



Child Protection Policy



Notes

Name of Policy: Child Protection Policy

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Related Documents:

- **Critical Events Policy**
- **Excursions Policy**
- **Discipline Policy**
- **Staff Code of Conduct**
- **Code of Conduct for Volunteers**

NESA Reference:

Registered and Accredited Individual Non-government Schools (NSW) Manual (*the RANGS Manual*), July 2017

Section(s):

- 3.6 Safe and Supportive Environment
 - 3.6.1 Child Protection



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Policy Statement

The Legislative Context

A focus of this school's duty of care is the protection of children at risk of significant harm. The procedures followed by the school are in accordance with all relevant legislation, and take into account other appropriate practices and guidelines aimed at the protection of children. The school's policy and detailed procedures will be amended from time to time to take into account amendments to legislation and regulations.

As a registered non-government school, CHCCS must have in place policies and procedures to ensure that it meets its legislative obligations in relation to child protection. A number of Acts relate to child protection in New South Wales, including

1. Ombudsman Amendment (Child Protection and Community Services) Act 1998, which added Part 3A into the Ombudsman Act 1974
2. Child Protection (Working with Children) Act 2012, provides for employment screening for people in child-related employment
3. Children & Young Persons (Care & Protection) Act 1998, which sets out responsibilities of Community Services with regard to child protection

Other legislation or relevance to the work of CHCCS include:

- Crimes (Child Sex Tourism) Amendment Act 1994, in relation to our overseas programs.

CHCCS is responsible for knowing and complying with its obligations under each of these Acts.

Duty of Care

It is part of the school's Duty of Care to ensure that children receive the protection that is due to them because they are of an age where they could not be expected to know their rights nor to assert them if they became subject to abusive behaviours from an older person. Therefore, in every action taken in response to a case of suspected child abuse (see Definitions) the best interest of the child is of paramount consideration.

Duty of Care applies while the students are under the care of the school. This applies equally to school-based activities and activities outside of the school, including overseas. The same Duty of Care applies to employees who volunteer their services to the school. Employees are required to follow good standards and approved practice. Risk assessments undertaken by the teacher-in-charge in relation to volunteers (e.g. parents on excursions, sport coaching, VET/TAFE) are required to ensure that volunteers are aware of child protection requirements, including the signing of Prohibited Persons Declarations if they may have unsupervised access.



Aim

It is the role of the school to focus specifically on a broad education for the children. In this regard, the School provides a curriculum which fosters their health spiritually, morally, emotionally, physically, intellectually and socially. This education must include an awareness of issues associated with their protection from unwanted and/or unwelcome actions from older people or peers.

a) Coffs Harbour Christian Community School is committed to;

- Providing a safe environment for students;
- Preventing child abuse in any form within the school
- Dealing seriously with any reports of students at risk of significant harm promptly and appropriately
- Educating students concerning their rights and equipping them with appropriate skills for avoiding/reporting uncomfortable/abusive situations.



Definitions

Child

A person under the age of 18 years.

Child abuse

When a child is used as a sexual object for the gratification of the older person's needs/desires or is unable to give consent due to unequal power in the relationship or is too young to be able to make a reasonable decision, that child is deemed to have been abused. Generally, sexual abuse does not include sexual activity between consenting peers. It should be noted that the school does not condone sexual activity outside a monogamous heterosexual marriage.

Duty of Care

A legal term describing the responsibility of executive and teaching staff to be aware and protective of the students' well-being while under their supervision. If an outcome is foreseeable, the school and therefore its staff have a "duty of care" to take action to protect the student's well-being. The executive also have a duty of care to ensure that there is appropriate policy and that policy is being monitored and enforced.

Harassment

Any unwanted, unsolicited and unreciprocated behaviour or statement that offends someone or humiliates them.

Physical Abuse

Any action of an unwanted nature inflicted upon a person that incurs hurt or harm to their bodies.

Sexual Abuse

Any sexual action of an uninvited or unwelcome nature by a person(s) on another person that has the effect of intimidating/harming/violating/demeaning that person.

Psychological Abuse

Any action or comment of an unwanted nature directed towards a person which has the effect of creating fear, isolation, distress, humiliation or affront in the victim.



Implementation

Responsibilities

The Head of Agency (the Principal) is responsible for the administration and conduct of the school and all that relates to it. Therefore, the Principal must be informed promptly of all serious matters concerning students at risk of significant harm unless the Principal is the subject of a complaint, in which case, the Chairman of the Board must be informed.

Staff are bound by the school's Staff Code of Conduct. Expected behaviour by all staff, will be actively monitored. Staff members who the Board and Principal reasonably believe, on the face of evidence, to have breached the Staff Code of Conduct or any part of this Policy may be stood down subject to the nature of the incident, the reliability of the evidence and/or pending the outcome of enquiries.

All staff and volunteers (subject to certain conditions) are required to have a current Working with Children Check (WWCC) clearance documented and filed with the school.

All staff are to report any conduct (Reportable Conduct) by another employee that includes any conduct as defined by the NSW Ombudsman as reportable, to the Principal. Allegations of reportable conduct are to be reported to the NSW Ombudsman within 30 days.

