.
- (c) The child or young person has been, or is at risk of being, physically or sexually abused or ill-treated.
- (d) 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.
- (e) 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.
- (f) The child was the subject of a pre-natal report under section 25 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.

Note: Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

Any such circumstances may relate to a single act or omission or to a series of acts or omissions.

Indicators of abuse or neglect

There are four areas of abuse that may impact on children and young people:

Neglect; Sexual abuse; Physical Abuse; Emotional (Psychological) Abuse

Sexual Abuse

Child sexual abuse is the involvement of dependent children or adolescents in sexual activity with an adult or person older or bigger. Child sexual abuse does not generally include peer sexual activity but peer sexual activity may, in some circumstances, constitute sexual abuse.

When considering alleged cases of peer sexual activity, age of consent issues are highly relevant considerations. In NSW:

- the age of consent for heterosexual and homosexual sex is 16
- a child under the age of 10 cannot give consent in any circumstances

Child Sexual Abuse includes fondling genitals or breasts, masturbation, oral sex, vaginal and anal penetration by finger, penis or any other object. It includes attempting any such act, or assault with such intent. It may also include pornography, exhibitionism and suggestive behaviour. In all cases the offender has more power than the child and misuses that power to take sexual advantage of the child.

Some indicators of Child Sexual Abuse:

The following are common behavioural indicators that may lead a member of staff to suspect that a child has been sexually abused. One indicator in isolation may not necessarily indicate abuse, but needs to be considered in the context of the child’s personal circumstances.

| | |
|--|---|
| Direct or indirect disclosures Sexual behaviour inappropriate to the child’s age, development and vocabulary level Sexual themes and fears expressed in the child’s artwork, written work or play Describing sexual acts Complaints of itching or pain in the genital area Injury or bleeding in the genital area or anus Abdominal pain Reluctance to go to a certain place or be with a particular person | Child being in contact with a known or suspected perpetrator of sexual assault Persistent running away from home Going to bed fully clothed Regression in developmental achievements Self destructive behaviour, drug dependency, suicide attempts, self mutilation Bruises to the breasts, buttocks, lower abdomen, thighs Unexplained accumulation of money or gifts Sexually transmitted diseases Vaginal infections |
|--|---|

Physical Abuse

Physical abuse refers to assault or non-accidental injury to a child by a parent, caregiver or another person responsible for the child. It includes injuries which are caused by excessive discipline, severe beatings or shakings, bruising, lacerations or welts, burns, fractures or dislocation, female genital mutilation, attempted suffocation or strangulation and death.

Indicators of Physical Abuse in Children

| | |
|--|--|
| Bruises and welts Cuts, scratches and sprains (repeated and not adequately explained by normal childhood activities) Burns and scalds Broken bones Head injuries Fear of parent | Very passive Wariness of physical contact Unusual hunger for affection Difficulty relating to peers and adults Fear of going home after school Constantly alert for possible danger |
|--|--|

Emotional Abuse (Behaviour which causes psychological harm)

Emotional Abuse encompasses a range of behaviours that harm a child. It includes excessive or unreasonable demands, failure to provide the psychological nurturing and affection necessary for a child’s physical and emotional growth and development, scapegoating or rejecting, severe verbal abuse and threats of abuse.

These behaviours by caregivers can destroy the confidence of a child, and the subsequent emotional deprivation and trauma impairs the child’s social, emotional, cognitive and intellectual development. Witnessing domestic violence can have a profound effect on children, and constitutes a form of emotional abuse.

Indicators of Emotional Abuse in Children:

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| Feelings of worthlessness about life and themselves Inability to value others Lack of trust in people and expectations Lack of interpersonal skills Extreme attention seeking behaviour Other behavioural problems (e.g. disruptiveness, aggressiveness, bullying) | Lying and cheating Destructive or violent behaviour Rocking or sucking Very withdrawn or depressed Inability to mix with peers |
|---|--|

Neglect

Neglect occurs where a child is harmed by the failure to provide the basic physical and emotional necessities of life – food, clothing, shelter, emotional security, affection attachments, medical care and adequate supervision. Neglect is characterised as a continuum of omissions in parental care taking. Neglect of children is an offence under Chapter 14, Clause 228 of the *Children and Young Persons (Care and Protection) Act 1998*.

