



# Safe & Supportive Environment Framework 2 – Student Welfare

## 2-2 Child Protection Policy

Prepared by	CEN Hub Compliance Officer
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*This policy and its associated documents are prepared by CEN Hub (NSW & ACT), for use by member Colleges. Procedures and supporting documentation should be customised to reflect those of the individual College.*

*Do not alter policy statements without consultation with the CEO of CEN Hub.*

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## Version History

Version	Date	Notes
1.0	March 2016	New CEN Hub policy
2.0	November 2018	New Child Protection Framework; Major revision + re-formatting of previous Child Protection Policy; Incorporating legislative changes re: WWCC to June 2018 Includes reference to ACT legislation; Addition of Checklists for monitoring records Additional information/ forms in CP Support Documents (separate file)
3.0	March 2020	NEW <i>Children's Guardian Act 2019</i> (replaces requirements of <i>Ombudsman Act 1974</i> (Reportable Conduct); Replacement of: Section 10; Updated: references, terms, definitions, contacts; Addition of: 5c 'failure to protect' and 'failure to report' within <i>Crimes Act 1900</i> ; Amendment to: 6 Definitions under 'reportable conduct'; 8.14d Complaint against the Principal; Update re: Department of Communities & Justice (FACS); Addition of: 8.3 e,f; 8.14e Procedural Fairness (OCG); Deletion of previous 9.5a; Reference to NSW Civil and Administrative Tribunal (NCAT) for appeals; Minor editing
3.1	May 2020	Review by Prolegis 15.4.2020: Re-formatting of 'Relevant Legislation'; 5 Revision of Definitions + alphabetisation; 7 Rewrite of 'Legal Obligations'; 8 Renamed 'Child Safeguarding Framework'; Revision of: Section 8; 8.4 renamed 'Staff Responsibilities'; New 8.8 'Students'; New 8.10 'Remote Learning'; New 8.16 'Complaints'; 8.17 'Investigation of an Allegation of Child Abuse or Reportable Conduct'; Renamed section 9 'Procedures for Mandatory Reporting'; Removal of redundant information; New 9.1 'Mandatory Reporters'; 9.1c status of 18 year old students; 9.3d Child on child abuse; Revision of section 9: Revision by Prolegis 9.6; Removal of 'Information Sharing' to section 14; Renamed section 10 'Procedures of the Reportable Conduct Scheme'; Replaced 'OCG' with 'Office of the Children's Guardian'; Revision of: Section 10; deletion of: 10.6e; Removed 10.7 'Records' to section 13; Removed:10.11b, advice from Prolegis; 10.12 Complaint or Review revised, advice from Prolegis; 10.13 deleted Reference fact sheets Renamed section 11: Procedures Relating to WWCC; Revision section 11; Deletion 11.8 risk assessment procedures of OCG only; Addition 11.8a NEW Section 12 Confidentiality'; Section 13 Documentation; Section 14 Information Sharing; Delete 15 Evidence of Compliance'

Prepared from information provided in Prolegis Child Protection Manual For Schools (2010), provided under licence for the purposes of Christian Education National Limited schools

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## College Vision

In Christ, partnering with families in providing excellent academic and practical education, preparing students to act justly, love mercy and walk humbly before God.

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## IMPORTANT RELATED DOCUMENTS

Employment Policy suite	Staff Code of Conduct
WHS Policy suite	Code of Conduct for Parents and Visitors
Teaching & Learning Policy suite	Student Code of Conduct
Privacy Policy	School Rules
Welfare Policy	Governance 3-2 Risk Management Framework
Anti-Bullying Policy, Student	Volunteer Code of Conduct +procedures
Discipline Policy	Contractor Code of Conduct + procedures
Teacher Accreditation Policy	Interviewing Children Procedure
Complaints Framework	
Governance 3-1 Compliance Framework	

**Relevant Legislation:**

*Child Protection (Working With Children) Act 2012 (NSW)*  
*Child Protection (Working With Children) Regulation 2013 (NSW)*  
*Children's Guardian Act 2019 (NSW)*  
*Children and Young Persons (Care and Protection) Act 1998 (NSW)*  
*Children and Young Persons (Care and Protection) Regulation 2012 (NSW)*  
*Civil Liability Act 2002 (NSW)*  
*Crimes Act 1900 (NSW)*  
*Education Act 1990 (NSW)*  
*Fair Work Act 2009 (Cth)*  
*Limitation Act 1969 (NSW)*

**Reference:**

Office of the Children's Guardian (NSW Reportable Conduct Scheme) [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)

- 'Child Safe Standards', Office of the Children's Guardian
- Facts Sheets - <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/fact-sheets>

Department of Communities & Justice (DCJ) – [www.dcj.nsw.gov.au/families-and-communities](http://www.dcj.nsw.gov.au/families-and-communities) (forwards to FACS website [www.facs.nsw.gov.au](http://www.facs.nsw.gov.au))

NSW Police

'National Principles for Child Safe Organisations', Australian Human Rights Commission 2018

NSW Civil and Administrative Tribunal - [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)

National Office for Child Safety - <https://pmc.gov.au/domestic-policy/national-office-child-safety> (Dept of the Prime Minister & Cabinet)

Christian Education National Ltd 'Class or Kind' Agreement with Ombudsman (Current signed Agreement) (transition arrangement)

## 1 INTRODUCTION

Wagga Wagga Christian College endeavours to ensure that the College is a safe environment where children are free of the risk of any form of abuse, or any other danger. The leadership is committed to creating a culture where children are free to disclose any matters of concern to them, where they will be listened to and where concerns are treated seriously and promptly.

The College's approach is both preventive and responsive to encourage and foster a culture of proactively dealing with, and reporting concerns relating to, child safety:

- Taking the necessary precautions to minimise harm;
- Ensuring safety networks are in place;
- Ensuring staff, volunteers and visitors on site are aware of their responsibilities for child safety
- Responding to indication or report of harm, abuse or danger to children;
- And acting in accordance with the legal obligation on all schools.

The College is committed to achieving the highest standards of education while fostering the dignity and integrity of the whole school community. The maintenance of a child-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, and supported in their educational, health, social, spiritual and cultural development.

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

## 2 CHRISTIAN RATIONALE

Wagga Wagga Christian College has a commitment to honour and glorify God and 'In Christ, partnering with families in providing excellent academic and practical education, preparing students to act justly, love mercy and walk humbly before 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 Wagga Wagga Christian College, this love seeks to nurture and protect all people. Special regard is given to the healthy development of children and young people placed into the College's care by parents; but also fostering the welfare of staff, volunteers and visitors to the College, the families and friends that form the community of the College, and the greater Wagga community. The education of students within Wagga Wagga Christian College 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, within a community of faith.

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)

Wagga Wagga Christian College 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. 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 Wagga Wagga Christian College (the College) to assist staff, and others involved with children in the College, 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 and others their legal obligations in relation to child protection;
- explain to staff and others what is required of them to comply with, and implement, those obligations at a practical level;
- how the College will respond to an incident or allegation of child abuse or reportable conduct; and
- explain the procedures to be followed for Working with Children Checks (WWCC) of workers in child-related positions.

