THE KING'S SCHOOL
PARRAMATTA

POLICY TO PROTECT
CHILDREN IN ITS CARE

JANUARY 2015
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1. **Purpose of Policy**

This Policy articulates the School’s approach to the important issue of child protection.

The focus of this School’s duty of care is the protection of children from harm. This School cares for children, it must act in the best interests of the children in its control at all times and take all reasonable steps to ensure the safety of those children in the context of the School’s educational activities.

The damaging consequences for a child, their future life and the impact upon their family as a result of harm they suffer at the hands of others and particularly by those in positions of trust are immeasurable. This School will seek to prevent any form of child abuse being experienced by a child in its care.

A failure by the School or members of its Community in addressing such child protection matters will mean a child has suffered and the School’s standing in the community generally will have diminished. Every reasonable measure will be taken by the School to prevent this happening. The School will continue in its efforts to promote strategies for prevention among its students, staff and Community generally.

The School requires the support of all members of its Community to assist it in achieving these aims. This Policy is provided to all staff members upon their appointment.

2. **Roles and Responsibilities**

2.1. **School**

Should the School need to respond to allegations of this nature then the procedures followed by the School will be in accordance with all relevant legislation, and will take into account other appropriate practices and guidelines aimed at the protection of children. This Policy and associated detailed procedures will be amended from time to time to take into account amendments to legislation and regulations.

The School has responsibilities to several NSW Government agencies in meeting its legal obligations. These are the NSW Ombudsman, Community Services, and Office of the Children’s Guardian. A summary of these responsibilities and the role each of these agencies plays is also contained in this Policy. In dealing with child protection matters the School’s management will liaise with each of these authorities as well as seeking advice from the police, School Council’s solicitors and the Association of Independent Schools (NSW) as necessary.

2.2. **Headmaster**

The Headmaster as Head of a designated non-government agency is required to respond to all allegations against employees. Reportable allegations and convictions are to be notified to the Ombudsman within 30 days of the Headmaster becoming aware of such allegations or convictions.
The Headmaster, or his nominee, should conduct investigations (which can include preliminary or other inquiries and assessments) into all allegations or convictions and take appropriate action as a result, including reporting to the Ombudsman’s office, as well as possibly the Office of the Children’s Guardian, the outcome of the School’s investigation into a reportable allegation or conviction.

Should the Headmaster receive notice of allegations against any employees his responsibility is to either respond to such allegations or arrange for a response from an appropriate senior staff member.

The Headmaster will be mindful of the School’s “Code of Conduct” that is attached as Appendix C and outlines appropriate and inappropriate behaviour to assist staff and others to better understand the School’s expectations in respect of its aim to eliminate any harm coming to children in its care.

The Headmaster is responsible for ensuring systems are in place for recording and responding to all allegations or convictions against an employee, including matters that are required to be notified to the Ombudsman, the Office of the Children’s Guardian and Community Services.

The Headmaster has delegated authority to the Deputy Headmaster, the Head of the Preparatory School and the Bursar to ensure that all academic and non academic staff as well as volunteers receive regular (at least annual) training in respect to this Policy and their obligation under the Policy and the law.

2.3. Ombudsman

The Ombudsman’s child protection role is to, inter alia:-

- scrutinise the School’s child protection systems that seek to prevent and then respond to allegations and convictions of reportable conduct against employees;

- monitor the School’s investigations into an allegation of reportable conduct against an employee, and if necessary undertake direct investigations into such allegations;

- respond to complaints about any inappropriate response by the School to an allegation or conviction of reportable conduct against an employee.

2.4. The Office of the Children’s Guardian (OCG)

The OCG is responsible for the employment screening for child related employment in accordance with the Child Protection (Working with Children) Act 2012. A Working With Children Check is a prerequisite for anyone in child-related work. It involves a national criminal history check and review of reported workplace misconduct findings. The result of a Check is either a clearance to work with children for five years, or a bar against working with children. Cleared applicants are subject to ongoing monitoring by the OCG, and any relevant new records which appear against a cleared applicant’s name may lead to the Check being revoked.
Please refer to the [http://www.kidsguardian.nsw.gov.au/Working-with-children/working-with-children-check](http://www.kidsguardian.nsw.gov.au/Working-with-children/working-with-children-check) for further information on the new Working With Children Check that commenced on 15 June 2013. In summary, all School staff commencing since that date are required to obtain a Check under the new system before they commence duties. All existing staff employed by the School since 2000 and prior to that date have had a Check under the previous screening system. All staff will eventually need to obtain a Check under the new system within a phasing in period described on the above web site and Appendix D attached.

The OCG also receives notification of sustained findings of serious physical assault and sexual misconduct and convictions involving children against employees.

### 2.5. Community Services (CS)

Community Services (previously known as the Department of Community Services) is a division of Family and Community Services and has a broad role to play in the protection of children within our society and significant investigative powers to enable it to discharge its responsibilities.

As mentioned elsewhere in this Policy document, the School’s Headmaster has a clear obligation under the Children and Young Persons (Care and Protection) Act 1998 to report to CS any child which is considered to be at risk of significant harm and to assist that agency with its investigations.

As mandated employees under relevant legislation, teaching staff will discharge their obligation to report children at risk of significant harm to CS by conveying the information upon which they base their concerns to the Headmaster who is in turn obliged to inform CS.

If the Headmaster does not confirm to you, as the person reporting the relevant information that the matter has been reported to CS or that he does not believe the circumstances warrant it being reported then you should if you still believe, in light of any additional information provided by the Headmaster, a child is at risk of significant harm, call the CS Helpline on 133627.

CS will acknowledge safe receipt of notifications to its Helpline (133627) and assign a case worker and reference number to the matter being reported.

Located at [www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au) is an online interactive “Mandatory Reporter Guide” (also known as a decision tree) that will assist the School to determine if a child should be reported as being at risk of significant harm to Community Services.
2.6. **Staff Member**

As a member of staff of this School, your responsibility is to report to the Headmaster or to the Headmaster’s nominee any situation where:-

(a) you are aware that there has been an allegation of reportable conduct; or
(b) you have formed a belief on reasonable grounds that a child is in danger of being subject to reportable conduct; or
(c) a child is at risk of significant harm.

You should also notify the Deputy Bursar of any of the above situations to enable him to assist the Headmaster to discharge all statutory obligations and manage the risks associated with such matters.

It is important to realise that failure to report allegations of reportable conduct or a suspicion of reportable conduct against a child who is under 16 years of age, based on reasonable grounds, is possibly an offence under Section 316 of the NSW Crimes Act.

Teaching staff need also to be aware that under Section 73 of the Crimes Act a teacher who has sexual intercourse with one of their pupils who is aged between 16 and 18 is liable to imprisonment of up to eight years.

As a member of the School’s staff you are not to investigate allegations or suspicions of reportable conduct. Investigations must only be carried out by investigators specifically appointed for the purpose.

Your responsibility is to report any allegations or evidence of reportable conduct only to the Headmaster or his nominee and discussion with others should be avoided or limited to persons in your privileged communication path (normal reporting line). **Failure to limit your communication in this way will not only be a breach of this Policy, but may result in you not being protected under the law (Section 29 Children and Young Persons (Care and Protection) Act 1998) from potential civil proceedings for defamation.**

The Headmaster or his nominee will report any matter that has been notified, as required by the relevant legislation described in the Legislative Requirement section below. You will be advised of the action taken. If it is decided that there are not “reasonable grounds to suspect” a child is at risk of significant harm and consequently the matter is not going to be reported by the Headmaster, you, as the original notifier, will have an obligation under the legislation to report to CS (Helpline 133627) if you believe that reasonable grounds exist.