Indicators of Neglect in Children:

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|---|---|
| Consistent and regular hunger Malnutrition Low weight for age Poor language skills and coordination Poor hygiene (unwashed) often leading to social isolation Untreated physical problems Extreme longing for adult affection | Inadequate clothing for weather Lack of supervision Extended stays at school, public places, others’ houses Anxiety about being dropped or abandoned A flat superficial way of relating Self-comforting behaviour, e.g. rocking, sucking |
|---|---|

15 APPENDIX D - STAFF RESPONSE TO DISCLOSURE BY STUDENT

Staff Response to Disclosure of Abuse by a Student

When a student discloses abuse, staff need to be well prepared so that they can be supportive of the student and at the same time be very clear about their responsibility. Children generally disclose with great hesitation and often with a mix of intense emotions, including fear, embarrassment and guilt. Sometimes they may only hint at or tell a small part of their experience to see how the staff member reacts before fully disclosing. It is essential that the staff member remains calm and supportive of the student and is clear about his or her own responsibility if a student discloses.

The staff member should –

- Actively listen to the student and **never probe for details** or ask leading questions e.g. *“Did s/he touch your vagina/penis?”*
- Refrain from questioning excessively because of fear of making a mistake in deciding to notify
- Talk gently and reassuringly pointing out that you are there to help
- Only ask questions that are open ended and designed to provide sufficient information to decide whether the suspicion of abuse is sufficiently strong to warrant a notification being made
- Seek professional support/advice, e.g. from the School Counsellor
- Ensure the Principal and FACS are notified.

How to Help a Student Making a Disclosure

- Listen in a calm way
- Reassure the student that you take their statement seriously
- Avoid any reaction that could make the student regret having talked about the experience
- Emphasise that what has happened is definitely not the student’s fault
- Acknowledge that it is very hard to talk about such things
- Tell the student that the best way to stop the abuse happening is to report it to the people who have the responsibility for the care and protection of children.

Responding to a Disclosure Made in a Group or Classroom

- (a) If a student begins to make a disclosure in a group situation:
 - Acknowledge that you have heard the child
 - Indicate your support by explaining that what you think they are saying sounds important and that it would be better to talk about it later
 - Arrange, at an appropriate time, to see the student in a more appropriate context
- (b) When a student discloses do not make promises that you will not tell anyone. In fact, you must tell the child that you have a responsibility to tell the Principal and/or FACS as soon as possible.
- (c) In many cases of risk of significant harm/neglect children have been threatened or coerced into remaining silent about their abuse. If a child breaks this silence in disclosing

abuse to a member of staff, he or she may ask that the *secret* be kept by that adult. A staff member will not be helping a child by making unrealistic promises of confidentiality.

- (d) It usually takes a great deal of courage for child victims to disclose abuse to trusted adults. When their disclosures are not acted on, the trusted adults risk increasing the psychological damage cause by the abuse; eventually rejected children resign themselves to victimisation, convinced that they are helpless, hopeless and not worth helping,
- (e) Never promise the child that the abuse will stop as that cannot be guaranteed. Counselling may need to be arranged for all involved students.

16 APPENDIX E - SAFEGUARDS FOR REPORTERS

Safeguards for Reporters (Extracted from NSW Interagency Guidelines)

Reports to Community Services are confidential and the reporter's identity (if known) is protected by law if the report is made in good faith. The law offers the following protections:

- (a) The report shall not be held to be a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) No liability for defamation can be incurred because of the making of the report;
- (c) The report, or its contents, is not admissible in any proceedings as evidence against the person who made the report;
- (d) A person cannot be compelled by a court to provide the report or give any evidence as to its contents;
- (e) A report is an exempt document under the Freedom of Information Act 1989 (NSW).

If law enforcement agencies require the identity of a reporter in order to investigate serious offences alleged to have been committed against children or young people, the identity of the reporter may be released to the police. The reporter will be notified that their identity is to be released to the police unless doing this would prejudice the investigation.