## 4 TABLE OF RESPONSIBILITIES

*Customise to your school's requirements*

<b>Responsibilities</b>	<b>Evidence of Compliance</b>
<b>Board</b>	
Ensuring adequate policies and procedures in place within the school for child protection and safeguarding students	Board reports
<b>Principal</b>	
Compliance with guidelines and procedures as Head of Relevant Entity (HRE)	Records of investigations
- if HRE delegated to person other than Principal	Delegation schedule
Ensure all staff and others working with children in the school are aware of their obligation to report suspected child abuse	CPL records; Register of Mandatory Reporting
Ensure compliance with the processes and policies 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 staff have current 'Working With Children Check' clearance	Recruitment Policy; WWCC clearance register
Maintain systems for a safe environment for students	Welfare Policy; WHS Policy; 'database' student welfare records
Ensure systems for communication of allegations/ convictions; + reporting & investigating incidents	This document; confidential files
Ensure timely reporting/ notification to Regulators	Notifications; reports
Ensure adequate record keeping for audit or inspection by government authorities or CEN	Records of investigations + notifications; reports to CEN
Ensure annual staff training; and that contractors and volunteers are aware of their child protection responsibilities	PD Calendar; Register of mandatory PD; Signed Staff CoC (annually)
<b>Authorised Investigator/s</b>	
Compliance with guidelines and procedures as Authorised Investigator	Records of investigations
Maintain training currency	Records of PD/ training
<b>Business Manager</b>	
Ensure all recruitment paper work complete	Applicant personnel files
Ensure WWCC verification prior to commencement of work	WWCC files
Ensure induction of all staff prior to commencement of work	Induction records
Ensure WWCC currency maintained	WWCC files
Ensure relevant induction; WWCC clearance; and records for contractors/ others on site	Contractor files
<b>Coordinators</b>	
Ensure volunteers are adequately trained and WWCC verification obtained as needed	Volunteer Register; WWCC files



**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 annually	Register of Annual Mandatory PD (Jan); Staff Induction Policy; CPL Policy; Sign on sheet 'Read Child Protection Policy'
Read and agree to comply with the Staff Code of Conduct (annually)	Annual Staff Code of Conduct files
Report according to the provisions of the law	(database); Confidential report files

**Volunteers**

Attend training as required	Signed Volunteer Code of Conduct
Provide WWCC number as required	Volunteer WWCC files
Report suspected child abuse	Register of Mandatory Reporting

**College community**

Respect for school environment and safety of students	Code of Conduct for Parents & Visitors
Cooperate with any investigation	Records of investigations

## 5 DEFINITIONS

In this Policy, unless a contrary intention appears:

**Assault** means an act committed intentionally or recklessly, which:

- applies physical force against a child without lawful justification or excuse (for example, hitting, dragging, pushing)
- causes a child to apprehend the immediate and unlawful use of physical force (for example, threatening words or gestures, regardless of intention to act)

**Authorised Investigator** means a staff member who has received training & accreditation in undertaking child protection investigations (E.g. CEN Hub Child Protection Services; ESPC training provider); or an external accredited investigator recognised by the OCG could be appointed

**Child** means a person under the age of 18 years.

**Child abuse** includes child sexual abuse, physical assault, emotional abuse and neglect, whether or not with the consent of the child.

**Child sexual abuse** means any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography.

Child sexual abuse does not include sexual activity between consenting peers of similar ages.

**Grooming** means actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child to lower the child's inhibitions in preparation for sexual activity with the child.

**Head of Relevant Entity (HRE)** is the Principal and has responsibility for notifying the Office Children's Guardian of reportable conduct matters, and for arranging the investigation, reporting and managing of outcomes and risk management of situation.

**Ill-treatment means** conduct towards a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel.

**Mandatory Report** means a report made in accordance with section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

**Neglect** means a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, that causes or is likely to cause harm to a child, by:

- a person with parental responsibility for the child, or
- an authorised carer of the child, or
- an employee, if the child is in the employee's care.

**Parent** means any person having parental responsibility for a child, including the custody or care of a child.

**Reasonable grounds** means 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; and
- inference based on professional training and /or experience.

**Reportable allegation** means any allegation of reportable conduct against an employee.

**Reportable conduct** has the same meaning as in the *Children's Guardian Act 2019* and includes:

- a sexual offence;
- sexual misconduct;
- ill-treatment of a child;
- neglect of a child;
- an assault against a child;
- an offence under section 43B (failure to protect) or section 316A (failure to report) of the *Crimes Act 1900* (NSW); and
- behaviour that causes significant emotional or psychological harm to a child.

**Reportable Conduct Scheme** means the scheme set out in Part 4 of the *Children's Guardian Act 2019* (NSW).

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

**Risk of significant harm** means a current concern for the safety, welfare or well-being of a child or young person because of the presence, to a significant extent, of any one or more of the circumstances set out at section 23 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), which includes:

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met;
- 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 psychological harm.

**Sexual misconduct** means any conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence) and includes the following (non-exhaustive) examples:

- descriptions of sexual acts without a legitimate reason to provide the descriptions
- sexual comments, conversations or communications
- comments to a child that express a desire to act in a sexual manner towards the child, or another child.

**Sexual offence** means an offence of a sexual nature under a law of NSW, another state/territory, or the Commonwealth committed against, with or in the presence of a child, such as:

- sexual touching of a child
- a child grooming offence
- production, dissemination or possession of child abuse material.

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of a sexual offence.

**WWCC** means a clearance to engage in child-related work issued in accordance with the *Child Protection (Working with Children) 2012 (NSW)*.

**WWCC Register** means the register kept in accordance with section 9A of the *Child Protection (Working with Children) 2012 (NSW)*.

**Young person** means a person over the age of 16 and under the age of 18 years.

## 6 POLICY

Wagga Wagga Christian College opposes child abuse in any form; and seeks the welfare and protection of all students in its care. It aims to promote a culture of child protection within the school and wider community.

All children, regardless of their gender, race or cultural background, religious beliefs, age, disability, sexual orientation, or family or social background, have equal rights to a safe environment and protection from abuse.

### 6.1 Commitment

Wagga Wagga Christian College is committed to:

- Providing a safe physical and learning environment for all students (WHS policy suite; Teaching & Learning policy suite, including ICT; Student Code of Conduct; School Rules; Discipline Policy) Safe & Supportive Environment policy suite.
- Preventing harm to a student within the school as a shared responsibility between staff, volunteers, contractors and members of the School community (Staff Code of Conduct; Code of Conduct for Parents & Visitors; Volunteer Code of Conduct).
- Prompt and effective responses to any report of a student at risk of harm, including reporting to police and/ or appropriate regulators and agencies
- Educating students regarding their rights; equipping them with appropriate skills to avoid, and report, uncomfortable or abusive situations; and considering the opinions of children in the development of its procedures for child protection. (Teaching & Learning Policy suite; Student Code of Conduct)
- Managing professional conduct (Staff Code of Conduct, Continued Professional Learning & Staff Appraisal policy)
- Training staff to recognise, appropriately handle and report situations where a student may be at risk of harm (HR 2 Continued Professional Learning Policy)
- Supporting students' welfare (Welfare Policy; Student Anti-Bullying Policy) (Safe & Supportive Environment Framework 2 – Student Welfare)

### 6.2 Responsibilities

- a) The College will meet its legal and professional responsibilities with regard to the safety and welfare of its students.
- b) All staff will participate in mandatory annual training in understanding and meeting their legal and professional responsibilities in child protection.
- c) The College will respond promptly and professionally to investigate all disclosures, complaints or allegations of harm or potential harm to a student.
- d) Investigations into an allegation will be conducted in accordance with the requirements of the appropriate regulator; and principles of procedural fairness and due process. (Complaints Framework: Investigations)
- e) Notifications shall be made to Regulators as required.
- f) Records shall be maintained of all allegations or complaints, the procedures and findings of any investigation and notifications to the Regulator/s.