If a student discloses reportable allegations to you, you are obliged to report the disclosure as stated above but you must **not** investigate the matter. You should refer to the “Guidelines for Assisting a Child who has Disclosed Reportable Allegations” (Appendix B) that are attached.

Investigation of allegations or evidence of reportable conduct must only be carried out by appointed investigators whose duties will include informing parents or caregivers that a notification has been made. You should not make any contact with parents or caregivers regarding the notification unless specifically authorised to do so.
You are required to confer with the Headmaster before responding to a request by CS or any other officers to attend an interview with a child (victim). You cannot be compelled by CS to attend such an interview and the advantages and disadvantages of attendance need to be carefully assessed before a decision is made.

You may be required to report in a detailed manner on any matter regarding reportable conduct about which you have notified or been notified. The confidentiality of such a report will be maintained unless otherwise required by a Court Order. Information relating to any matter of reportable conduct will need to be recorded in a signed statement.

3. Definitions

The various pieces of relevant legislation, agency guidelines and other publications, contain definitions of a number of terms and those relevant for the School’s purposes are summarised below. These definitions may alter and reference should always be made to the source document for the latest content.

3.1. Allegation

An allegation against an employee might involve behaviour that is reportable conduct or behaviour that is exempt from notification to the Ombudsman but is required to be investigated by the School.

3.2. Apprehended Violence Order

An Apprehended Violence Order (other than an interim order) made by a Court under the Crimes Act 1900, or an interstate restraint order (within the meaning of the Crimes Act 1900) which is registered in NSW, and made on the application of a police officer or other public official for the protection of a child (or a child and others).

3.3. Behaviour that causes psychological harm

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.

3.4. Behaviour that does not constitute reportable conduct

Allegations against employees, that are exempt from notification to the Ombudsman, are:

(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 s. 25CA of the Ombudsman Act 1974. (There is a detailed process to observe to determine if alleged behaviour falls within this exemption and further information can be obtained from the Deputy Bursar).

Examples of conduct that would not constitute "reportable conduct" include:

- touching a child in order to attract a child’s attention to guide a child or to comfort a distressed child
- a teacher raising his or her voice in order to attract attention or to restore order in the classroom
- conduct that is established to be accidental
- providing appropriate medical care to a child who is hurt
- not providing supervision where this was for good reason, and for a short period of time and where the risk of harm was reasonably perceived at the time to be low
- actions found to have been appropriate physical contact in classes such as sport, drama, dance etc.

3.5. Chapter 16A – Sharing of Information

Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 allows information to be exchanged between prescribed bodies despite other laws that prohibit or restrict the disclosure of personal information, such as the Privacy and Personal Information Protection Act 1998, the Health Records and Information Privacy Act 2002 and the Commonwealth Privacy Act 1988. The object of this Chapter is to facilitate the provision of services to children and young persons by agencies that have responsibilities relating to the safety, welfare or well being of children and young people.

Previously this information exchange was generally only possible where the information was sent to or received from Community Services.

Chapter 16A allows for the exchange of information between prescribed bodies without Community Services involvement.

A prescribed body is an organisation specified in section 248(6) of the Act or in clause 7 of the Children and Young Persons (Care and Protection) Regulation 2000. Generally prescribed bodies are:-

- NSW Police Force
- a State government department or a public authority
- a government school or a registered non-government school or a TAFE
- a public health organisation or a private health facility
- an accredited adoption service provider
- a designated agency
- a registered agency
• a children’s service
• any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly to children.

For further information on the application of Chapter 16A please refer to [http://www.community.nsw.gov.au/kts/guidelines/info_exchange/provide_request.htm](http://www.community.nsw.gov.au/kts/guidelines/info_exchange/provide_request.htm)

3.6. Child

Under the Child Protection (Offenders Registration) Act 2000, the Ombudsman Act 1974, the Child Protection (Working with Children) Act 2012 all children and young people up to the age of 18 years are defined as children. The Children and Young Persons (Care and Protection) Act 1998 includes children up to the age of 16 years.

3.7. Conviction of reportable conduct

This means any conviction of a person, in NSW or elsewhere, of an offence involving reportable conduct, and includes a finding by a court that a charge for such an offence is proven even though the court does not proceed to a conviction.

3.8. Disqualified Person

The Children’s Guardian must not grant a working with children check clearance to the following persons ("disqualified persons"):

(a) a person convicted before, on or after the commencement of relevant legislation of an offence specified in Schedule 2, if the offence was committed as an adult,

(b) a person against whom proceedings for any such offence have been commenced, if the offence was committed as an adult, pending determination of the proceedings for the offence.

See CHILD PROTECTION (WORKING WITH CHILDREN) ACT 2012 - SCHEDULE 2 for a list of offences that disqualify a person from receiving a clearance
3.9. **Employee**

An employee is any person who is employed by the School, whether or not they are employed to work directly with children, as well as anyone from outside the School who is engaged to provide services to children such as contractors, volunteers, students on placement, instructors of religion, sports coaches, visiting musicians, voluntary non-student members of theatrical production (Section 25A Part 3A of the Ombudsman Act 1974).

3.10. **Grooming behaviour**

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.

For the purposes of notification to the OCG, grooming behaviour constitutes a form of sexual misconduct and is notifiable.
3.11. Head of Agency

The Head of Agency is the Headmaster or in his absence the Acting Headmaster.

3.12. Internal investigation of an allegation

This involves a process where the School:

- gathers all relevant facts
- makes a decision as to whether an allegation is sustained or not
- provides information to assist any relevant employment proceedings.

When undertaking an investigation the School will be mindful of “The Association of Independent Schools NSW and The NSW/ACT Independent Education Union – Recommended Protocols for Internal Investigation and Disciplinary Proceedings” that are referred to below and are attached (Appendix A).

3.13. Mandatory reporting of a child or young person at risk of significant harm

Section 27 of the Children and Young Persons (Care and Protection) Act 1998 provides for mandatory reporting as follows:-

“(1) This section applies to:

(a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly, to children, and

(b) a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly, to children.

(2) If:

(a) a person to whom this section applies has reasonable grounds to suspect that a child is at risk of significant harm, and

(b) those grounds arise during the course of or from the person’s work, it is the duty of the person to report, as soon as practicable, to the Director-General the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.”

(“Department” means Community Services "Director-General" means the person for the time being holding office or acting as the Director-General of the Department (Helpline 133627).)
3.14. Neglect

Neglect occurs when a child is harmed by the failure of a person whose job includes care responsibilities towards a child, to provide basic physical and emotional necessities of life, including failure of such a person to provide or arrange for the provision of adequate and proper food, nursing, clothing, medical attention or lodging for a child in that person’s care.

3.15. Office of Children’s Guardian (OCG)

The OCG is responsible for providing or declining working with children clearances to applicants. The new checking system came into place on 15 June 2013 and all new employees are subject to the clearance process and existing employees will be phased in to undertake the clearance over the coming years.

3.16. Physical assault

Using common law principles, physical assault must include all three of the following elements:

- it is an act committed on or towards a child;
- it involves either the application of force to a child or an act that causes a child to think that immediate force will be used on them;
- it is either hostile or reckless (a reckless act is one where the person foresees the likelihood of inflicting injury or fear, and ignores the risk).

Actual physical harm does not have to occur in order for an assault to have taken place, i.e. the child does not have to be injured.

Physical contact which is an inevitable part of everyday life does not amount to an assault.

3.17. Reportable allegation

An allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct and must include:

- identification of a person who is a current employee of the School
- an alleged offence or description of offending behaviour that meets the definition of reportable conduct
- a person who was a child at the time of the alleged offence or behaviour described.

All allegations (including anonymous allegations) of reportable conduct must be reported to the Ombudsman.
Complaints that form the basis of less serious allegations i.e. non reportable conduct, will be dealt with in accordance with the relevant School Policy and the School’s other legal obligations.