All staff are required by law (Mandatory Reporting) to report any suspicions or disclosures of students at risk of significant harm to the Principal and to Child Protection Helpline if reasonable grounds exist, as identified by the Mandatory Reporting Guidelines issued by the NSW Ombudsman. Cases of child sexual assault (see Definitions) must be reported to the Child Protection Helpline by the Principal (or his delegate) who will involve the teacher if required. Mandatory reporting is required by law for teachers, counselors, principals and heads of schools for any child under the age of 16 years – or 17 in some instances – for cases of sexual assault only.



Working With Children Check (WWCC)

Prior to commencing employment

- If a position is offered the new employee must first present a current WWCC as issued by the New South Wales Office of Children's Guardian together with a copy of their current driver's licence. All employment is offered by the Principal for either campus and is generated from the Head Office of the School located at Bonville Campus.
- The Principal's Assistant then completes the check, on behalf of the Principal, using the information contained on the official letter.
- A clearance notification is then printed and attached to the copy of the letter from the Office of Children's Guardian and current driver's licence.
- The employee's name, their WWCC number and the date of expiry is then recorded on a list which is applicable for the year of expiration.
- The WWCC letter, driver's licence and clearance print out are then placed in the employment file for that individual.
- No employment is finalised without the appropriate clearance.
- At the end of the year this list is then typed and placed in alphabetical order for each expiry year. A hard copy of these lists are stored in a folder kept by the Principal's Assistant.

Please note, existing staff are progressively having a WWCC completed according to legislated requirements.

Prior to commencing as a volunteer

- No person is permitted to work as a volunteer unless first presenting a WWCC for a Volunteer and their current driver's licence. The only exception to the requirement of a WWCC is if the person's own child is travelling in the same vehicle with them or if their own child will be accommodated in the same room as the person acting as a volunteer.
- The Principal's Assistant completes the check on behalf of the Principal, regardless of which campus (Junior, Middle or Senior School) using the information contained on the official letter. The Junior School is notified by email when their volunteers are cleared.
- A clearance notification is then printed and attached to the copy of the letter from the Office of Children's Guardian and current driver's licence.
- The volunteer's name, their WWCC number and the date of expiry is then recorded on a list which is applicable for the year of expiration.
- The WWCC letter, driver's licence and clearance print out are then placed in a folder for the appropriate expiry year. These files are contained in the Principal's filing cabinet.
- At the end of the year this list is then typed and placed in alphabetical order for each expiry year. A hard copy of those doing volunteer work at the Junior Campus is forwarded to the office manager at the Junior Campus for her records. A hard copy of the lists for the whole school are stored in a folder kept by the Principal's Assistant.



Reportable Conduct

Reportable conduct means:

- Any sexual offence or sexual misconduct committed against, with or in the presence of a child (including child pornography offence) or
- Any assault, ill-treatment or neglect of a child, or
- Any behaviour that causes psychological harm to a child

Reportable conduct does NOT extend to the following:

- Conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children, and to any relevant codes of conduct or professional standards
- The use of physical force that, in the circumstances is trivial or negligible, but only if the matter is investigated and the result of the investigation recorded under workplace employment procedures, or
- Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under Section 25CA of the Ombudsman Act 1974

Staff who have access to information regarding students at risk of significant harm are to observe strict confidentiality in relation to the entire matter unless required by the Principal to disclose that information.

Accurate documentation must be kept by all parties concerning any reports made about students at risk of significant harm, details of notification, actions taken within the school resulting from notification and other details related to reported cases of abuse.

Staff employment policy and procedures require that staff who are appointed to positions in the school are fit and proper persons to occupy those positions. Employment suitability checks are done through NSW Commission for Children and Young People.

The school will appoint trained investigators to carry out investigations in relation to allegations of reportable conduct. The results of such investigations will be reported to the Principal who will make a finding in light of the facts. Such investigations and the accompanying reports to the Ombudsman must be under the direction of the Principal unless the allegation is made against the Principal, in which case the Board Chairman will oversee the investigation.

Mandatory Reporting

Mandatory reporting is required in any case of:

- Physical abuse
- Neglect (supervision, physical shelter, food, medical care, mental health care, education (not enrolled, habitual absence))
- Problematic sexual behaviours
- Psychological harm
- Relinquishing care
- Carer concerns (substance abuse, mental health, domestic violence).



Informing Staff

All staff are expected to be aware of the requirements of this policy and all related policies. In order to enable staff to have the opportunity to be informed of the policy requirements the following procedures are in place:

- All new staff must have a current Working With Children Check clearance, which must be provided to the school, and a record held on file.
- All staff will have a current Working With Children Check clearance or a
- All staff sign an affirmation that they will abide by the Staff Code of Conduct, which, on page 14, requires that *"All staff members of CHCCS must be familiar with the school's **Child Protection Policy** and how it is implemented."*
- At the beginning of the school year, a staff meeting will be held, where all staff are present, in which a Child Protection Policy overview will be presented. This will include a practical component where hypothetical situations are considered in relation to both mandatory reporting and reportable conduct.
- An overview of the policy is included in the Staff Handbook that is to be read by all staff, and is provided to new staff as part of their induction.
- The full policy is posted on the school's website, and all staff are expected to have read the policy and gained a satisfactory understanding of child protection requirements.
- All staff have access (Read only) to the school's policy suite via the intranet. Staff are expected to utilise this facility when undertaking school business in order to be fully cognisant of all relevant policies, including the Child Protection Policy.
- Staff who have any questions or uncertainties regarding child protection matters are encouraged to consult with their Head Teacher and or the Principal.
- Staff are encouraged to refer to:
 - the "Keep Them Safe" website (<http://www.KeepThemSafe.nsw.gov.au/home>) in relation to decision trees for mandatory reporting; or
 - the NSW Ombudsman's website (<https://www.ombo.nsw.gov.au/home>) for further assistance and information on reportable conduct.