17 APPENDIX F - EXEMPTIONS FROM WWCC

Specified Exemptions from the Working With Children Check under Part 4, Clause 20 of the Child Protection (Working With Children) Regulation 2013.

- Administrative, clerical or maintenance work, or other ancillary work, that does not ordinarily involve contact with children for extended periods.
- Work with minimal direct contact or unsupervised contact with children, done for no more than five days in a calendar year.
- Volunteering by a parent or close relative:
 - of a child in activities for the child's school, early education service or other educational institution; except where the work is part of a formal mentoring program or involves intimate personal care of children with a disability
 - with a team, program or other activity in which the child usually participates or is a team member; except where the work is part of a formal mentoring program or involves personal care of children with a disability.
- A visiting speaker, adjudicator, performer, assessor or other similar visitor at a school or other place where child-related work is carried out if the work of the person at that place is for a one off occasion and is carried out in the presence of one or more other adults.
- Work by an interstate visitor:
 - in a one-off event such as a jamboree, sporting or religious event or tour, if the event is the only child-related work carried out by the worker in NSW in that calendar year and the period of work does not exceed 30 days
 - who holds an interstate working with children check, or is exempt from the requirement to have such a check in his or her home jurisdiction, whose child related work in NSW is for no more than 30 days in any calendar year.
- NSW Police or Australian Federal Police officers in their capacity as police officers.
- People under the age of 18.

Under Part 2 of the Child Protection (Working With Children) Regulation 2013, some work is not considered to be child-related, and so will not require a Working With Children Check. This includes:

Clause 6 (4) Work as a student in the course of a student clinical placement in a hospital or other health service is not child-related work

Clause 7 (3) Work as a referee, umpire, linesperson or otherwise as a sporting official or a groundsperson is not child-related work, if the work does not ordinarily involve contact with children for extended periods without other adults being present

Clause 8 (2) Work in providing respite care or other support services primarily for children with a disability **is** child-related work; **but it is not child-related work if** the work does not ordinarily involve contact with children for extended periods without other adults being present.

Clause 11 (3) Providing food or equipment at or for a sporting, cultural or other entertainment venue or providing a venue is not child-related work.

18 APPENDIX F - POCKET GUIDE TO CHILD PROTECTION

Pocket Guide to Child Protection

DO:

1. Treat students, staff, volunteers, parents and visitors with respect and honesty.
2. Be a positive role model to students.
3. Set clear boundaries of appropriate behaviour between yourself and students.
4. Follow organizational policy for the safety of students as outlined in the Child Protection Policy and Code of Conduct.
5. Abide by the terms of the School's internet policy if communicating with students electronically.
6. Have another adult present or in sight when conducting one-on-one coaching.
7. Be alert to bullying or any other form of discriminatory behaviour.
8. Record and act on concerns of risk of harm.
9. Comply with all school policies.

DO NOT:

1. Develop any 'special' relationships with students, such as offering gifts, favouritism, special treatment or social interactions outside school.
2. Do things of a personal nature that a student can do for themselves, such as going to the toilet or changing clothes.
3. Remain alone with a student in an enclosed space.
4. Leave students unsupervised either within or outside class.
5. Tutor or coach students outside school.
6. Supply or condone the use of alcohol, tobacco or other drugs.
7. Communicate with students on social networking sites for purposes unrelated to employment.
8. Use inappropriate language, sarcasm, teasing or physical force when interacting with students.

19 APPENDIX G - STAFF CODE OF CONDUCT

STAFF CODE OF CONDUCT WITH STUDENTS

- A. The aim of this code is to guide staff as to the limits of their relationships with students.
- B. It is designed to **protect** the staff from situations that might raise suspicions of inappropriate behaviour and **ensure** staff do not act in a sexually, physically or psychologically abusive or harmful manner toward students. Necessarily this will place impact upon staff when they are not in a school situation, as teachers' conduct outside the school in a non-educational setting may nevertheless affect their professional standing in the community.
- C. As Christians we recognise that we are also ambassadors of Christ and therefore are exhorted to live a life of exemplary behaviour in all circumstances.