3.18. Reportable conduct

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- any assault, ill-treatment or neglect of a child, or
- any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

3.19. Risk Assessment

It is the analysis of the facts and circumstances known to the Headmaster when he is made aware of allegations of reportable conduct to determine whether any measures need to be taken for the safety and welfare of all concerned.

In the context of the “Working with Children Clearances” the process of analysing information gathered through background checking to decide whether the Office of Children’s Guardian provides a Clearance to a volunteer or worker.

3.20. Risk of Significant Harm

Under Section 23 of the Children and Young Persons (Care and Protection) Act 1998 a child or young person is "at risk of significant harm" if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence of any one or more of the following circumstances:

a) the child’s or young person’s basic physical or psychological needs are not being met or are at risk of not being met,
(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
(b1) in the case of a child or young person who is required to attend school in accordance with the Education Act 1990 the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
(c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
(e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,
(f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

Note: Physical or sexual abuse may include an assault and can exist despite the fact
3.21. 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.

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

3.22. 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 (see definition above).

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 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.

The School’s Code of Conduct Appendix C outlines the nature of the professional boundaries which should exist between employees and children/young people. For employees who either intentionally breach that code or have demonstrated an inability to apply it appropriately, it may be necessary for the staff member’s Senior Manager to provide more detailed written advice about what constitutes appropriate behaviour.

**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.

Reference should also be made to the NSW Ombudsman website for further information on the above definitions.

**3.23. Special care relationships**

Teachers along with certain other staff are included in the definition of special care relationships in Section 73 of the *Crimes Act 1900* (see section headed “Staff Member above).

**3.24. Spent conviction**

Those offences included on a person’s criminal record which, because of the passage of time and legislative preconditions have been met, are no longer to be considered in any administrative decision making.

Sexual offences can never be “spent” for the purposes of an application for child-related employment in NSW (Criminal Records Act 1991, Section 15 (1A)).
3.25. Vexatious

Where enquiries into the matter find that the allegation was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made.

3.26. Working With Children Clearance

Staff are required to obtain a Working With Children Check Clearance to do their job at the School because of their direct responsibility for children or:-

(a) the requirement or ability of all School staff to have face to face contact with children in the School’s care; or

(b) the nature of their role may enable them to have access to a child’s personal information; or

(c) the School’s environment as a large boarding School with a significant number of children residing at the School.

An application needs to be commenced on the website of the OCG and once the Clearance letter has been received it should be sent to the Deputy Bursar along with the staff member’s date of birth.

4. Legislative Requirements

As mentioned above for the purposes of this Policy and the various legislative requirements the Headmaster or Acting Headmaster is the School’s Head of Agency. A summary of the various pieces of legislation involved with child protection follows:-

• **Ombudsman Act 1974** requires the Headmaster as Head of a non-government school to respond to allegations against employees and to notify the Ombudsman of reportable allegations or convictions.

• **Child Protection (Working with Children) Act 2012** requires the School to use the Working With Children Check administered by the OCG to screen people who apply to work in child-related positions in the School. The Headmaster is also required to notify the OCG of certain sustained findings of reportable allegations.

• **Children and Young Persons (Care and Protection) Act 1998** mandated employees are required to report to the ‘Helpline’ (133 627) of CS any children and young people whom they suspect to be at ‘risk of significant harm’.

In the event that a mandatory reporter complies with the procedures for centralised reporting of his or her employer and has no knowledge of any failure to relay the risk of significant harm report to CS, then CS will accept that the mandatory reporter has reported to CS in accordance with section 27, *Children and Young Persons (Care and Protection) Act 1998* and CS will not initiate any relevant prosecution for breach of that section.
The Headmaster is accountable to relay a report of risk of significant harm to CS when staff employed within the School report risk of significant harm to the Headmaster. Should the Headmaster fail to relay the risk of significant harm report, then CS may take action against the Headmaster in accordance with Section 27, Children and Young Persons (Care and Protection) Act 1998.

If a staff member learns that a matter they believe should be reported to CS by the Headmaster has not been so reported then they should report the matter to CS. (See Section 2.5 above).

5. Prevention

This School clearly opposes any practice that involves conduct of a reportable nature and will be constantly looking to implement measures and strategies that are aimed at preventing reportable conduct and other harm coming to children in its care. These measures and strategies will include:-

- developing and reviewing strategies to minimise reportable conduct occurring;
- requiring employees to sign off their acknowledgment and understanding of this Policy to protect children;
- ensuring this Policy is dated and contains a date when it will be reviewed;
- adopting the attached “Code of Conduct” (Appendix C) that assists staff in understanding appropriate and inappropriate behaviours;
- over a period of time clearly defining each person’s current role within the organisation;
- identifying people who are not suitable to work with children through implementing thorough employment procedures including reference checking, pre-employment screening and detailed questioning at interviews;
- providing information to families and the community on the child protection strategies that have been adopted by the School;
- training for employees to promote best practices and to ensure a safe environment for children and employees, and
- raising awareness in the School community about child protection by displaying where appropriate brochures, posters or other means of communication;
- encouraging members of the School Community to make constructive contributions as to how this Policy and the foregoing measures and strategies can be improved.

6. Response to Allegations

When responding to allegations, the Headmaster will be mindful of the “The Association of Independent Schools NSW and The NSW/ACT Independent Education Union – Recommended Protocols for Internal Investigation and Disciplinary Proceedings” (Appendix A) as amended to reflect the changes made by the Child Protection Amendment Act 2003.

Any allegation of reportable conduct to be made against the Headmaster needs to be made to the Chairman of the School Council and his contact details can be obtained from the Deputy Bursar.
7. **Steps in the investigative process**

The following flow chart provides an overview of the key actions the School will observe when responding to and investigating a reportable allegation against an employee and notifying the Ombudsman and possibly the Children’s Guardian.
Steps In The Investigative Process

**Allegation made**

Head of agency assesses risks and takes appropriate action re:
- children who may be at risk
- The employee who is the subject of the allegation
- The agency and the investigation including making a record of the allegation

Head of agency determines if the allegation is reportable or exempt from notification to the Ombudsman

Head of agency notifies reportable allegation to the Ombudsman within 30 days

Planning of investigation

**Information gathering**
- interviews conducted and documented
- other relevant documents collected
- give employee opportunity to respond

Make a finding and re-assess risks

Take action to address issues related to:
- the employee
- the child(ren)
- witnesses, and
- policies and procedures

Head of agency sends final report to Ombudsman

Ombudsman provides feedback to head of agency

Head of agency to determine action to be taken if allegation is false and malicious

Is there risk of significant harm to the child(ren)

Head of Agency to notify CS “Helpline” 133 627

CS may make a referral to the Joint Investigative Response Teams (JIRT) comprising CS, Police and NSW Health Professionals

*Note: Agencies should liaise with CS and/or Police if they are involved in the matter. The Ombudsman’s office can be contacted for consultation at any time during the agency investigation.

Employer informs OCG of outcome if serious physical assault or sexual misconduct allegations are sustained.
8. **Risk Assessment**

With the abovementioned process in mind the Headmaster or his nominee will:-

- conduct an initial and subsequent risk assessment, including an assessment of the safety of the child(ren) concerned;
- decide what action, if any, e.g. suspension, is to be taken regarding the employee who has had an allegation made against them, and
- assess and monitor the risk of continued access of the employee (who has had an allegation made or conviction recorded against them), to children attending the School.

9. **Documentation and Record Keeping**

All documents held by the School and relating to an allegation or conviction of reportable conduct or details of behaviour that does not constitute reportable conduct will be kept on a strictly confidential basis.

Should the Ombudsman be notified in accordance with the School’s obligations, the related documents will be kept indefinitely and stored in a secure location separate to the employee’s file.