Attachments

Appendix 1

Sets out the legal responsibility for reporting of students at risk of significant harm

Appendix 2

Sets out the legal responsibility for reporting policy of the NSW Ombudsman in relation to allegations of reportable conduct against employees.

Appendix 3

Sets out the procedures for dealing with allegations of reportable conduct against employees.

Appendix 4

Sets out the guidelines and procedures for identifying students at risk of significant harm.

Appendix 5

Sets out the, procedures for child interviews by police or the Child Protection Helpline and removal of students.

Appendix 6

Sets out the protocols for student security as they relate to identifying staff as well as registering and identifying school visitors and volunteers.



APPENDIX 1

Legal Responsibility for Reporting Of Students At Risk Of Significant Harm

All notifications that involve a criminal offence under the Children (Care and Protection) Act, the Crimes Act 1900 or the Crimes (Female Genital Mutilation) Act 1995 must be referred by the Department of Family & Community Services to the Police. This includes all cases of sexual abuse. Child abuse under the Crimes Act 1900 refers to a range of offences that result in harm to a child victim or which involve behaviours to which a child cannot give consent. Offences include sexual intercourse, indecent assault and indecent acts. The practicing, aiding, abetting, towards or procuring of someone to practice female genital mutilation is an offence under the Crimes (Female Genital Mutilation) Act 1995.

The Role of the Family & Community Services and Other Government Agencies

Scripture assigns Governments the role of punishing wrong doers and endeavouring to protect their citizens and the school supports the role the Government plays in protecting children through the Child Protection Helpline, the NSW Police Service and the Attorney General's Department. The school aims to develop a relationship with the Child Protection Helpline that will enable the school to be involved in the process of protecting children.

The Children and Young Persons (Care and Protection) Act, 1998

When investigating whether take action under **Children and Young Persons (Care and Protection) Act, 1998**, school staff must satisfy themselves that they are acting on reasonable grounds.

This Act forms the statutory basis for the role of the Child Protection Helpline for the investigation of cases of a child at risk of significant harm and the responsibilities borne by schools in relation to such cases. A child is defined as a person under the age of 18 years.



APPENDIX 2

Allegations of Reportable Conduct Against Employees

Policy Statements

1. The School will follow the Procedures as Specified by the Ombudsman's Act 1998 and the Protocols as agreed between the AIS, IEU and the Ombudsman.
2. Allegations will be investigated in a confidential manner. No staff member or student should be disadvantaged as a result of having complained/disclosed information.
3. During the process of investigation the following may occur:
 - A strong recommendation for a student and/or a staff member to receive counseling/legal advice from an appropriate person(s)
 - Staff member and/or student(s) may have their duties/schedules adjusted so that they are removed from contact with others that may cause difficulties with the investigation
 - Notification of relevant government agencies
 - Involvement of parents/guardians when considered appropriate
4. Where the Principal reasonably concludes, after reviewing the evidence, that an act against a student at risk of significant harm has taken place or the Staff Code of Conduct has not been complied with, or a loss of confidence in a member of staff exists, the Principal may decide that a staff member may be summarily dismissed from employment or a student expelled from the school. This action may occur irrespective of whether a conviction has been determined by a court of Law.

Head of Agency

The Principal is the Head of Agency under the Act. When the principal is the subject of an allegation the Chairperson of the School Board is the Head of Agency.



Reportable Conduct

All Reportable Allegations against employees must be notified to the Ombudsman regardless of whether the child has been harmed or not and regardless of whether the behaviour is thought to have occurred. In the case of psychological harm, there needs to be evidence that a child has been harmed as a result of the employee's behaviour.