Policy

1. All actions of staff towards children must always be motivated by a desire for the welfare of the child. **Love always protects** (1 Corinthians 13:7)
2. Staff must act in a professional manner, modelling appropriate relationships to all members of the school community at all times.
3. Students should be treated by staff with Christian love and respect. Staff who find themselves thinking or behaving inappropriately toward students should seek immediate counselling and also speak about the issue to the Principal. Staff shall not make unattainable or illegal demands on students, use sarcastic or demeaning speech in order to belittle or ridicule students, verbally abuse students or make threats of abuse against students, or make a scapegoat of a student. (i.e. make a student bear the blame for others.) Nor should staff members engage in any activities that embarrass or victimise a student.
4. Staff members are not to kiss students except where it is to respond to a formal kiss on the cheek initiated by a (usually senior) student as a form of congratulation, greeting or farewell.
5. Staff members must never punish a child using physical force or strike a student for any reason. Staff members may use physical force to restrain a child if they reasonably believe that the child may cause damage to themselves, another person, materials or equipment. In such a situation, gentle pressure applied to the student's shoulder in order to guide him/her or to the student's arm in order to settle a student is acceptable. Also it is acceptable to hold a student to stop them running away into possible danger. Dragging by the arm or pushing a student by the shoulders is not acceptable.
6. Generally staff should only touch students on the shoulders, arms, upper back or head, though never in a way that could be construed as sexual. Staff must **never** touch students on the thighs, buttocks, genitalia or breasts except in extreme cases where not doing so would threaten the life or safety of the student or others. Should students require medical attention to these areas of their bodies and they are incapable of doing it themselves (under instruction), such assistance should be given, where practicable, by a female staff member or, in the case of secondary school boys, either by a male or female staff member, always ensuring that a suitable witness is present.
7. staff members should generally refrain from hugging or embracing students except in genuine congratulatory or comforting gestures that are clearly appropriate to the circumstances.
8. Hugs initiated by a student are acceptable provided other conditions in this policy are met. This is especially applicable for lower Primary students.
9. If a student is upset and a staff member believes the student would be comforted by a hug, this should only take place in public view, and a side hug only. In this regard, the staff member

must be reasonably confident the act of physical comfort is acceptable to the student. The staff member must always ask in a way that does not risk imposing the staff member's will on the student. Any act of physical comfort should not be prolonged or frequently repeated.

If in doubt a question such as: "Would a hug help?" or "Should I get someone you would like to give you a hug?" or "Would you like a hug from me?" may help.

10. Wherever possible, staff members are to try not to be alone with a student. Where an individual staff member in the course of his/her duties is required to be alone with a student (e.g. for interviews, detention, tutoring, counselling, etc) it is important that there be appropriate professional distance between the student and the staff member and that the student is asked to indicate whether he/ she feels safe and at ease in the situation. Where possible the interview should take place in a location where both parties can be seen, though not necessarily heard, by others. (e.g. in a room with windows, an office with a window in the door or with the door partly open)
11. On any excursion, camp or overnight stay where staff are required to sleep in the same room or tent as students, there should always be at least two adults present in the room with the children. Adults should make every attempt to be visible at all times.
12. Staff members should be aware that young people who are in the process of becoming sexually aware may be confused by the actions of an adult. Staff members are absolutely prohibited from courting, dating or developing an emotional or physical intimate personal relationship with a student enrolled at the school. Appropriate professional relationships between teachers and students must be encouraged at all times.

Should any student make an advance toward a staff member, or should the staff member suspect that a student might be developing a romantic to, or infatuation with, him/ her, he/ she should report the issue to an executive staff member (Principal, Deputy Principal or Business Manager). Married staff are also encouraged to tell their spouse about the issue. If other staff members believe a student is romantically attached to or infatuated with another staff member, they are also required to inform an executive staff member. (Principal, Deputy Principal or Business Manager)
13. Staff members must not correspond with students via text/ sms messages on any personal matter nor become 'friends' with students on Facebook or any other cyber-social media.
14. Should the student need to correspond with staff by email, the staff member's school email address should be used for this purpose. The practice is generally suitable for senior students only. Please note: if a student initiates contact with a staff member via personal email or text message, the teacher should not respond.
15. Staff should always dress modestly both as an example to students and to avoid causing others to sin.
16. Staff may not have conversations with students that are of a lewd or sexually suggestive nature. Staff should not expose a child or young person to material that contains violent, inappropriate sexual messages or adult concepts or themes that are inappropriate given their age and level of maturity. If curriculum material is of concern to staff in this regard staff should seek the guidance of an executive staff member (Principal, Deputy Principal or Business Manager).
17. Staff should not normally enter areas where students are changing except in emergency, to deal with a disciplinary incident, to help a student in need (e.g. helping Infants children to change) or where the change area is a communal one, such as at public swimming pools. If a staff member needs to use the facilities being accessed by students they should take reasonable steps to avoid causing embarrassment or offence before entering and while in the change area (e.g. warning students upon entering, turning their back or making reasonable efforts to change in an area physically separated from that of the students). On excursions, sleepovers, camps and sporting events where students are required to change staff should ensure there are provisions for students to change in privacy.