## 7 LEGAL OBLIGATIONS

The legal obligations to ensure the safety of children at school include:

a) **Duty of care**

Schools owe an ordinary and non-delegable duty of care to their students<sup>1</sup> by virtue of the vulnerability and dependency of children and the *loci parentis* role the school assumes in reference to each child.<sup>2</sup>

Schools are subject to a statutory duty to take reasonable precautions to prevent child sexual abuse in accordance with section 6F of the *Civil Liability Act 2002* (NSW). In determining whether a school took reasonable precautions to prevent child abuse, a court may take into account, amongst other things, whether the school complied with any applicable standards (however described) in respect of child safety.

b) **Screening of staff**

Schools are prohibited from employing someone in child-related work if the school knows, or has reasonable cause to believe, that the person does not hold a WWCC or have a current application for a WWCC, or is subject to an interim bar within the meaning of the *Child Protection (Working with Children) Act 2012* (NSW).

Schools are also required to ensure that volunteers and contractors are appropriately screened, or there is an available exemption pursuant to the *Child Protection (Working with Children) Regulation 2013* (NSW).

Schools are also required to keep a register recording relevant details relating to screening pursuant to section 9A of the *Child Protection (Working with Children) Act 2012* (NSW).

In NSW, the WWCC regime is administered by the Office of the Children's Guardian (see [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au))

c) **Mandatory reporting**

School staff are mandatory reporters pursuant to section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) requiring them, where they have reasonable grounds to suspect that a child is at risk of significant harm, to make a report to the Department of Community and Justice (**DCJ**) of the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm (see <https://reporter.childstory.nsw.gov.au/s/mrg>)

d) **The reportable conduct scheme**

The School (via the head of a relevant entity (or their delegate)) is required to notify the Office of the Children's Guardian of reportable conduct pursuant to the reportable conduct scheme set out in the *Children's Guardian Act 2019* (NSW). The head of a relevant entity is also required to ensure that the school has in place systems including a code of conduct, policies and processes for, amongst other things, preventing and detecting reportable conduct, receiving reports about reportable conduct, complaint handling and information sharing.

e) **Criminal offences**

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<sup>1</sup> *Geyer v Downs* (1977) 138 CLR 91.

<sup>2</sup> *The Commonwealth of Australia v Introvigne* [1982] HCA 40.

School staff are subject to the provisions in the *Crimes Act 1900* (NSW) in relation to criminal offences against children. Staff may also be subject to a failure to protect offence pursuant to section 43B of the *Crimes Act 1900* (NSW), and subject to having otherwise made reports to government agencies, to the offence of failure to report child abuse pursuant to section 316A of the *Crimes Act 1900* (NSW).

f) **Requirement of registration and accreditation**

The NSW Education and Standards Authority (NESA) requires that 'a registered non-government school must have in place policies and procedures to ensure that it meets its legislative obligations in relation to child protection' (see requirement 3.6.1 in the Registered and Accredited Individual Non-government Schools (NSW) Manual). This requires that:

- all staff are informed annually of legal requirements re: child protection/ mandatory reporting/ other relevant school expectations
- all mandatory reporters are informed annually of obligations & processes for reporting
- all staff are informed annually of requirements to notify allegations of reportable conduct
- all persons in child-related work have WWCC clearance; + evidence maintained
- evidence of response to reportable matters, as required.

## 8 CHILD SAFEGUARDING FRAMEWORK

The College's Child Safeguarding Framework is based on National Principles for Child Safe Organisations and is an expression of the College's risk management processes, to both protect the students in its care, and to continue to build its culture of safety and awareness, so that students are empowered to know their right to a safe childhood, to speak up and to access help.

### 8.1 The Principal's Responsibilities

The Principal is responsible for the administration and conduct of the College and all that relates to it. The Principal:

- Must notify the Department of Communities & Justice (DCJ) if there are reasonable grounds to suspect that a child under the age of 16 years (and for the purpose of this policy – a child under the age of 18 years) is at risk of significant harm.
- Shall inform Police in the event of likely criminal activity.
- As the Head of Relevant Entity, or the person delegated as Head of Relevant Entity:
  - Must notify the Office of the Children's Guardian 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 they become aware.
  - Will set up systems for providing a safe environment for children in the College'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 College to require all staff to inform the Head of Relevant Entity of any allegations or conviction of a child protection nature against an employee, volunteer or contractor engaged within the College, of which they become aware as soon as practicable.
- Must inform the reporting teacher of the action which has been taken (or not taken as the case may be) in the event the teacher reported a matter to the Principal which could reasonably be expected to result in a notification or report to the DCJ, Police or Office of the Children's Guardian.
- Shall report all critical incidents relating to child protection to the Board.

### 8.2 Employment Policy

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

- a) The College advises applicants for child-related positions that it will check with their previous employers. (HR Policy: 1-2 Recruitment)
- b) The College will undertake that all child-related staff have an unconditional WWCC prior to commencement of work.
- c) The College will keep a WWCC Register and ensure currency for staff.
- d) Any child-related worker, paid or voluntary, who is subsequently barred from engaging in child-related work and from holding a WWCC will be immediately removed from child-related work upon notification of the bar to the College.



- e) The College shall seek advice from CEN Industrial Relations Services, and/ or legal advice, where a staff member is involved in child protection allegations.
- f) Teachers must be registered with NESAs and fulfil current TAA requirements.

### 8.3 Staff Code of Conduct

- a) All staff must be familiar with, and 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 following mandatory child protection training. (January PD week)
- b) Staff cannot commence employment until their signed Staff Code of Conduct is received.
- c) Signed Staff Codes of Conduct shall be filed annually, and stored with Employee files.
- d) Unprofessional conduct or non-compliance with Staff Code of Conduct or other College policies shall be dealt with according to the processes set out in the relevant awards. (See: HR: 1-1 Employment Policy)
- e) Where the College receives a plausible complaint (meaning not clearly false or vexatious) of a breach of the Staff Code of Conduct that relates to a matter which would require an investigation under the Child Protection Framework, then the staff member may be suspended pending the outcome of the investigation.
- f) Where the Principal reasonably believes, on the face of evidence presented, that it is more probable than not that a staff member breached the Staff Code of Conduct, or any part of the Child Protection Framework, the staff member may be dismissed from employment if the conduct constitutes serious misconduct within the meaning of the employment agreement with the staff member.

### 8.4 Staff Responsibilities

- a) **All staff** are Mandatory Reporters.
- b) All staff must take the necessary steps to prevent and protect students from being harmed or exposed to harm, in consultation with the College Principal or, where the College Principal is unavailable, in consultation with a designated teacher.
- c) All staff must report all allegations of reportable conduct, prior conviction for, or disciplinary proceedings in relation to, reportable conduct by staff to the Principal: whether in their own case or that of another staff member or volunteer.
- d) Staff are expected to address or report behaviour of another staff member that crosses boundaries of expected standards of behaviour with children. Concerns or complaints which may be considered reportable conduct must be reported to the Principal.