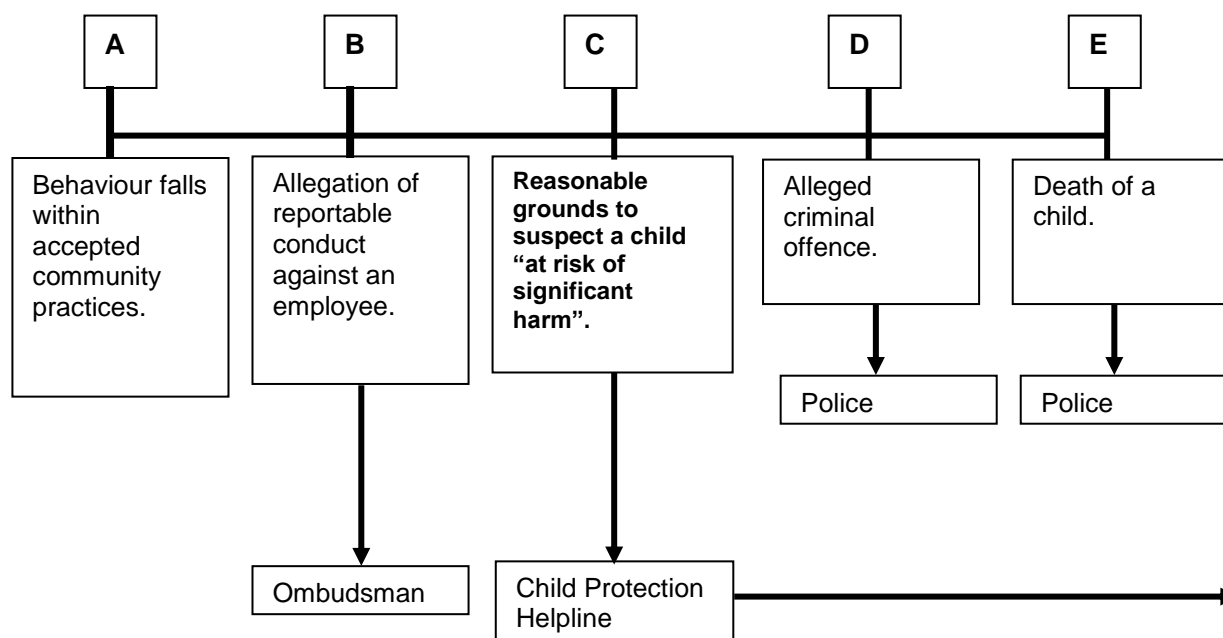
The following continuum highlights at point **(A)** where the employee's behaviour falls within the boundaries of acceptable community practice – eg. Comforting a child who has hurt themselves; and the other end of the continuum **(E)** where a child dies as a result of an employee's behaviour.

Between **A** and **B** are those matters which fall within the exemptions:

- The use of physical force that in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, **or**
- Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA of the *Ombudsman Act*.

A matter is notifiable to the Ombudsman when the complaint/information received by an agency constitutes on the face of it an allegation of misconduct that may involve reportable conduct **(B)**. However, this type of allegation may not be notifiable to statutory investigative bodies (e.g., Community Services) unless there is some evidence that the child may be 'at risk of significant harm' **(C)** or a criminal offence may have been committed **(D)**.

Continuum of Reporting Allegations



Defining Reportable Conduct

The NSW Ombudsman has produced a factsheet, "Defining Reportable Conduct" (Child Protection Practice Update 2013/1). It is reproduced below, but can also be downloaded from the Ombudsman's website (<https://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection/practice-update-defining-reportable-conduct>)



Defining Reportable Conduct

1. Reportable conduct

Section 25A of the Ombudsman Act defines 'reportable conduct' as:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material), or
- b) any assault, ill-treatment or neglect of a child, or
- c) any behaviour that causes psychological harm to a child,

whether or not, in any case, with the consent of the child. Reportable conduct does not extend to:

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

Note: Examples of conduct that would not constitute reportable conduct include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

Some conduct may fall within more than one category.

These definitions replace those contained within the Ombudsman's publication 'Child Protection in the Workplace: responding to allegations against employees' (2004).

2. Sexual offences and sexual misconduct

2.1 What is a sexual offence?

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

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

- indecent assault
- sexual assault
- aggravated sexual assault
- sexual intercourse and attempted sexual intercourse
- possession/ dissemination/ production of child pornography or child abuse material
- using children to produce pornography
- grooming or procuring children under the age of 16 years for unlawful sexual activity
- deemed non-consensual sexual activity on the basis of special care relationships.¹

All cases involving a sexual offence would also involve sexual misconduct.

2.2 What is sexual misconduct?

The term 'sexual misconduct' includes conduct that does not necessarily equate to a criminal offence.

For sexual misconduct to constitute reportable conduct, the alleged conduct must have been committed against, with or in the presence of a child.

There are three categories of sexual misconduct in addition to sexual offences:

- crossing professional boundaries
- sexually explicit comments and other overtly sexual behaviour, and
- grooming behaviour.

2.2.1 Crossing professional boundaries

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

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

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

In the area of 'crossing professional boundaries', particular care should be exercised before making a finding of sexual misconduct. For example, an employee who, on an isolated occasion, 'crosses professional boundaries' in a manner that involves little more than

¹ Special care relationships are defined in section 73 of the *Crimes Act 1900* (NSW)



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poor judgement could not be said to have engaged in sexual misconduct. Also, in cases where an employee has 'crossed boundaries' in terms of their relationship with a child, if there is evidence which clearly shows that the employee did not seek to establish an improper relationship with the involved child, then this does not constitute sexual misconduct.

However, persistent less serious breaches of professional conduct in this area, or a single serious 'crossing of the boundaries' by an employee, may constitute sexual misconduct, particularly if the employee either knew, or ought to have known, that their behaviour was unacceptable.