18. Physical contact should be appropriate given the age, maturity, health or other characteristics of the child and contact should be consistent with any specific management plan for specific children.
19. Whilst the above mentioned points relate primarily to staff-student relations it is expected that staff will conduct themselves in a similar manner towards all other staff. Staff should remain above reproach in all relationships both inside and outside the school context. (1 Tim 3:1-3)
20. Your continued appointment is conditional upon you maintaining an active commitment to and involvement in a Christian Church and a firm personal belief in the Statement of Faith.
21. If a member of staff is in doubt about anything contained in this Code he/ she should speak to the Principal or to his/ her immediate supervisor.

Staff members are **required** to comply with the above Code of Conduct. Failure can result in **dismissal**

Be aware of behaviours that could be misconduct, which may involve reportable conduct

- socialising with a child outside of the workplace in breach of the code of conduct
- purchasing gifts or paying special attention to the child (The gifts do not necessarily have to be expensive; they may include simple things such as lollies and ice creams)
- attempts to isolate the child from a group
- attempts to befriend the child's family and offers to take the child to various places, assist the child with their schooling, etc outside the workplace and in breach of the agency code of conduct
- touching that may be not sexual in nature, but may elicit a level of discomfort from the victim or from others who observe the behaviour
- inappropriate or suggestive comments or jokes directed toward the child (These comments may be about the child's physical presentation or may be persona i.e. commenting that they have nice legs)
- providing alcohol or drugs to children
- an employee taking children to their own home, or transporting children to and from school or any other place in breach of the agency's code of conduct.

Allegations involving inappropriate comments or swearing at a child whilst constituting inappropriate behaviour or misconduct **will not** ordinarily on their own be regarded as allegations of 'misconduct that may involve reportable conduct', where allegations are not being reported as part of a pattern of behaviour. The Ombudsman expects that these behaviours would be dealt with by an agency as misconduct. For example: calling a student a derogatory name like 'stupid' or 'idiot', raising a finger in a rude gesture to a student or not allowing a student to have lunch during a two-hour detention.

20 APPENDIX H - CODE OF CONDUCT FOR PARENTS & VISITORS

CODE OF CONDUCT FOR PARENTS/ VISITORS

A code of conduct for parents and visitors ensures that everyone who visits the school site is able to do so in a safe and harmonious manner and to ensure that students, staff, parents and other visitors are not subjected to aggressive, hostile or violent behaviours.

Parents and visitors are expected to:

- treat all persons associated with the school with respect and courtesy
- ensure their child/ children are punctual to class
- make appointments in advance of expecting to obtain an interview
- discuss issues or concerns about the school, staff or students through the correct procedures
- follow school procedures governing entry and behaviour on school grounds, including any restrictions that may be imposed

Any person contravening this Code of Conduct is advised that the provisions of the *Inclosed Lands Protection Act (1901) and its Amendments* will be followed if any of the following occur:

- actual physical assaults or threatened physical assaults on students, staff, parents or community members at the school or during the course of school activities
- behaviour in the presence of students, staff, parents or other visitors to the school that causes alarm or concern to the students, staff, parents or other visitors
- use of offensive language (ie swearing) in the presence of students, staff, parents or other visitors to the school
- any interruption to the learning environment of the school such as entering classrooms without permission

Your cooperation is sought in maintaining a safe and happy school.