## 8.5 Staff Training

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.

- a) The Principal, as Head of Relevant Entity, and Authorised Investigators, maintain currency through CEN training and/ or external provider training. Generally 3 yearly updates.
- b) Training for all staff occurs in January PD week; and throughout the year in section meetings.
- c) Staff are required to sign their agreement to the Staff Code of Conduct annually.
- d) Staff are required to sign that they have read and agreed to comply with the Child Protection Framework (this document) annually.
- e) An authorised Child Protection Investigator training provider is used for authorised investigators.
- f) Other resources: Office of the Children's Guardian – eLearning for staff; resources for kids; training events

## 8.6 Volunteers

- a) All visitors to the site are required to sign in to the College.
- b) A Code of Conduct for Parents and Visitors is displayed in public spaces.
- c) Volunteers may be required to provide a WWCC, which must be verified by the school prior to the event. A WWCC is required for overnight camps with students.
- d) Volunteers for longer term or overnight programs shall undergo training; and be required to sign a Volunteer Code of Conduct prior to the event. (Ref: Volunteer Procedures)
- e) Volunteers are required to report suspected abuse or neglect of a child to the Principal /designated teacher.
- f) A Register of Volunteers is maintained for people involved in the College's programs; and a WWCC Register where required.
- g) Student volunteers working with other students out of hours are also required to sign the Volunteer Code of Conduct. For example, students volunteering at after school programs.

## 8.7 Contractors

- a) Contractors are asked to provide to the College information relevant to their current licencing and WWCC if available. (See: Contractor Procedure)
- b) Contractors are required to sign in and out of the College.

- c) Contractors engaged in prolonged work on site shall be inducted to the site: including appropriate dealing with students and other staff and visitors; visitors and signing the Code of Conduct for Contractors.
- d) Where possible, contract work is arranged to fall within school holidays.

### 8.8 Students

- a) The College's expectations for student behaviour are set out in the 'College Rules' and 'Student Code of Conduct' documents. Responsible online behaviour is set out in the 'Computer User Agreement'.
- b) Students who are employed by the College e.g. after school care, are required to sign the Staff Code of Conduct; and also the 'Student Employees – Code for Social Media Use', which sets out the College's requirements for appropriate social media use among peers.
- c) Broader issues of student welfare and safety are set out in the College's policies and procedures – especially: Welfare Policy, Discipline Policy, Anti-bullying Policy and ICT Policy, as well as WHS policies.
- d) Students who are 18 years of age or older
  - 18 year old students would not ordinarily be mandatory reporters in NSW; but as 'adults', are subject to the offence of failure to report a child abuse offence. (See section: Procedures for Mandatory Reporting) .
  - Students 18 years of age are classed as adults in terms of relationships between older students and younger students:
    - the age of consent for sexual interactions in NSW is 16 years old; and
    - there is an available defence where the sexual interaction is between students of "similar age" (where the victim is above 14 years old and the age gap is not more than 2 years).

**NOTE:** The Student Code of Conduct requires a Christian standard in relationships in addition to these legal considerations.

### 8.9 Curriculum

- a) Child protection and safety issues will be incorporated and implemented within the school curriculum (PDHPE) to promote age-appropriate child empowerment and participation in decisions that affect their lives and the lives of others. (Student Code of Conduct; College Rules)
- b) The College aims to encourage a culture of openness which supports students to report their concerns.
- c) Specific small groups may be convened to address vulnerabilities, needs and characteristics of the student body.

### 8.10 Remote Learning

- a) Where students are unable to attend classes onsite the College shall enable students to complete lessons at home through alternate teaching strategies.

These may be: hard copy materials; emailed work; teaching resources on the current college learning management platform; school-based online conferencing groups, or other as available.

- b) The College's policies continue to apply for the safety of students, including the Staff Code of Conduct and the Student Code of Conduct. Additional protocols are in place for student safety in remote and online learning. The College shall undertake a Risk Assessment for extended periods of online learning.
- c) Students are encouraged to report any concerns with online learning or other complaints to the College, as well as to their parents.

See also: Video Conferencing Protocol

### **8.11 Work Placement/ Work Experience**

- a) VET Work Placement is provided by TAFE Riverina for all VET students required to complete Work Placement hours. Child protection measures are based on policies and procedures developed by DET; and are built in to the process and documentation of informing employers and parents, and in preparing students in Work Placement readiness.

The College's VET RTO, TAFE Riverina also provides information for employers, students and parents, which the College uses. (See: VET procedures)

- b) Work Experience

The College offers a work experience program for Years 10-12 students. It follows practices similar to Work Placement (see Work Experience Policy + documents). Child protection measures are based on policies and procedure developed by DET and are built into the process and documentation of informing employers and parents, and in preparing students in Work Experience readiness. The College provides a student handbook and information for employers, students and parents, which the College uses prior to any work placement. (See also: Teaching and Learning Framework 3-1 External Providers).

### **8.12 External Providers**

The College offers distance education in partnership with providers who hold child protection policies consistent with its own. E.g. TVET (TAFE) and iCEN (Christian Education National schools).

Students are instructed to inform a staff member at the College if they find themselves in an unsafe environment.

(See also: Teaching & Learning Policy 3-1 External Providers)

### **8.13 Supporting Structures**

Child protection is enhanced through the development of a safe and supportive school environment within the College, through the mechanisms of: Board oversight; WHS; student attendance and welfare; anti-bullying; chaplaincy; teaching & learning, including learning support; student leadership; privacy and complaints management.

These provisions are set out in the College's policies and procedures.

### 8.14 Culture of Child Safety

A healthy and proactive culture of child protection is also fostered across the College through:

- Board responsibility to ensure student safety and wellbeing prioritised in the College
- Senior leadership focus on priority of child protection
- Delegated accountabilities & responsibilities
- Development of reporting culture – students & staff
- Particular needs of individual students are addressed according to the student's Individual Plan (IP)
- Student leaders meet with coordinating staff regularly to discuss issues and gather student opinion on matters of concern to the student body
- Partnership of strategic relationships – CEN; NESAs; Office of the Children's Guardian; local community

### 8.15 Communication

The College seeks to communicate its commitment to child protection to the College community regularly.

- Information on the College's website
- The Complaints Framework explains how to make a complaint to the College
- The College's newsletter and other communications include sections on child well-being and developing resilience
- College App
- Scheduled parent-teacher meetings; and other communication

### 8.16 Complaints

a) Complaint against the Principal

An allegation of reportable conduct against the Principal must be reported directly to the Office of the Children's Guardian.

b) Complaint against a staff member

A complaint which may represent child abuse or reportable conduct shall be handled according to the procedures required by the relevant regulatory agencies, as set out in this document.

c) Other complaints

Complaints which clearly do not represent child abuse or reportable conduct are handled according to the procedures of the Complaints Framework

(See also: Complaints Framework: 'How we handle allegation of reportable conduct against a staff member')

### 8.17 Investigation of an Allegation of Child Abuse or Reportable Conduct

a) Investigations shall be conducted according to the requirements of the relevant regulator.

b) Interviewing Children

Guidelines for conversations and interviews involving children are given in the Interviewing Children Procedure.

c) Protection of Staff

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

d) Procedural fairness (from OCG Fact Sheet 4)

Procedural fairness is practiced in investigations, as advised by regulators, external investigators and/ or the College's legal advisors with respect to the particular circumstances of the investigation and the overarching paramountcy of the safety, welfare and well-being of children. Generally:

- An appropriate level of confidentiality
- Identify and manage real or perceived conflicts of interest
- Conduct the investigation and make any decisions without bias
- Inform the subject of allegation (at an appropriate stage of the process) of the nature and scope of the allegations (with sufficient information so that they can understand the allegation and are able to respond to it), and the process to be followed
- Keep the employee reasonably informed of the progress of investigation
- Provide option of a support person for interviews
- Explain potential consequences of an adverse finding
- Provide a genuine opportunity to respond to allegations
- Put any further relevant adverse information that arises during the investigation and that relates to the subject of an allegation to them for a response

### 8.18 Counselling

The College 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.