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

2.2.2 Sexually explicit comments and other overtly sexual behaviour

Sexual misconduct includes a broad range of sexualised behaviour with or towards children. While it is not possible to provide a complete and definitive list of unacceptable sexual conduct involving children, the following types of behaviour give strong guidance:

- sexualised behaviour with or towards a child (including sexual exhibitionism)
- inappropriate conversations of a sexual nature
- comments that express a desire to act in a sexual manner
- unwarranted and inappropriate touching involving a child
- personal correspondence and communications (including emails, social media and web forums) with a child or young person in relation to the adult's romantic, intimate or sexual feelings for a child or young person
- exposure of children and young people to sexual behaviour of others including display of pornography
- watching children undress in circumstances where supervision is not required and it is clearly inappropriate.

2.2.3 Grooming behaviour

Grooming or procuring a child under the age of 16 years for unlawful sexual activity is a sexual offence. However, Schedule 1(2) of the *Child Protection (Working With Children) Act* also recognises grooming as a form of sexual misconduct. As grooming is a sexual offence if the alleged victim is under 16 years old, caution should be exercised before reaching a grooming finding (particularly in cases where the behaviour is directed towards a child under 16 years). As an alternative to grooming, in many cases it will be more appropriate to consider whether

there has been a 'crossing of professional boundaries' (see above) and/or other more overt sexual behaviour.

Furthermore, behaviour should only be seen as 'grooming' where there is evidence of a pattern of conduct that is consistent with grooming the alleged victim for sexual activity, and that there is no other reasonable explanation for it. The types of behaviours that may lead to such a conclusion include (but are not limited to) the following:

- Persuading a child or group of children that they have a 'special' relationship, for example by:
 - › spending inappropriate special time with a child
 - › inappropriately giving gifts
 - › inappropriately showing special favours to them but not other children
 - › inappropriately allowing the child to overstep rules
 - › asking the child to keep this relationship to themselves.
- Testing boundaries, for example by:
 - › undressing in front of a child
 - › encouraging inappropriate physical contact (even where it is not overtly sexual)
 - › talking about sex
 - › 'accidental' intimate touching.
- Inappropriately extending a relationship outside of work (except where it may be appropriate - for example where there was a pre-existing friendship with the child's family or as part of normal social interactions in the community).
- Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.

An adult requesting that a child keep any aspect of their relationship secret or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

2.3 Determining whether a sexual offence has occurred

Generally, a sustained finding of a sexual offence should only be made when a court has found that a sexual offence occurred. In the absence of a conviction, agencies should determine whether or not sexual misconduct has occurred.

3. Physical assault

3.1 What is an assault?

An assault of a child includes any act by which a person intentionally inflicts unjustified use of physical force against a child. An assault can also occur if a person causes a child to reasonably fear that unjustified force will be used against them. Even if a person who inflicts, or



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causes the fear of, physical harm does not intend to inflict the harm or cause the fear, they may still have committed an assault if they acted recklessly (i.e. the person ought to have known that their actions would cause physical harm or the fear of such harm).

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

It is important to consider the context in which physical force is used against a child to determine whether it constitutes an assault. For example, an assault has not taken place where there is use of reasonable force in the following examples:

- exercising appropriate control over a child
- disarming a child or young person seeking to harm themselves or others
- separating children or young people who are fighting
- moving a child or young person out of harm's way
- restraining a child or young person from causing intentional damage to property
- self defence or the defence of others.

When considering whether the physical force used was reasonable, a range of variables should be taken into account, having regard to the circumstances of the case. Variables that may be relevant include matters such as the age, maturity, health or other characteristics of the child or children involved, and professional codes of conduct or standards that the worker is required to follow.

In addition the Ombudsman Act specifically outlines certain conduct which does **not** need to be reported:

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

3.2 Conduct to be reported to the Office of the Children's Guardian

While every allegation of physical assault should be investigated, only findings that a **serious** physical assault occurred are reportable to the Office of the Children's Guardian for consideration in Working With Children Check assessments.²

² Please note there are a small number of non-government agencies that do not have a class or kind determination with the Ombudsman that are not under a legislative obligation to report relevant misconduct findings to the Office of the Children's Guardian. However, where there is a finding of serious physical assault that indicates an individual may pose a risk to the safety of children, this should be reported to the Office of the Children's Guardian by either the Ombudsman or by the agency itself. (In each of these cases the issue of making a report to the Guardian will need to be discussed with the Ombudsman.)

3.3 Serious physical assault

A physical assault **is not serious** where:

- it only involves minor force; and
- it did not and was not ever likely to result in serious injury.

A physical assault **is serious** where:

- it results in the child being injured, beyond a type of injury like a minor scratch, bruise or graze; or
- it had the potential to result in a serious injury; or
- the injury suffered may be minor, but the assault is associated with aggravating circumstances (in this regard, aggravating circumstances might include associated inhumane or demeaning behaviour by the employee, for example kicking a child, pulling a child by grabbing the child around the neck).

In considering whether a serious physical assault has occurred, reporting bodies whose work involves regular restraint of children should consider the context of events, including the child's age and vulnerability.

Generally, behaviour that does not meet the standard of a serious physical assault does not become a serious physical assault by means of it being repeated. The only exception to this is where an employer has developed legitimate concerns for the safety of a child or children and intervened with a worker (e.g. warnings, counselling etc) and the behaviour is repeated.

4. Ill-treatment

4.1 What is ill-treatment?

Ill-treatment captures those circumstances where a person treats a child or young person in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner.

The focus is on the alleged conduct rather than the actual effect of the conduct on the child or young person.