The Deputy Bursar will be responsible for keeping and storing all records relating to all matters addressed by this Policy and only those persons whom the School is obliged to advise of this information or need to be aware of the contents of such documents will have access to them.

Attached to this Policy is the Ombudsman Notification Form (Appendix E) in respect of Reportable Allegations to assist staff to understand the type of information that is shared with other agencies and kept in the School’s records.

10. **Support Available for All Parties**

The School’s Pastoral Welfare Services that include the School’s Counsellors and the School’s Chaplaincy Team are available to support children involved in matters of this nature. Similarly, staff are able to call upon these colleagues for pastoral support along with the School’s external anonymous counselling service ACCESS Counselling (1800 818 728).

Attached are “Guidelines to Assist a Child or Young Person who has Disclosed Reportable Allegations” (Appendix B) that seeks to assist staff in understanding the approach that should be taken when a child or young person reveals abuse to you.
11. Review Date

The School will review this Policy and associated documents within twelve months and reissue a further version if necessary. Any suggested improvements should be forwarded to the Deputy Bursar. Whilst the School will strive to ensure it has a robust and effective “Policy to Protect Children In Its Care” it is also recognised that this Policy and the School are unable to exceed any statutory obligation upon the School.

The King’s School
May 2015
12. Appendices

Appendix A

The Association of Independent Schools N.S.W. and The NSW/ACT Independent Education Union
Recommended Protocols for Internal Investigative and Disciplinary Proceedings - 2001

Introduction

It is acknowledged that each case of alleged reportable conduct which requires internal investigation and possible disciplinary action will be quite different. These protocols have been compiled to advise how investigations and disciplinary proceedings may be conducted. They are guidelines only and in applying them one should always bear in mind the primary objectives of the relevant legislation. If adopted by a school this document should be provided to staff who are the subject of an internal investigation into reportable conduct.

Outline of Obligations under the Legislation

Upon receipt of an allegation of reportable conduct against an employee, the head of agency should determine whether or not it is an allegation about reportable conduct that may involve misconduct.

All allegations against employees that involve reportable conduct must be reported within 30 days of receipt of the allegation to the Ombudsman. The allegations should also be reported to the Community Services (CS) if there is a current concern for the safety, welfare and well being of the child. The head of agency will need to:

- conduct or cause to be conducted, an investigation of the allegation;
- decide as to whether on the balance of probabilities the allegation has been sustained or not sustained;
- decide on the disciplinary action, if any, to be taken against the employee.

At the conclusion of the investigation and the decision regarding disciplinary action, a complete report including the findings, disciplinary action decided upon and any other recommendations must be forwarded to the Ombudsman together with any information which the accused person requires to be included.

Completed relevant disciplinary proceedings should be reported to the Commission for Children and Young People unless the allegation was found to be false, vexatious or misconceived.

Risk Assessment

Upon the receipt of an allegation of reportable conduct against an employee, the head of agency is responsible for carrying out an initial risk assessment prior to the investigation of the allegation. The purpose of the risk assessment is to identify and minimise the risk:

- to a child or children who are alleged to have been victims of the reportable conduct;
- to the employee against whom the allegation has been made;
• to other children with whom the employee may have contact;
• to the proper investigation of the allegation.

This may result, for example, in the employee being temporarily relieved of some duties, being required to avoid certain pupils or, in some special cases, being suspended from duty. Any decision to take action as a result of a risk assessment is in no way an indication of the guilt of the employee concerned.

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

• the nature of the allegation;
• vulnerability of children;
• nature of the position occupied by the employee;
• the level of supervision of the employee;
• disciplinary history of the employee;
• safety of the employee;
• any comments made by the employee.

Risk should be continually monitored throughout the investigation.

The Investigation

In conducting an investigation into allegations of reportable conduct, the head of agency should be guided by the following principles.

1. Conflict of Interest and Appointment of Investigator

   All investigations must be conducted in an impartial, independent and objective manner and be open and transparent. The investigator must not show bias or favour to the alleged victim(s), the person the subject of the allegation, nor in outcomes which might affect the reputations of the particular agency.

   In some instances the head of agency may call on an external expert to undertake the investigation. This may be the case where the agency determines that it does not have the expertise to satisfactorily conduct the investigation or in cases where a conflict of interest or bias may arise.

   The mere perception of a conflict of interest by an accused person is not sufficient in itself to require the appointment of an external investigator. However, if there is a clear history of conflict between the proposed investigator and the employee it would be advisable for another investigator to be appointed.

2. Confidentiality

   Heads of agency and persons conducting investigations should maintain a high level of confidentiality throughout the investigation phase. Action for defamation could result in situations in which agencies have published allegations of reportable conduct against an employee.
The person making the allegation also has a right to protection, and if appropriate, confidentiality. In a limited number of circumstances it may be inappropriate to advise the accused person of the identity of the person making the allegation. The employee should not discuss the allegations with students (including the alleged victim) nor with parents without the approval of the school.

**Steps in the Investigative Process**

A proper investigation usually requires that an employee against whom an allegation has been made, be told promptly the substance of the allegation and be given the right to reply to the allegation.

If CS or police are investigating the allegation, advice should be received from them about when to inform the employee about details of the allegation. 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.

Where possible employees should be given advance notice of an interview with the head of agency or an appointed investigator, details of the allegation (sufficient to allow the employee to respond) and be advised that they may have a witness at the interview.

While it is desirable for an employee to be given reasonable notice before being required to respond to an allegation, what constitutes reasonable notice will depend on the circumstances of the situation.

Employees may wish to have someone support them during the interview process. The support person may be a friend on staff or the chapter representative. However, such a person is there for support only and as a witness to the proceedings, and not as an advocate or to take an active role in the proceedings.

A record should be kept of the meeting, this could be made by a tape recording, a full written record or short minutes. The form of record may be dependent on the seriousness of the allegation.

Listed below are fundamental steps in the investigative process. These may need to be varied on occasions to meet particular circumstances. The employer should normally:

(a) clarify the allegation and determine that it is an allegation of reportable conduct;
(b) make appropriate notifications to CS, police, Ombudsman;
(c) carry out a risk assessment;
(d) collect all available relevant information (ensure full documentation);
(e) interview all relevant witnesses (ensure all interviews are adequately recorded);
(f) make the employee fully aware of the allegations;
(g) possibly give the employee access to relevant documents on which the employer is relying, unless such documentation needs to be kept confidential;
(h) interview the person the subject of the allegations (ensure procedural fairness);
(i) consider all the evidence and make a preliminary finding as to whether the allegation is sustained or not sustained.
Findings

At the conclusion of the investigation, the investigator will make a preliminary finding on the balance of probabilities that:

1. the allegation was false; or
2. the allegation was vexatious, that is, was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made; or
3. the allegation was misconceived, that is, whilst the allegation was made in good faith it was either without substance or a misunderstanding on behalf of the person making the allegation occurred or the incident would not reasonably be considered as reportable conduct (irrespective of the definition), sexual misconduct or an act of violence; or
4. the allegation was not sustained; or
5. the allegation was not one of reportable conduct, but might constitute a breach of professional behaviour or judgment which requires further professional disciplinary action; or
6. the allegation was sustained and the matter required disciplinary action.

A finding of 'not sustained' means that the investigator considers that there is insufficient evidence to determine that the alleged event occurred, on the balance of probabilities.

The employee should be told of the preliminary finding and given an opportunity to respond including, if they wish, in writing.

Disciplinary Proceedings

For the purpose of this recommended protocol disciplinary proceedings are defined as the action taken as a consequence of the findings arising out of the investigation. When conducting disciplinary proceedings the employer should have regard to procedural fairness. This will usually involve:

- giving the employee details of the final finding;
- informing the employee of the possible action the employer may take; and
- giving the employee a right to respond including, if they wish, in writing.