See also: [www.victimsservices.justice.nsw.gov.au](http://www.victimsservices.justice.nsw.gov.au)

### 8.19 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.

## 9 PROCEDURES FOR MANDATORY REPORTING

**NOTE: If there is immediate danger to the child, contact the Police (000) and/or Helpline (132 111) directly.**

### 9.1 Mandatory Reporters

Under section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), **all staff in schools are mandatory reporters.**

- a) The College also requires volunteers, and contractors required to have a WWCC clearance to work at the College, to report to their supervisor if they suspect that a child at the College is at risk of significant harm.
- b) Although the legislative requirement ends at age 16, the College considers a 'child' to mean any student enrolled at school thereby extending the duty of staff to report concerns to cover all students, including those over the age of 16.
- c) 18 year old students would not ordinarily be mandatory reporters in NSW. However, 18 year old students, as 'adults', are subject to the offence of failure to report a child abuse offence set out in section 316A of the Crimes Act 1900 (NSW). (See section: Failure to Report)

**N.B.** The requirements for mandatory reporters extend to all children, not just the students of this school and would include children the mandatory reporters are aware about by virtue of their role with the College (for example, the siblings of students at the College).

### 9.2 Mandatory Reports

All staff:

- 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 must notify the Department of Communities and Justice (DCJ) directly.
- 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.

### 9.3 Where a staff member suspects risk of significant 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) The Principal or his/her agent will use the Mandatory Reporter Guidance Tool (<https://reporter.childstory.nsw.gov.au/s/>) in order to help ascertain whether or not the child is at risk of significant harm.
- c) If it has been determined there **are** 'reasonable grounds' to suspect the child has been, or is, at risk of significant harm the Principal must promptly notify or authorise notification to DCJ.

## d) Child on child abuse

Most instances of child on child abuse is dealt with according to the College's Discipline Policy and / or Anti-bullying Policy. Sustained and repeated instances of peer-based bullying may be referred to DCJ depending on the particular circumstances.

Inappropriate contact/ sexting etc may fall into the category for mandatory reporting.

## 9.4 Reporting to Department of Communities and Justice (DCJ)

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

The Mandatory Reporter Guide includes decision-trees to assess whether concerns meet the risk of significant harm threshold for reporting.

- <https://reporter.childstory.nsw.gov.au/s/>

### OR

Call the **Child Protection Helpline** 132 111; or **Mandatory Reporters** ring: 133 627

NOTE: To submit a child protection report (eReport), mandatory reporters need to register online for the website above

### Step 2 – Prepare information for report

- a) If risk of significant harm is indicated after following the Mandatory Reporter Guide provide details about:
  - The risk of significant harm;
  - The child or young person;
  - The family background;
  - The reporter; and
  - The context of the report.
- b) Submit information provided in the report to the Principal and the Authorised Investigator.
- c) All Staff preparing the report or with access to the information must observe confidentiality in relation to the entire matter.

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

- Phone 132 111
- eReport

### NOTE:

- Written notification must be provided to DCJ on the prescribed form or by eReport.
- Mandatory reporters need to register to submit eReports. (ChildStory Reporter Community website). This allows notification by email when there is a change in status for a report or to log in to see the status of any previous reports that have been submitted.



- If the Principal declines to report, and the staff member has a current concern of risk of significant harm to a child, 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 DCJ**

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

**Note:** Reports to DCJ are confidential and the reporter's identity is protected by law if the report is made in good faith.

### **9.5 Other matters to be aware of regarding a disclosure**

- a) A risk assessment should be completed; and measures taken to ensure the safety of the child and to manage any risks, in consultation with DCJ and/ or the Police.
- b) Once a report is made to the Child Protection Helpline, no further report needs to be made unless new information comes to hand.
- c) Reports should be made in one form only, i.e. by phone or eReport. The summary page, or the decision report, from the online Mandatory Reporter Guide can be printed and filed in the College records.
- d) Further investigation is normally left to DCJ or the Police. If there is some aspect of the case that directly involves the College, investigation must be in consultation with DCJ, and with care to avoid prejudicing any criminal investigation.
- e) The Principal or staff members **MUST NOT** inform parents that a notification has been made. This is the responsibility of DCJ.
- f) The Principal must inform a student who is to be interviewed by DCJ 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.
- g) The Principal **MUST NOT** inform parents/carers of an interview with the student, where suspected abuse involves a family member or close family friend. This is the responsibility of DCJ.
- h) If the alleged offender is not a family member or close family friend, a student **MUST NOT** be interviewed unless a parent or their nominated representative is present.
- i) The Principal or staff member should not attend as a nominee of the parents or carers.

- j) Any person with a complaint or concern regarding an interview with a child should be referred to DCJ.
- k) If the concerns do not fall within the category of 'significant harm' but are still matters of concern, the College may wish to deal with the matter internally or take action such as discussing the matter with the College Chaplain and/ or parents. If appropriate in the circumstances, refer the matter to a Family Referral Service.
- l) The Principal will follow up with DCJ 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 the College.

## 9.6 Failure to report

- a) It is a criminal offence to fail to report a child abuse offence pursuant to section 316A of the *Crimes Act 1900* (NSW). In most instances, if the staff member has made a mandatory report then there is a 'reasonable excuse' not to also report a concern to the NSW Police.

However, there will be circumstances where a report may need to be made to the NSW Police. For example, where the concern relates to historic child sexual abuse at the College and does not relate to a current or future risk of significant harm to a child.

- b) 18 year old students, as 'adults', are subject to the offence of failure to report a child abuse offence set out in section 316A of the *Crimes Act 1900* (NSW).

It would be a 'reasonable excuse' for them not to report the information if they obtained that information while under the age of 18 years old (see subsection 316A(2)(e)).

## 10 PROCEDURES OF THE REPORTABLE CONDUCT SCHEME

### Notification of 'Reportable Conduct' – Police may also be involved if likely crime (000)

#### Children's Guardian Act 2019 and the Reportable Conduct Scheme

The reportable conduct scheme covers the conduct, both inside and outside the College (a 'relevant entity' under the Act), of the College's 'employees'. For the purpose of the scheme, this includes paid staff as well as volunteers, and contractors (and sub-contractors) who hold, or are required to hold, a WWCC.

The Office of the Children's Guardian shall monitor how the College investigates and reports on reportable allegations or reportable convictions made against employees of the College.