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

In making a determination regarding ill-treatment it may be important to consider relevant codes of conduct that outline the nature of professional conduct and practice by employees/workers which should occur when working with children/young people.



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5. Neglect

5.1 What is neglect?

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

5.1.1 Supervisory neglect:

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

5.1.2 Carer neglect:

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

5.1.3 Failure to protect from abuse:

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

5.1.4 Reckless acts (or failure to act):

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

An incident can constitute neglect if it contains any element within this definition.

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfill a duty or obligation, resulting in actual harm to a child or where there is the potential for significant harm to a child.

6. Behaviour that causes psychological harm to a child

6.1 What is behaviour that causes psychological harm to a child?

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

For reportable conduct involving psychological harm, the following elements must be present:

- an obviously or very clearly unreasonable or serious act or series of acts that the employee knew or ought to have known was unacceptable, **and**
- evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self harm, **and**
- an alleged causal link between the employee's conduct and the psychological harm to the child.

Psychological harm can include the exacerbation or aggravation of an existing psychological condition, such as anxiety or depression.

When it is **alleged** that an adult's behaviour has caused psychological harm to a child, it will often be necessary to obtain a psychological or medical assessment of the child to determine whether psychological harm can be established. However, a clinical diagnosis will not be required in every circumstance – particularly if the assessment itself may cause harm. In addition, in certain serious and/or ongoing domestic violence cases, it may be open to infer that a child has been psychologically harmed, in the absence of a clinical diagnosis of such harm. Finally, it is important to stress that, when a report has established a child has a psychological condition, it is still necessary to show the condition was caused by the employee's conduct.

Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street
Sydney NSW 2000

Email nswomb@omb.nsw.gov.au
Web www.omb.nsw.gov.au

General inquiries 02 9286 1000
Facsimile 02 9283 2911

Toll free (outside Sydney metro) 1800 451 524
Tel. typewriter (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

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Not-Reportable Conduct

The Act Section 25A(1) makes it clear that certain classes of matters do not need to be reported to the Ombudsman. Please refer also to section 1 of the fact sheet above. Reportable conduct does not extend to:

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

When does a complaint against an employee become a reportable allegation?

Employers are required to deal with a wide variety of complaints relating to employees' professional practice or conduct, e.g.: rudeness, punctuality, failure to achieve expected outcomes, management issues. Although most complaints about employees will not fall into the category of reportable allegations, **all** allegations against employees should be recorded and responded to appropriately.

Allegations against employees of the use of trivial or negligible physical force do not have to be notified to the Ombudsman because they are specifically excluded from the definition of 'reportable conduct'.



APPENDIX 3

Procedures for Dealing with Allegations Against an Employee

Receipt of an Allegation

Allegations against employees must be dealt with in accordance with the 'Child Protection in the Workplace Manual'.

Complaints of information where it is considered some form of reportable behaviour may have occurred should be made to the Principal.

Initial Response

The Principal will clarify the information to ascertain whether the complaint or information constitutes an 'allegation of reportable conduct'.

The Principal should immediately conduct **an appropriate risk assessment** to decide whether or not, on the face of the information provided, the matter is reportable to the Ombudsman. This decision should be made as soon as the allegation is received so that an investigation into the matter can commence and be concluded in a timely manner.

Clarification may be sought as to the nature of the alleged behaviour, from the person making the allegation. Any further enquiry would constitute an investigation. Such clarification may be necessary to establish:

- The identity of persons involved
- When and where the alleged incident occurred
- A description of the acts and/or omissions which form the basis of the allegation.

Notification to the Ombudsman

If the allegation is deemed to be an allegation of reportable conduct then the allegation should be notified to the Ombudsman's Office **within 30 days** of its receipt with subsequent submission of the findings at the conclusion of the investigation.

Investigations

If it is deemed that an allegation of reportable conduct (*or Misconduct that may involve reportable conduct*) has been made, then the Principal shall cause an investigation to be carried out by an Approved Investigator (as described under the Act).

Preliminary Findings

The approved investigator will make a 'Recommended Finding' to the Principal who will inform the employee of the outcome of the investigation and inform him/her of the 'Preliminary Finding'.



Employee's Response

The employee will be afforded the opportunity to respond to the finding in writing.

Final Finding

The Principal will then make a Final Finding in relation to the allegation and;

1. Inform the employee of the Final Finding
2. Submit a Report to Ombudsman
3. Make any necessary notifications to the CCYP, depending on the outcome.
4. Ensure that any disciplinary proceedings in relation to the employee are carried out.

Record Keeping

Information relating to the handling of all allegations (whether reportable or exempt from notification), including inquiries, investigations, findings, decisions and action taken must be appropriately recorded by agencies.

Records of all allegations must be accessible for audit by the Ombudsman.