When the investigation has been completed:

- the employee is entitled to ask the Ombudsman to review the investigation and findings if the employee believes the investigation was unfair, biased, incomplete or suffered some other deficiency giving rise to an incorrect finding.
- the employee must be advised if the employer has notified completed disciplinary proceedings to the Commission for Children and Young People.
- if the completed disciplinary proceedings are notified to the Commission for Children and Young People, the employee is entitled to inspect the employer file in accordance with Freedom of Information Principles, subject to any exemptions which may apply under that Act.
**Notification to the Commission for Children and Young People (CCYP)**

The Commission for Children and Young People Act requires all completed investigations into allegations of reportable conduct to be reported to it. It is an offence under the Act to fail to report unless the allegation is found to be either:

- false (the alleged conduct did not occur);
- vexatious (without substance, malicious intent);
- misconceived (not reasonably be considered to be reportable conduct).

In the findings listed above only findings 4 and 6 need be reported to the CCYP.

(NB
- The School will be mindful of this Protocol whenever it is necessary to undertake an investigation into relevant allegations.
- The suitability of this Protocol to the School’s needs and its legislative obligations will be reviewed on a regular basis and generally at the same time as the School’s “Policy to Protect Children In Its Care”.
- Since the publication of this Protocol it should be noted that wherever reference is made to the Commission for Children and Young People this should be replaced with the Office of Children’s Guardian. It should also be noted that only sustained findings of serious physical assault or sexual misconduct need be reported by the School to the Office of Children’s Guardian.
Appendix B

Guidelines for Staff Assisting a Child or Young Person who has Disclosed Abuse

When a student discloses abuse, staff need to be well prepared so that they can be supportive of the student and at the same time be very clear about their responsibility which in the first instance is to report to the Headmaster and not investigate. However, when in a one-to-one situation, children generally disclose with great hesitation and often with a mix of intense emotions, including fear, embarrassment and guilt. Sometimes they may only hint at or tell a small part of their experience to see how the staff member reacts before fully disclosing. It is essential that the staff member remains calm and supportive of the student.

The staff member should:

(a) actively listen to the student and never probe for details or ask leading questions: e.g. “Did s/he touch your vagina/penis?”;
(b) refrain from questioning excessively through fear of making a mistake in deciding to notify;
(c) talk gently and reassuringly, in private, pointing out that you are there to help;
(d) only ask questions that are open-ended and designed to provide sufficient information to decide whether the suspicion of abuse is sufficiently strong to warrant a report being made e.g. what happened then?.

Members of staff will help a student making a disclosure by:

(a) listening in a calm way
(b) reassuring the student that you believe him
(c) saying that you are pleased that the student has told you as it was the right thing to do
(d) avoiding any reaction that could make the student regret having talked about the experience
(e) emphasising that what has happened is definitely not the student’s fault
(f) acknowledging that it is very hard to talk about such things
(g) telling the student that the best way to stop the abuse happening is to report it to the people who have the responsibility for the care and protection of children.

When a student discloses:

(a) do not make promises that you will not tell anyone; in fact, you must tell the child that you have a responsibility to tell the Headmaster
(b) never assure the child that the abuse will stop, as that cannot be guaranteed.
Inter-agency Guidelines emphasise the importance of “being honest with the child about your responsibility for taking action to protect them and what is likely to happen. {However} it is important not to do anything that may make the situation worse and cause further harm to the child by asking probing questions, accusing parents or discussing the circumstances of the notification with potential witnesses or colleagues” (Inter-agency Guidelines for Child Protection Intervention).

Responding to a disclosure made in a group or classroom

If a student begins to make a disclosure in a group situation use the strategy of ‘protective interruption’ by:

(a) acknowledging that you have heard the child
(b) indicating your support by explaining that what you think they are saying sounds important and that it would be better to talk about it later.
THE KING’S SCHOOL
CODE OF CONDUCT
for the
CARE AND PROTECTION OF CHILDREN

CONTENTS:

1. Introduction
2. The Legislative Context
3. Duty of Care and Legal Liability
4. General Guidelines

October 2014
1. Introduction

The care and protection of children according to the parameters set out in NSW legislation is both complex and sensitive. Since the NSW Government introduced its legislation in 1998 there have been a number of significant developments which have resulted in the passing through both Houses of Parliament a number of new and amending pieces of legislation and associated regulations.

Child Protection Legislation requires agencies to develop a Code of Conduct which will apply to its employees. Such a Code should help establish parameters for employees who work in child related employment. This Code of Conduct has therefore been formulated to identify to staff the type of conduct that is required of them in the way they deal with children in the performance of their duties. It is also intended to provide practical assistance for staff members if they encounter ethical problems.

Staff have been involved in the development of this Code to ensure ownership. Just as important is the need to regularly review this Code to ensure currency and to reinforce with staff their obligations under the Code and current child protection legislation.

This Code may require amending over time. The School welcomes the input of its staff in assisting to fine tune this Code in the light of your experience. Any concerns or questions are welcomed and should be directed to either the Deputy Headmaster or Head of Preparatory School as they will help us to refine the Code to meet the needs of the School.

The School acknowledges with appreciation the work of the Association of Independent Schools in assisting this School to develop this Code.

2. The Legislative Context

Everyone who is concerned in a professional capacity with the care and protection of children needs to have a clear understanding of the essential elements of the law as it applies to the care and protection of children.

Legislation in NSW relating to the care and protection of children is currently contained in the following Acts of Parliament:

- Ombudsman Act 1974
- Child Protection (Working with Children) Act 2012
- Children and Young Persons (Care and Protection) Act 1998

3. Duty of Care and Legal Liability

Staff can be deemed legally liable if they have been negligent in relation to their responsibilities under the legislation as it pertains to the care and protection of children.
Generally speaking, a person owes a duty not to injure another as a result of his or her own negligent act or omission. The duty does not usually extend to the taking of steps to prevent injury where one has not caused or contributed to the risk giving rise to the injury.

There exists, however, special duty relationships between some members of our society which give rise to more onerous duties of care. The relationship between teacher and pupil is one of these.

The general law of negligence provides that a person may be negligent if:

- S/he owes a duty of care to the person injured, that is, the standard judged reasonable in all of the circumstances, and
- S/he did not carry out that duty to the legal standard required, and
- The person suffered damage as a result of the failure to observe the duty of care.

With regard to care and protection the following general principles apply:

- Staff must take reasonable care to ensure that their students are not harmed. They have a duty to protect their students against foreseeable risks of personal injury or harm.
- The standard of care is that of a reasonably prudent parent. The degree of care depends on such factors as the age of the students.
- There must be an efficient system of supervision in operation in the School.

Duty of care applies while the students are under the care of the School. This applies equally to school based activities and out of school activities. 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. An example of good standards or approved practice would be compliance with the School’s Code of Conduct.

4. **General Guidelines**

The School is committed to the achievement of the highest standards of education in which the security, protection and comfort of students is a high priority. The following guidelines are to be adopted for the care and protection of students and staff.

4.1 **Supervision of Students**

(a) Staff must take all reasonable care to ensure that no student is exposed to any unnecessary risk of injury. Staff are to remember that they are in *loco parentis* - the standard of care required is that of a skilled professional.

(b) Staff should be familiar with and adhere strictly to the school’s evacuation procedures.
Ill or injured students should be attended to by the supervising staff member. Should additional assistance be required contact should be made with the central office. The supervising staff member will need to determine in light of the circumstances whether the School’s Health Centre, Prep Sick Bay or Ambulance service should be contacted for further assistance.

Students should not be left unsupervised either within or outside of class. Staff are reminded of their duty of care obligations in this regard. Staff should be punctual to class and allocated supervision.