### 10.1 General

a) **Reportable conduct** may involve, briefly: (See: Definitions)

- a sexual offence
- sexual misconduct
- assault, ill treatment, or neglect of a child
- certain offences under the Crimes Act (failure to protect s43B; failure to report s316A)
- 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

b) **Exclusions**

Reportable conduct does not extend to:

- Conduct that is reasonable for the purposes of the discipline, management or care of a child, having regard to the age, maturity, health or other characteristics of the child and to any relevant codes of conduct or professional standards
- 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 procedures
- Conduct of a 'class or kind' exempted from being reportable conduct by the Office of the Children's Guardian under s30 of the *Children's Guardian Act 2019*; or which was previously exempted by the Ombudsman and is subject to transitional arrangements (CEN continuing arrangement with NSW Ombudsman)

### 10.2 Reporting to the Office of the Children's Guardian

**NOTE:** This is an allegation-based system: it is the fact of an allegation, and what is alleged, that triggers the obligation to report to the Office of the Children's Guardian.

A notification of reportable allegation to Office of the Children's Guardian may not replace reporting obligations to NSW Police, the Department of Communities & Justice, or any other relevant agency.

If another agency is already investigating the reportable allegation, the College should consult with them before taking any other action (other than to address any immediate risk).

Forms to report to the Office of the Children's Guardian are found at:  
[www.kidsguardian.nsw.gov.au/reportableconduct](http://www.kidsguardian.nsw.gov.au/reportableconduct)

a) **Initial Report** (7 business days)

The Principal/ Head of Relevant Entity is required to notify the Children's Guardian within seven (7) business days of becoming aware of:

- an allegation of reportable conduct; or
- the discovery, or notification, of a reportable conviction for, or previous disciplinary proceeding in relation to, reportable conduct

by any employee of the College under the categories described. (7-day Notification Form)

Following notification, the Office of the Children's Guardian can provide guidance to the College about how to respond to the allegation.

b) **Report within 30 calendar days**

- Final entity report to be provided on completion of the investigation (Entity Report Form); OR
- If not finalised by 30 days, an interim/ update report to be made (Interim Report Form); and an estimated timeframe for completion

Penalties may apply for failure to comply with reporting obligations.

### 10.3 Role of the Office of the Children's Guardian

a) The Reportable Conduct Directorate at the Office of the Children's Guardian can:

- Monitor and guide the progress of the College's investigation into the reportable allegation or conviction
- Require further information about the allegation or the College's response to it
- Assess whether the College conducted a fair, transparent, effective and timely investigation
- Determine whether appropriate actions have been taken by the College following the investigation
- Work with the College to help it improve their child protection systems and responses to reportable allegations
- Share information within the Office of the Children's Guardian and other external agencies to keep children safe

- b) Following the College's notification the Office of the Children's Guardian may assess that the allegation does not meet the threshold of a reportable allegation or conviction
- c) If the allegation is considered to meet the threshold of a reportable allegation or conviction the Office of the Children's Guardian may decide whether further information, oversight or investigation is required by the Office of the Children's Guardian.

#### 10.4 Responsibilities of Head of Relevant Entity (HRE)

The Head of Relevant Entity, or their delegate, is responsible to:

- Ensure systems for preventing, detecting and responding to reportable allegations or convictions
- Make all notifications to Office of the Children's Guardian as prescribed
- Ensure risk assessment is completed as soon as practicable for the safety of children and other parties
- As soon as practicable after receiving the reportable allegation/ conviction, arrange for investigation
- Ensure the investigation is completed in a reasonable time and that procedural fairness is afforded those subject of the allegation
- Provide information re: allegation, ongoing investigation, finding and action to alleged victim and their parents, unless the HRE considers it not in the public interest to do so
- Make a finding of reportable conduct if satisfied, on the balance of probabilities, that the case against the employee who is the subject of the reportable allegation has been proved beyond reasonable doubt (See: OCG Fact Sheet 8 – Making a Finding of Reportable Conduct)
- Provide information to the Office of the Children's Guardian as required
- Ensure confidentiality of information; disclose as permitted by law

#### 10.5 Staff Responsibilities

- a) Staff must, as soon as practicable, inform the Principal if they:
  - Become aware of any conduct, allegation or complaint that may involve reportable conduct by another employee, volunteer or contractor to the College, and report the circumstances;
  - Become aware of any allegation of a conviction of, or disciplinary action in relation to, reportable conduct against another employee, volunteer or contractor to the College, or against themselves, and report the circumstances.
- b) If a staff member gives a report to the Principal and becomes aware that the Principal has not reported to Office of the Children's Guardian, the staff member should alert the Office of the Children's Guardian to this.

- c) In the case of an allegation of reportable conduct, or reportable conviction, against the Principal an employee must report directly to the Office of the Children's Guardian. All relevant details should be sent to:  
[reportableconduct@kidsguardian.nsw.gov.au](mailto:reportableconduct@kidsguardian.nsw.gov.au)
- d) The College encourages and supports the appropriate reporting of child protection concerns. Also, protections apply for people who make reports (see sections 63 and 64 of the *Children's Guardian Act 2019* (NSW)).

## 10.6 The College's Response to an Allegation of Reportable Conduct

### a) Summary

- Clarify the allegation so that it is understood what conduct the allegation relates to
- Conduct a risk assessment; and manage any immediate risk to children or others
- Report to Police, if required; Make mandatory report to DCJ if there is a concern that there is a child at risk of significant harm
- Notify the Office of the Children's Guardian within 7 days
- Notify CEN Child Protection Services (advice and support)
- Plan and conduct an investigation into the allegation, or arrange external investigation; unless prevented by prior investigation requirements of police other agencies
- Ensure procedural fairness
- Advise the employee, volunteer or contractor that a reportable allegation has been made against them (ensuring clearance from Police or DCJ)
- Make a finding based on all relevant factors (with appropriate weight given to factors that have probative value)
- Draft report including findings, outcomes, recommendations and actions
- Report - interim or final - to the Office of the Children's Guardian within 30 days
- Provide report and supporting documents to Office of the Children's Guardian for review and finalisation
- Secure storage of all information

### b) Clarifying the Allegation

On receiving an allegation which may involve reportable conduct against an employee the Principal shall consult with the 'Authorised Investigator/s' to promptly decide whether or not, on the face of the information provided, the matter is reportable to the Office of the Children's Guardian. The Authorised Investigator/s may seek clarification and record the details, but should not commence an investigation.

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 College's code of conduct, then the matter is not reportable to the Office of the Children's Guardian, but needs to be recorded by the entity and dealt with as a complaint in the ordinary course;
- the alleged behaviour involved the use of physical force that, in all the circumstances, was trivial or negligible, then the matter should be investigated and the result of the investigation recorded under workplace employment procedures.

If the allegation does not fit into these categories, the HRE shall contact the Office of the Children's Guardian for advice, plan for an investigation and follow the reporting requirements outlined.

c) **Risk Management**

The HRE is responsible to ensure that any risk posed to a child(ren) by an employee is assessed and managed whilst responding to reportable allegations.

The focus of risk management is:

- Safety of the child or other children is paramount
- Fair process and appropriate support for the employee named in the allegation
- Support for other relevant parties
- Proper investigation of the allegation

Risk management shall include:

- Initial assessment on receipt of reportable allegation, based on all relevant information at the time
- Appropriate revision and adjustment of risk assessment during investigation
- Consideration of potential risk to the investigation, or any individual's health and safety, before informing an employee about the reportable allegation against them
- Final risk assessment, provided to Office of the Children's Guardian in final report, at end of investigation:
  - Including in relation to child/ children involved; employee; organisational culture and processes etc; and
  - regardless of finding; including action/s taken and reasons for action or no action.
- Records maintained of decisions and actions at each stage

**NOTE:** A decision to take action as a result of a risk assessment:

- Is not an indication that the alleged conduct occurred or is considered to have occurred;
- Does not mean that a finding has been made; and
- Will not influence the investigation's finding.