Protocols for Investigations

1. Decide if it is an allegation of child abuse or professional misconduct involving child abuse.
2. Offer support for student, advise on confidentiality
3. If necessary notify Child Protection Helpline and or Police.
4. Perform an initial risk management.
5. Inform the employee that an allegation has been made, and from the risk management what measures, if any, will be taken during the investigation.
6. Inform Person Subject of Allegation (PSOA) of support available. Advise on confidentiality.
7. Conduct or cause to be conducted, an investigation of the allegation.
 - a) Collect all relevant information
 - b) Interview all relevant witnesses
 - c) Interview employee
 - Giving reasonable advance notice
 - Details of the allegation
 - Entitlement of a support person/witness to be present
8. Make a preliminary finding, on the balance of probability, if the allegation is
 - a) False (did not occur)
 - b) Vexatious (did not occur, reported with malice intent)
 - c) Misconceived (no malice, but on the balance of probability was not child abuse)
 - d) Not sustained (insufficient evidence to determine)
 - e) Not child abuse but may be a breach of professional behaviour (some professional disciplinary action required)
 - f) Sustained and requiring disciplinary action



9. Decide on the disciplinary action, if any.
10. Inform the employee of
 - a) details of the finding and possible disciplinary action, if any
 - b) if the finding is to be reported to the CCYP (findings d and f only)
 - c) his/her right to ask for the Ombudsman to review the investigation
 - d) give above findings in a letter to PSOA
11. Notify the Ombudsman, within 30 days of your awareness of an allegation, with a complete report of the investigation including findings, disciplinary action and any other recommendation.
12. Report to the Commission of Children and Young People (CCYP) any relevant completed disciplinary procedures unless the findings are false, vexatious or misconceived. Advise employee that this has been done.
13. Advise parents of the child.
14. Inform AIS of Class and Kind Investigation.



APPENDIX 4

Guidelines and Procedures for Identifying Children at Risk of Significant Harm

There are four areas where children may be at risk of significant harm. They are

- Physical abuse
- Sexual abuse
- Psychological abuse (Harassment)
- Neglect

Mandatory Reporter Guide

Staff are to use the Mandatory Reporter Guide produced by the NSW Government as part of it “Keep them Safe” program. The guide can be found at the Keep them Safe website (<http://www.keepthemsafe.nsw.gov.au/home>). The guide is available as an interactive online tool, or as a PDF document.

The guide has been developed to assist front-line mandatory reporters such as police officers, teachers, nurses, social workers, and NGO staff to determine whether a case meets the new risk of significant harm threshold for reporting children and young people at risk in NSW. It is based on research findings (customised for use in NSW) from the Structured Decision Making model developed by the Children’s Research Center, a US-based non-profit social research organisation.

The purpose of the Mandatory Reporter Guide is to guide decision making, about whether or not a report to the Child Protection Helpline is appropriate under the new risk of significant harm reporting threshold. It is intended to complement rather than replace critical thinking and does not prohibit a mandatory reporter from any course of action he/she believes is appropriate.

If you become concerned that a child or young person known to you in your capacity as a mandatory reporter is being abused or neglected, or is likely to be abused or neglected, this Mandatory Reporter Guide (MRG) is a resource to help you make a decision about whether to report.

When using the online guide, select the main decision tree that most closely matches the concerns you have. If you have more than one concern, start with your most serious concern. After selecting the applicable decision tree, you will be asked questions. It is important to read the accompanying definitions to complete a 'yes' or 'no' answer until a final decision is reached.

After completion of each decision tree, a decision report will issue with an explanation of the outcome based on your completion of the decision tree. This should be printed and/or saved for your records.

If your concern does not fit any of the decision trees, it is probably not reportable, but you may consult with your Department’s Child Wellbeing Unit (CWU) and/or your supervisor as appropriate. You may call the Child Protection Helpline to report directly however the report should always be informed by having used the Mandatory Reporting Guide which defines the reporting threshold for statutory child protection reports, i.e., whether or not to report to Family & Community Services.



Indicators of Abuse and Neglect

Your first priority is to refer to the Mandatory Reporter Guide. However, the following information may assist you to identify the main characteristics of the indicators of a child at risk of significant harm.

General Indicators

None of these indicators, on their own, should be taken as clear evidence of abuse.

- History of previous harm to the child
- Neglect of a sibling
- Social or geographic isolation of the child or family
- Family history of violence including injury to children
- Domestic violence
- Physical or mental health issue affecting the parent or care giver
- The parent or care givers' abuse of alcohol or other drugs
- A developmental disability affecting the parent or care giver
- Parent or care giver experiencing significant problems in managing the child's behaviour
- A history of injury which is vague, bizarre or variable
- Marked delay between injury and presentation for medical assistance
- The child tells you he or she has been abused, or he or she knows someone who is at risk of significant harm and may be referring to themselves
- A friend, relative etc., tells you that the child may be at risk of significant harm

Specific Indicators

Sexual

- Direct or indirect disclosures
- Describing sexual acts
- Age inappropriate behaviour and/or persistent sexual behaviour
- Age in appropriate knowledge
- Self destructive behaviour (e.g. self mutilation, suicide attempts)
- Overtly sexual themes in play, artwork or writing
- Persistent running away from home
- Anorexia, over eating
- Unexplained accumulation of money or gifts
- Adolescent pregnancy
- Injuries to the breasts, buttocks, lower abdomen, thighs and genitalia
- Other child stress indicators (e.g. poor concentration, nightmares and bed wetting, marked changes in behaviour, complaints of stomach aches and headaches with no physical findings)

If a child tells you about a student at risk of significant harm

Staff need to be well prepared so that they can be supportive of the student and clear about their responsibilities at the same time. It is essential that the staff member remains calm and supportive of the student. The staff member should:

- Be aware of the common indicators (see section 8) above);
- Actively listen to the student and never probe for details or ask leading questions;
- Refrain from questioning excessively even if unsure of whether to notify;
- Talk gently and reassuringly, pointing out that you are there to help;



- Only ask open ended questions that are designed to provide sufficient information about whether the suspicion of significant harm is reasonable and therefore sufficiently strong enough to warrant a report being made, without suggesting the complaint is not believed
- Where a risk of significant harm exists outside the school's control, never assure the student that the harm will stop as that cannot be guaranteed; do not make promises that you will not tell anyone. In fact, you should disclose that you have a responsibility to tell the Principal and relevant government department.