It is recognised that individual music tutors must work with students alone in enclosed studios. External monitoring is made possible with a window in each studio door.

In the event that a student is not collected, staff should remain with the student until collected or return to school with the student, or put in place other measures which are prudent and necessary.

Playground supervision is an integral part of the responsibility of staff and they must be punctual. It must take precedence over other activities. Staff should actively supervise their designated area, being vigilant and constantly moving around.

Staff should be alert to bullying or any other form of discriminatory behaviour, and report incidences to the appropriate staff member.

4.2 Relationships with Students

Staff should avoid situations where they are alone in an enclosed space with a student. Where staff are left with the responsibility of a single student they should ensure that this is in an open space in view of others. Where this is not possible or practical it should be discussed with the immediate supervisor.

Staff may as part of their pastoral care role engage in discussion with students. This is entirely appropriate. However staff must be cautious of making personal comments about a student or asking questions that probe their own or a student’s sexuality or relationships.

When staff wish to conduct a private conversation with a student they should consider the time and venue carefully to avoid placing themselves in a vulnerable situation. It is preferable to leave the door open. The staff member should not locate themselves between the student and the door.

Staff should never drive a student in their car unless they have specific permission from their supervisor to do so. In the event of an emergency staff should exercise discretion but then report the matter to the appropriate supervisor.
Staff should notify the Headmaster as Head of Agency via the Head of Prep in the Preparatory School immediately should they suspect a situation involving any form of reportable conduct. It is not a staff responsibility to investigate. Similarly staff should report to the Headmaster as Head of Agency via the Head of Prep in the Preparatory School any suspected case of neglect.

Social relations between staff and students outside the school can be problematic. Staff should refrain from visiting students at their home unless they have the express permission of the Headmaster and/or relevant parents or guardians. Staff must be alert to the risk involved in social relations with students and be conscious that their position places extra obligations on them.

Staff should not engage in tutoring or coaching students from the school for monetary return unless approved by the Headmaster.

When physical contact with a student is a necessary part of the teaching/learning experience staff must exercise caution to ensure that the contact is appropriate and acceptable. Staff could check with the student first to see if the student was comfortable with the proposed contact or ask for a volunteer to demonstrate a particular activity.

Whilst teachers will generally not attend to the toileting needs of young children should the need arise it will be done with caution. It may be appropriate to have the door open. In respect to students with a disability the management of toileting needs should be included in the student’s individual management plan.

Staff should not supply or condone the use of alcohol, tobacco other non-prescription drugs or illegal substances for any student in their care except for pain relieving medicines, e.g. Panadol, that they are permitted to administer.

When congratulating a student, a handshake, pat on the shoulder or brief hug are acceptable as long as the student is comfortable with this action. Kissing of students is not acceptable.

Assessing a student who is injured or ill may necessitate touching. Always advise the student of what you intend doing and seek their consent.

Staff must always treat students with respect and without favouritism. There is no place for sarcasm, derogatory remarks, inappropriate familiarity or offensive comments.

Staff who communicate with students electronically must abide by the terms of the school’s Computer/Internet Policy. Transmission of messages or files which are sexually explicit or offensive are totally inappropriate, and may be grounds for dismissal.

Sometimes during the course of your work you may be in receipt of a gift from a student. In such circumstances where the receipt of a gift could be considered outside of usual custom you are to inform your immediate supervisor. In respect to gifts you should also be mindful of any School Gifts Policy.
Staff should not communicate with students on social networking sites for purposes unrelated to their employment without the knowledge and permission of the Headmaster.

Staff should ensure that they are familiar with and adhere to the school’s Policy in regard to the storage and administration of medical products to students.

Sometimes in ensuring duty of care staff may be required to restrain a student from harming himself or others by using reasonable force. Any such strategy must be in keeping with the school’s behaviour management practices.

4.3 Discipline of Students

(a) All staff should be familiar with and adhere to the school’s Discipline Policy.

(b) Alcohol is not to be consumed by staff at school camps or excursions. The only exceptions will be those occasions deemed appropriate by the Headmaster in accordance with the relevant School Policy (refer to Staff Handbook).

(c) No student should be allowed to leave or be sent from a class other than for personal hygiene matters. In extreme cases students can be sent to the Deputy Headmaster’s office or the Preparatory School’s Deputy Head’s office.

(d) At all times when speaking with students care must be taken to use appropriate language.

4.4 Communication Issues

(a) Staff are required to respect and adhere to the established lines of communication in the school.

(b) Staff should be mindful of confidentiality when in discussion with parents. Staff can never guarantee confidentiality if the matter under discussion requires mandatory reporting.

(c) Staff should not speak inappropriately about another staff member to students or parents.

(d) Staff should present a courteous professional manner to students, parents, visitors and other staff members. Confrontation and criticism in public is to be avoided at all times.

(e) Certain matters discussed in staff meetings and staff memos will be treated as confidential and should not be discussed with students unless relevant to students.

(f) The media should not be given access to students or allowed entry to the school without the express permission of the Headmaster.
4.5 Camps/Billets/Excursions

(a) In the case of activities involving overnight accommodation of boys and girls, both genders should be represented in the group of supervisors.

(b) Excursion information must be communicated to parents.

(c) A mobile phone must be taken on all excursions. The teacher in charge must arrange to have access to a complete list of student contact numbers with them on the excursion.

(d) A co-ordinator will be appointed to oversee billeting arrangements. The co-ordinator will ensure that lines of communication are known to all students, their parents and host families.

(e) Students being billeted should have access to supervising staff. The overriding principle is ‘to act in the best interests of the child’. If the child expresses discomfort, or unease the child will be counselled and appropriate action taken including immediate removal from the situation.

(f) Parents of students to be billeted must complete consent forms and if necessary update the School’s medical information forms. A list of possible Senior School host families will be shown to the School Counsellor, Headmaster and Deputy Headmaster and comments invited. Adult members of host families are required to undergo the Working with Children Check as Volunteers. See www.OCG.nsw.gov.au

(g) Risk Management Assessment and Insurance arrangements must be completed well in advance of an interstate or overseas excursion.

4.6 Duty to Disclose

(a) Staff are required to report to the Headmaster any allegation of ‘reportable conduct’.

(b) Staff who are the subject of an Apprehended Violence Order or a Reportable Conviction are required to inform the Headmaster immediately they are in receipt of such an Order or Conviction.

(c) Staff are required to report to the Headmaster or his nominee any concerns relating to the safety, welfare or wellbeing of a student.
Fact sheet 1
Overview of the Working With Children Check
October 2014

A Working With Children Check is a prerequisite for anyone in paid or voluntary child-related work in NSW.
The process involves a national police check and a review of findings of misconduct.
The result is either a clearance to work with children for five years or a bar against working with children.
Barred applicants may not work or volunteer with children.

Who needs a Working With Children Check?
Only child-related workers need to apply for a Working With Children Check. There are other screening tools available for non-child related workers (e.g. national police check).
Child-related work is face-to-face contact with children in a child-related sector, or work in a child-related role. See FACT SHEET: What is child-related work? available from the fact sheets and resources page of www.kidsguardian.nsw.gov.au/check.
Some additional roles will require a Check, including prospective adoptive parents, and adults who reside in the home of an authorised carer, family day care service provider or home-based education and care service provider.
More details are on our website at Who needs the Check?