- d) 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.
- e) The factors to be considered for 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.

## 10.7 Conduct of an Investigation

**NOTE:** If Police are investigating an allegation, the College must not commence any investigation until Police give written notice of having completed their investigation. Records of communication must be kept.

- a) Prepare an **Investigation Plan** to facilitate the investigation process. Any investigation will normally include the following steps:
- Clarify the allegation - 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.
  - Review risk assessment
  - Declare any conflicts of interest or personal biases of investigator/s
  - 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; only after any other investigating agency has given permission. (See 10.8)
  - Give the employee enough information to meaningfully respond to the allegation, with regard to confidentiality. It may, in some circumstances, be inappropriate to advise the accused person of the identity of the person making the allegation.
  - Interview the employee ensuring procedural fairness
  - Consider all the evidence and make a preliminary finding whether the allegation is sustained or not
  - Principal to consider what, if any, disciplinary action is to be taken against the employee, in consultation with the College Board and legal advice



- 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 College. An unfair process is a risk to the investigation and subsequent outcomes.
- c) The Authorised Investigator will normally conduct an investigation. An external investigator may be engaged to undertake the investigation, e.g. in cases where a conflict of interest may arise.
- d) Where another agency has conducted inquiries, the College may request information from their investigations pertaining to the safety, welfare and well-being of a child. (see Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW))
- e) Only persons with a need to know about the reportable allegation should be informed of it; and must maintain a high level of confidentiality to protect the integrity of the investigation.  
All parties in the investigation should be advised of the need for confidentiality.
- f) The accused employee must not discuss the allegations with students (including the alleged victim) or with parents without the approval of the College.
- g) The College should, as far as possible, make available counselling and support to all those involved in an investigation, particularly the victim and accused.
- h) All communication with the Office of the Children's Guardian or other agencies, 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.
- i) If key personnel leave or become unavailable during an investigation, all files will be handed over to the incoming staff member.

### 10.8 Notifying the Employee who is the Subject of an Allegation

- a) If the police or DCJ 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; if it is a reportable allegation, that it has been notified to the Office of the Children's Guardian; and the process to be followed by the College.
- d) 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 support person at the interview.
- e) A support person is there as an observer to the interview only: not as an advocate or to take an active role in the proceedings. **NOTE:** The nominated support person must be appropriate and agreed by the investigator – e.g. not a witness in the investigation.

- f) A record must be kept of the meeting. This could be a digital recording, a full written record or short minutes.

### 10.9 Informing the Alleged Victim and/ or Parents

- a) Unless there are sound reasons not to, and depending on the age of the child or other circumstances, the College shall advise parents of a child who is involved that an allegation has been made; and seek permission to interview the child.
- b) Unless the HRE is satisfied that disclosure is not in the public interest, he or she shall disclose the following information to the child who is the alleged victim and their parents (see section 57 of the *Children's Guardian Act 2019* (NSW))
- the progress of the investigation
  - the findings of the investigation
  - action to be taken in response to the findings.

### 10.10 Findings

- a) In making a finding, the decision-maker must have regards to mandatory matters—whether the reportable allegation relates to conduct that is in breach of established standards applying to the employee; having regard to: professional standards; codes of conduct (professional and ethical); and accepted community standards (Division 6 of the *Children's Guardian Act 2019* (NSW))
- b) 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 reporting to the Office of the Children's Guardian.
- c) The employee should be informed in writing of a proposal to make an adverse finding and sufficient detail about the reasons for the finding; with an opportunity to make a further submission in response.
- d) The decision-maker shall consider the submission by the employee before making the final decision; and document the process.
- e) The final decision shall notified to the employee in writing; including any relevant consequences and review or appeal options available.

### 10.11 Disciplinary Proceedings

- a) As a result of findings of the investigation the Principal (or Board with respect to an allegation against the Principal) 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 to be taken;
  - Giving the employee the right to respond.

### 10.12 Complaint or Review

- a) Any request by an employee for a review of a finding or decision must be accompanied by additional information that was not available to the employee at the time of the investigation.
- b) A complaint may be made to the Office of the Children's Guardian in respect of any evidence of wrong-doing by the College.
- c) The employee may make an appeal or complaint through the Fair Work Commission.

### 10.13 Class or Kind Agreement with NSW Ombudsman

#### **NOTE: Continuing arrangement under new Children's Guardian legislation**

(Determination by the NSW Ombudsman under Section 25CA of the Ombudsman Act 1974, concerning Christian Education National and the participating member school)

- 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: signed Class or Kind Agreements with schools; '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 College:**
- Notify CEN of any allegations
  - Use only accredited Authorised Investigator/s
  - 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 HRE
- 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 the College
  - 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 College

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 College'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 Colleges records to ensure compliance with this Agreement
- The College 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

**Reference:**

'Class or Kind' Agreement between Christian Education National Ltd & Wagga Wagga Christian College (2020)

## 11 PROCEDURES RELATING TO WWCC

The Office of the Children's Guardian, through the *Child Protection (Working with Children) Act 2012* (NSW), aims to reduce the risk of abuse to children by establishing the Working With Children Check (WWCC) clearance. This check is a screening mechanism aimed at reducing the likelihood that unsuitable people be employed or engaged in child-related employment.

The check applies to child-related workers.

'Worker' is defined comprehensively to include **paid, unpaid and other roles**.

### 11.1 Child-related Work

A Working With Children Check is required where contact with children is a usual part of, and more than incidental to, the child-related work. Direct contact means physical contact or face-to-face contact.

Further information: see the *Child Protection (Working With Children) Act 2012* (NSW) and Part 2, Child-related Work, *Child Protection (Working With Children) Regulation 2013* (NSW). <http://www.kidsguardian.nsw.gov.au>

### 11.2 Regulations for Employers

Employers must:

- Register online for WWCC at: [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)
- Verify the WWCC status of every new paid employee before hiring them to ensure they have a clearance or a completed application for a WWCC. It is an offence for an employer to not verify workers in child-related work without a reasonable excuse. (Section 9A)
- Verify the Check status of employees when they renew their WWCC, no later than 5 working days after the expiry date of each clearance.
- Provide information in response to a request from the Office of the Children's Guardian relevant to assessment of whether a person poses a risk to the safety of children (Section 31 of the *Child Protection (Working With Children) Act 2012* (NSW))
- Remove any barred person from child-related work
- Establish whether a WWCC is necessary for the position being filled, and may not ask for one if it is not required

### 11.3 Compliance for Employees in Child-related Work

- All employees are required to have a current WWCC clearance
- A child-related employee or volunteer is responsible for applying for his or her own WWCC.
- Child-related workers must have a WWCC clearance before commencing employment.
- All volunteers attending overnight camps with their child, or working with children not their own in a long term project e.g. mentoring, are required to have a WWCC

clearance (See subclause 20(2) of the *Child Protection (Working with Children) Regulation 2013* (NSW))

- All WWCC applicants are required to notify the Office of the Children's Guardian of any changes to their personal details within 3 months of the change. (Section 36B)

### 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* (NSW).

People covered by the exemptions are not required to have a WWCC. (Check details on website)

## 11.4 Results of a Check

- If the worker receives a WWCC, the WWCC 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. Where an employer reasonably knows that the person is a barred worker or poses a risk to children it may also be a criminal offence in light of section 43B of the *Crimes Act 1900* (NSW).