If a student begins to make a disclosure in a group situation (say in a camp sharing time)

Staff are required to:

- Acknowledge that they have heard the student;
- Indicate support by explaining that what the student has said sounds important and that it would be better to talk about it later;
- Immediately yet discretely arrange an appropriate time to see the student away from other students.

If you have reason to suspect a student is at risk of significant harm

From time to time staff may suspect that child is at risk of significant harm. Staff need to be aware of the indicators of child abuse. (See section i) above.)

If the school has evidence of a crime the matter will be reported directly to the Police by the Child Protection Helpline.

If someone, other than the child concerned, reports to you about a students at risk of significant harm

- Staff or students who, in good faith, make a report of suspected/alleged improper conduct of a sexual or abusive nature by a person against a student will not be prejudiced in any way. Assure them you will do everything you can to assist.
- In appropriate circumstances, staff may seek the advice of the Principal or another member of the Senior Executive without derogating from their responsibility under the Child Protection legislation.



APPENDIX 5

Procedure for Student Interview Conducted by Police or Child Protection Helpline at School

In relation to reportable cases of abuse where the Child Protection Helpline has been notified, officers of the Helpline and the NSW Police Service may wish to carry out student interviews, sometimes jointly, at school.

Before allowing any officers access to information or students, the Principal should sight the officer's identification and may choose to confirm this with a phone call to their office.

No student will be interviewed at the school against the wishes of the student and it is the Principal's responsibility to inform the student of this.

The Officers should give the school, in writing, an official confirmation of an investigation involving a particular child.

At the commencement of the interview, the Principal should ask the investigating officers to explain to the student, in the presence of the Principal, the purpose of the interview and their role.

The Principal will inform the student of his or her right to choose a supportive adult to be present at the interview. If a person is nominated by the student, the interview must not commence until that person has arrived. What takes place in the interview becomes part of the investigation and must remain confidential. The interview may be taped by the support person if all parties agree; otherwise notes should be taken by the support person as a record of interview for the school.

Except in cases which involve a member of the family it is expected that a parent of the child concerned will be present at any interview with the child. Should the allegations be made against a family member the parents will be informed of the interview as soon as possible after it has commenced.

Child Protection Helpline or police officers are responsible for communicating with parents about any further matters related to an interview.

Exchange of Information with Child Protection Helpline

Before any phone discussion occurs between officers of the Child Protection Helpline and the Principal, the Principal must always confirm the identity of the caller by phoning the known number of the Child Protection Helpline before any discussions occur.

Any information requested verbally must be confirmed in writing promptly.

Any staff member who receives a call from the Child Protection Helpline must refer the officers to the Principal.

The Principal should inform parents immediately that the school has supplied information to the Child Protection Helpline unless the Helpline supplies the school with a written direction that the parents are not yet excluded from suspicion and hence not entitled to receive information.



Removal of Students by Child Protection Helpline

From time to time the Principal may be approached by officers from the Child Protection Helpline to remove a student from school premises. This approach will be supported by a Section 60 notice. If a student is to be removed from School (Section 60) or ordered to remain at the school (Section 62A) the Principal must:

- Sight the identification of the officers;
- Take a copy of the Section 60 or Section 62A notice;
- Record details of the actions, names of officers and, where possible, place of lodgment of the student;
- Gain an assurance from officers of the Child Protection Helpline that they will immediately inform the parent or care giver that the student has been removed from the school or has been ordered to remain at the school.



APPENDIX 6

Protocols and Procedures for the Identification of Staff, Visitors and Volunteers

Staff

- All students must be able to identify staff and feel safe in approaching staff. All staff members are required to wear an official identification badge issued by the School. The badge displays the name and role of the staff member.

Volunteers and Visitors

- All visitors and volunteers are required to report to the school reception desk. (Direction signs are located at front of administration building)
- Visitors and volunteers are required to enter time and details of their visit in the Visitor Register.
- Visitors and volunteers are given an identification badge to wear which must be prominently displayed while they are on the premises. This is returned to the reception desk when they sign out and depart.
- Trades persons and short term workers on site are subject to protocols embedded in the School Induction Policy.
- All students are encouraged to report to a staff member the presence of any unidentified person on the school grounds. Staff will be responsible to ensure that any unidentified person on the school grounds immediately registers their visit at the school reception desk or take any further appropriate action deemed necessary.

Important Note

Some school volunteers may be required to complete a Prohibited Employment Declaration and *Working with Children Check* clearance according to *Working with Children* Employer guidelines.