When to apply
If you are starting a new job in child-related work, you must apply for a Check before you start.
If you are an existing worker you will be phased in over the next five years, according to your industry sector. See FACT SHEET: Phase in schedule.
If you are a volunteer, you will also be phased in over the next five years, according to your industry sector. Please refer to the FACT SHEET: Phase in schedule.
If you are self-employed, you can continue to use your Certificate for Self Employed People until it expires. If you don’t have a Certificate or it has already expired, you must apply for the Check before you take on any new child-related jobs.
Some workers are exempt from the Working With Children Check, which means they are not required to apply. To find out more, see FACT SHEET: Exemptions.
How to apply

For full instructions on how to apply, please refer to FACT SHEET: How to apply

Application is a simple, two-step process:

- Step 1. Complete the online application form at www.kidsguardian.nsw.gov.au/check. If you do not have access to the internet, please call (02) 9286 7219 for assistance.

If you need help filling in the online application form, there is a video tutorial on How to apply, available on our website on our Fact sheets and resources page.

- Step 2. Take your online application number (from step one) along with proof of identity to a NSW Motor Registry, RMS agency, or Service NSW office (not your local Council). Find a location at www.service.nsw.gov.au/service-centre.

See also:
FACT SHEET: Interstate applications
FACT SHEET: Overseas applicants

Once your application has been processed, you will receive the outcome by email (or post if you do not have an email address). Please allow up to four weeks to receive the results.
See FACT SHEET: When will I receive my results?

Results of a Check

There are only two outcomes of a Working With Children Check – a clearance or a bar. If the outcome is a clearance, your Check will be valid for five years for any child-related work in NSW.

Cleared applicants will be subject to ongoing monitoring and relevant new records may lead to a bar against working with children.

If a bar is being considered, you will be contacted in writing and asked to submit information which may affect the final decision.

If a bar is applied, you will be notified in writing. While a bar is in place it is an offence to engage in any child-related work, paid or unpaid. In most cases, you can apply for a review of a bar to the NSW Civil and Administrative Tribunal.

For more information, please refer to FACT SHEET: Bars and appeals and FACT SHEET: Risk assessment.

Disclaimer: The material provided in this Fact Sheet is for guidance only. Every effort has been made to ensure that the information is accurate, current and not misleading. However, this cannot always be guaranteed and no warranty is given that the information is free from error or omission. Users should exercise their own skill and care with respect to the use of the material. The information is also not a substitute for independent legal or other professional advice and users should obtain appropriate professional advice relevant to their particular circumstances.

The Office of the Children’s Guardian does not guarantee, and accepts no legal liability whatsoever for any act done, omission made, loss, damage, cost or inconvenience arising from, connected to, or as a consequence of, using or relying on the material contained in this Fact Sheet.
Fact sheet 2
Phase-in schedule for existing workers
January 2015

- Already working with children? You will be phased in between now and 2018. Find your industry sector in the chart below.
- Volunteering? You will also be phased in. Find your industry sector on the chart below.
- Self-employed? Apply when your Certificate for Self-Employed People (CSEP) expires, or if you do not have a CSEP, when your sector is phased in.
- Starting a new job? Apply before you start work.


<table>
<thead>
<tr>
<th>INDUSTRY SECTORS – Phase-in dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 Jun 2013 to 31 Mar 2014</td>
</tr>
<tr>
<td>Child protection</td>
</tr>
<tr>
<td>Disability services</td>
</tr>
<tr>
<td>Justice services</td>
</tr>
<tr>
<td>Religious services (work as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of the organisation)</td>
</tr>
<tr>
<td>Youth workers</td>
</tr>
<tr>
<td>Authorised carers*</td>
</tr>
<tr>
<td>Adults who reside in the home of an authorised carer or family day care service provider or home-based education and care service provider</td>
</tr>
</tbody>
</table>

* Foster carers and other authorised carers of children in statutory and supported out-of-home care.

Disclaimer: The material provided in this Fact Sheet is for guidance only. Every effort has been made to ensure the information is accurate, current and not misleading. However, this cannot always be guaranteed and no warranty is given that the information is free from error or omission. Users should exercise their own skill and care with respect to the use of the material. The information is also not a substitute for independent legal or other professional advice and users should obtain appropriate professional advice relevant to their particular circumstances. The Office of the Children’s Guardian does not guarantee, and accepts no legal liability whatsoever for any act done, omission made, loss, damage, cost or inconvenience arising from, connected to, or as a consequence of, using or relying on the material contained in this Fact Sheet.
Appendix E

NOTIFICATION FORM – Allegation of Child Abuse

Notification form  Part A

Instructions for completing and sending the notification form to the Ombudsman

Completing the form

This form is to be used for reporting a reportable allegation to the Ombudsman’s Office. A reportable allegation is defined in s25A of the Ombudsman Act. The Ombudsman Act states that a reportable allegation means either:

• an allegation of reportable conduct against a person (see Practice Update 2014/1: Defining Reportable Conduct for the current definitions of reportable conduct), or
• an allegation of misconduct that may involve reportable conduct.

Part A of the notification form, relating to the details of the people involved, the allegation and the agency’s initial response, is to be sent to the Ombudsman’s office within 30 days of the head of agency becoming aware of the reportable allegation or conviction against an employee.

If the investigation has been completed within those 30 days, please also complete Part B of the notification form, which details the findings of the investigation. Part B should be accompanied by copies of all documentation relevant to the investigation and decision making. This material should be secured but does not need to be bound or contained in a folder.

Delivery instructions

To maintain a high level of confidentiality, the notification form and any other documents relating to the investigation of a reportable allegation or conviction against an employee must only be sent to the Ombudsman by:

• registered mail
• hand delivery, or
• courier.

Addressed to:

Attention – Employment Related Child Protection Division
NSW Ombudsman
Level 24
560 George Street
Sydney NSW 2000
PART A

1. Agency details

1.1 Your case/reference number:

1.2 If this notification relates to any other notification(s) or inquiries made to the Ombudsman, please provide our reference number(s) or other details:

1.3 Agency type

☐ Ageing, Disability & Home Care
☐ Child Care Centre (includes OCCSH and mobile CCC services)
☐ Community Services
☐ Corrective Services
☐ Department of Education and Communities (including TAFE NSW)
☐ Family Day Care (including home based care)
☐ Health (including Dept of Health, Local Health District and other Health services)
☐ Juvenile Justice
☐ Local Government
☐ Non Govt School - Catholic
☐ Non Govt School - Independent
☐ Other Public Authority
☐ Sport & Recreation
☐ Substitute Residential Care
☐ Other

1.4 Name of agency (if not specifically named in 1.3)

1.5 Head of agency name:

1.6 Position title:

1.7 Telephone:

E-mail address:

Signature: Date:

1.8 Agency Postal Address:

(not a home address)

If another officer is preferred as the contact for any inquiries, please provide their details below. Unless other arrangements have been made, formal correspondence from the Ombudsman will be addressed to the nominated head of agency.