## 11.5 WWCC status

**Application in progress** - A WWCC application is being processed and the applicant may work with children.

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

**Cleared** - This applicant has a WWCC 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 WWCC 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

**The College cannot employ them to work with children – paid or unpaid.**

### 11.6 Records considered in the WWCC

A WWCC includes a national police check and review of findings of misconduct involving children.

### 11.7 Renewal of Check

- Workers will receive notice from the Office of the Children's Guardian to renew their WWCC three months before it expires
- Workers are responsible for applying and renewing their own WWCC
- No notification will be sent to employers
- Employers have responsibility for verifying the status of WWCC

### 11.8 Notification of 'Barred' Status

- a) An 'interim bar' may be applied to a worker pending due process of an investigation.
- b) 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.
- c) 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.
- d) If the College receives a letter advising that a current employee or volunteer has become barred, the senior executive must immediately remove the person from child-related work. It doesn't matter whether they are paid or unpaid; supervised or unsupervised.

The employer's 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 there is no legal obligation to find an alternative position for a barred worker).

The College should seek legal advice prior to dismissing the worker.

## 12 CONFIDENTIALITY

### 12.1 Confidentiality

- a) All persons involved in an investigation must maintain a high level of confidentiality to protect the integrity of any investigation.
- All parties should be advised of the need for confidentiality.
  - Only parties with a need to know about any complaint or allegation should be informed of it.
  - It may, in some circumstances, be inappropriate to advise the accused person of the identity of the person making the allegation.
- b) 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 or by law to disclose that information.
- c) Access to records shall be restricted to authorised staff only.
- d) The College shall treat any breaches of confidentiality as a matter for possible disciplinary action.

### 12.2 Privacy

- a) At all stages of reporting and investigating a concern 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.
- b) All personal information considered or recorded will respect the privacy of the individual involved unless there is a risk to someone's safety; or if the information is required to be disclosed to another agency by law.



## 13 DOCUMENTATION

### 13.1 Record Keeping

- a) Accurate documentation must be kept by all parties concerning:
- all complaints and allegations, not just those deemed reportable.
  - Reports made of any case where a student is suspected to be at risk of harm, including:
    - details of any complaint, allegation or notification;
    - actions taken by the College 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

### 13.2 Records to be Maintained

- a) **In relation to a mandatory report:**
- Reports made to the Principal about possible risk of harm to a child, any decisions made and action taken
  - Details of any notification to DCJ – Mandatory Reporter Guide summary
  - Details of any feedback or requests from DCJ following notification;
  - Any actions taken by the College in relation to a notification.
  - Communications/ reports to or from other agencies

b) **In relation to an allegation of Reportable Conduct**

Documentation shall include the process, decisions, action taken or not taken and reasons for decisions and actions; and shall be provided to the Office of the Children's Guardian:

- The allegation (as accurately/ close to verbatim as possible)
- The College's initial response to the person making the allegation, the alleged victim/s and the employee who is the subject of the allegation
- Notifications considered or made to other agencies
- Reports from other agencies
- Investigation plan
- Initial risk assessment and management
- Decisions about the employee; action in relation to child/ren or employee
- All interviews – questions & responses; location; who was present; start and finish times
- Decisions during and at end of investigation – rationale, name & role of decision-maker, date
- Personal contact, discussion, emails etc – date, details, questions, advice, outcomes; name of person making contact, details of position/ agency; reason for contact

- Summary report – allegation, investigation process (detailing procedural fairness), findings in relation to allegation & rationale
- Final risk assessment – including final decision about employee and the factors considered; any subsequent action taken or to be taken
- Communications to employee, alleged victim and parents, other agencies

c) **In relation to WWCC**

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

- Full name and date of birth
- Working With Children Check number
- Date and outcome of the Check verification
- Expiry date

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

Separate WWCC files and WWCC Registers are maintained for employees and for volunteers.

### 13.3 Retention

- a) Records pertaining to mandatory reports shall be maintained indefinitely.
- b) Records pertaining to reportable conduct or allegations shall be maintained indefinitely.
- c) WWCC records are kept during the period an employee carries out child-related work for at least 7 years afterwards.

### 13.4 Security

- a) All records shall be stored securely.
- b) Records of complaints or allegations shall be maintained separately to the employee's personnel file but will be referenced therein. For example, any outcomes impacting the employee's work will be recorded in their personnel file.
- c) Access to records is restricted to authorised staff members only.
- d) Monitoring - The College's records shall be monitored regularly to ensure compliance with the requirements of regulators and College procedures.

**14 INFORMATION SHARING**

- a) Schools are required to exchange information relating to a child or young person's safety, welfare or well-being (see Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW)). This provision overrides restrictions of disclosure under the *Privacy Act 1988* (Cth).

Where a prescribed body presents a request for information:

- Identification must be presented
- Request should identify what information is sought

- b) A prescribed body is any organisation specified in subsection 248(6) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and includes registered non-government schools.

The term also includes: police; government department; government schools; public health organisation; any other organisations that have direct responsibility for, or supervision of, the provision of healthcare, welfare, education, children's services, residential services or law enforcement to children

Note:

- Information that is not associated with the welfare of children must not be shared; nor information which may be prejudicial to an investigation, or endangering a person, or is not in the public interest (see subsection 245D(4) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) for a complete list of circumstances where the school is not required to comply with a request)
  - The reporters details cannot be exchanged without their permission, unless allowed by law
  - It is not essential to obtain consent where it may further jeopardise the child's safety, welfare or wellbeing – best practice is to keep all parties informed throughout the process
  - Written exchange is preferred; or written record of verbal exchange
  - Information share should be stored securely on file
- c) 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.
- d) Note: Ambulance officers are required to notify Police if a student is removed from the College for an injury which is the result of assault.

## 15 EVIDENCE

<b>EVIDENCE of COMPLIANCE</b>
Staff Code of Conduct; Staff Training
Volunteers
Contractors
Records
<b>GENERAL – all agencies</b>
Initial report/ complaint / allegation
<b>Preliminary investigation - General</b>
Inform Principal
Notification - DCJ / helpline/ Police/ CEN/ OCG/ DET/ NESA
School's initial response (all persons)
Advice/ feedback from agency
Risk assessment
School investigation Y/ N-reason
External investigation
Information shared – schools/ police etc
Copies of documents (evidence)
Personal contact/ emails/ date/ time/reason
Further info requested/ provided
<b>DCJ – Mandatory Reporting</b>
Mandatory report guide result
<b>Failure mandatory reporting</b>
Action/ Report
Correspondence/ records
<b>Office of Children's Guardian Reportable Conduct</b>
Initial Report (7 business days)
Final or interim report (30 calendar days)
Records
Investigation
'Class or kind' determination (CEN Agreement with NSW Ombudsman – transitional arrangement)
<b>Office of the Children's Guardian – Working with Children Check</b>
Recruitment/ induction paperwork (HR 1-2 Recruitment)
Verification WWCC no's
Currency
Notification of 'barred' received
Action following 'bar' / correspondence