1.9 Contact officer / delegate name:

(if different from Head of Agency)

1.10 Position title:

1.11 Address:

(if different from above)

1.12 Telephone:

E-mail address:
2. Details of the employee subject of allegation (Please complete this section for each employee)

2.1 Does this notification contain allegations of reportable conduct against more than one employee?
   - [ ] Yes – how many?
   - [ ] No

2.2 Family names:

   [Name]

2.3 Gender:
   - [ ] Male
   - [ ] Female
   - [ ] Date of birth:

2.4 Home address:

   [Address]

2.5 Position title with agency at the time the allegation was made:

   [Title]

2.6 Working with Children Check clearance number (if applicable):

   [Number]

2.7 Employment status with agency at the time the allegation was made:

<table>
<thead>
<tr>
<th>Employed</th>
<th>Engaged</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] Permanent – full time</td>
<td>[ ] Foster care</td>
</tr>
<tr>
<td>[ ] Permanent – part time</td>
<td>[ ] Volunteer</td>
</tr>
<tr>
<td>[ ] Casual</td>
<td>[ ] Contractor</td>
</tr>
<tr>
<td></td>
<td>[ ] Tutor</td>
</tr>
<tr>
<td></td>
<td>[ ] Other (state)</td>
</tr>
</tbody>
</table>

2.8 Is the employee aware that a reportable allegation has been made against them?
   - [ ] Yes – date informed: [ ]
   - [ ] No – reason:
     - [ ] Police advice
     - [ ] Community Service advice
     - [ ] Unable to contact employee
     - [ ] Unknown

2.9 Has support been offered/provided to the employee?
   - [ ] Yes – what kind?
   - [ ] No – why not?
   - [ ] Unknown
3. Details of the alleged victim(s) (Please complete this section for each child)

3.1 Does this notification contain allegations of reportable conduct involving more than one child or young person?

[ ] Yes – how many? [ ] No

[ ] Unknown

[ ] Child(ren) identity unknown

3.2 Family name:

Given names:

3.3 Gender:

[ ] Male

[ ] Female

[ ] Date of birth:

3.4 Age of the child at the time of the alleged reportable conduct (if different from above):

3.5 Is the child: Aboriginal or Torres Strait Islander? [ ] Yes [ ] No [ ] Unknown

Culturally & linguistically diverse (CALD) background? [ ] Yes [ ] No [ ] Unknown

3.6 Does the child have a disability or disorder?

[ ] Yes – details of disability or disorder

[ ] Intellectual

[ ] Behavioural

[ ] Sensory

[ ] Multiple

[ ] Physical

[ ] Other (specify)

[ ] No

3.7 Is parental responsibility for the child with the Minister for Community Services?

[ ] Yes

[ ] Shared responsibility

[ ] No

[ ] Unknown

3.8 Are the child’s parents or guardian aware of the allegations?

[ ] Yes

[ ] Unknown

[ ] No – why?

[ ] Not applicable – why?

3.9 Has support been offered/ provided to the alleged victim?

[ ] Yes – what kind?

[ ] No – why not?

[ ] Unknown
4. Details of the allegation(s) or conviction(s) (Please complete this section for each type of reportable allegation)

4.1 Does this notification concern more than one reportable allegation?

☐ Yes – how many? ________ ☐ No

4.2 Date of alleged incident: __________ Or period: from: __________ to __________

4.3 Detailed description of reportable allegation or conviction as described by the person making the allegation (or from any other source). Please attach all documentation where available.
4.4 Type of reportable allegation, including conduct that may involve¹

**Physical assault**
- [ ] Hitting/kicking/punching
- [ ] Shaking
- [ ] Pushing/shoving/grabbing/throwing a child
- [ ] Inappropriate restraint/excess use of force
- [ ] Use of object²
- [ ] Perceived threat of harm (including in the context of domestic violence)³
- [ ] Other deliberate/hostile/reckless application of force

**Psychological harm**⁴
- [ ] Persistent hostility/rejection
- [ ] Exposure to violence or self-destructive/antisocial behaviour (including domestic violence)⁵
- [ ] Scapegoating
- [ ] Humiliation/bullying
- [ ] Other (specify)

**Sexual offence**
- [ ] Sexual assault
- [ ] Sexual intercourse with a 16-17 yr old child in the context of a ‘special care relationship’
- [ ] Indecent assault
- [ ] Act of indecency
- [ ] Production, dissemination or possession of child pornography
- [ ] Procuring or grooming children under the age of 16 years for unlawful sexual activity
- [ ] Other (specify)

**Neglect**
- [ ] Clothing/food
- [ ] Medical care
- [ ] Shelter
- [ ] Supervision
- [ ] Environment not supportive (includes failing to intervene to ensure a child’s safety)
- [ ] Provision of drugs/alcohol

**Ill-treatment**
- [ ] Excessive discipline/punishment
- [ ] Other excessive behaviour

**Reportable Conviction**⁶
- [ ] Sexual offence
- [ ] Physical assault
- [ ] Other (specify)

4.5 Date your agency became aware of the allegations(s):

---

¹ A reportable allegation is defined in s63A of the Ombudsman Act. The Ombudsman Act states that a reportable allegation means either:
  - an allegation of reportable conduct against a person (see Practice Update 2014/1: Defining Reportable Conduct for the current definitions of reportable conduct), or
  - an allegation of misconduct that may involve reportable conduct
² Use of object includes the use of an implement or throwing an object towards a child
³ Exposure to domestic violence can be categorised as either behaviour causing psychological harm or a physical assault (threat of harm) to a child
⁴ These must be a claim of related harm to the child that was alleged to have been caused by the employee
⁵ In terms of further advice on domestic violence and psychological harm, see Practice Update 2014/1: Defining Reportable Conduct (behaviour that causes psychological harm to a child)
⁶ This category is only applicable when a matter has been proven at court

NSW Ombudsman
Employment related child protection – February 2014
5. **Interim action taken or proposed in respect of the reportable allegation(s)**

5.1 Have prior reportable allegations been made against the employee?

- [ ] Yes – please answer the following questions:
  - When was the most recent?
    - [ ] Within 2 yrs
    - [ ] 2-5 yrs
    - [ ] More than 5 yrs ago
  - What was the result or finding of that investigation?
    - [ ] Sustained
    - [ ] Not sustained – insufficient evidence
    - [ ] Not sustained – lack of evidence of weight
    - [ ] Not reportable conduct
    - [ ] False
    - [ ] Vexatious
    - [ ] Misconceived
  - What action was taken?
    - [ ] Changed duties
    - [ ] Training
    - [ ] Monitoring
    - [ ] Dismissal
    - [ ] No action
    - [ ] Other – please state: ___________________________

- [ ] No
- [ ] Unknown

5.2 Did your agency undertake an initial risk assessment when the current allegation was made?

- [ ] Yes – Please provide a copy of the risk assessment
- [ ] No – why? ___________________________

5.3 What action has been taken or is proposed in respect to the employee while the current allegation is being investigated and until final decisions are made?

- [ ] No action (state the current reason)
- [ ] Increased supervision (describe)
- [ ] Restriction on current duties (specify)
- [ ] Transferred to alternate duties (specify)
- [ ] Suspended with pay
- [ ] Suspended without pay
- [ ] Not re-engaged
- [ ] Dismissed
- [ ] Allowed to resign
- [ ] Agency advised Office of the Children’s Guardian (OCG) of interim risk
- [ ] Interim bar by the OCG
- [ ] Final bar by the OCG

---

7 Agencies may provide information to the Office of the Children’s Guardian (OCG) under Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 if the investigation/disciplinary proceeding has not been completed and the information relates to the safety, welfare or well-being of a particular child or young person or class of children if the provider reasonably believes that the provision of the information would assist the recipient to commence an investigation, provide a service or manage the risk to children.

8 Tick one of these boxes if the OCG has advised you that the employee is subject to a bar or interim bar. This means that they cannot be engaged or remain in child-related work.
5.4 Has Community Services been informed of the current allegation?
- Yes - Date of report: [ ]
- No (please go to 5.5)
- Unknown

5.5 Is Community Services investigating this reportable allegation?
- Yes
- No
- Unknown

5.6 Has the NSW Police Force been informed of the current allegation?
- Yes - Date of report: [ ]
- No (please go to 5.7)
- Unknown

5.7 Is the NSW Police Force investigating this reportable allegation?
- Yes
- No
- Unknown

---

9 Agencies must report suspected risk of significant harm to the Community Services' Helpline. The main purpose of a Community Services investigation is to identify whether a child is at risk of significant harm and whether any case and support issues exist. Advice should be obtained from Community Services before commencing an employment-related child protection investigation.

10 Agencies must report allegations of a criminal nature to the NSW Police Force. The main purpose of a police investigation is to make inquiries to determine whether there is sufficient evidence to charge a person with a criminal offense. Advice should be obtained from the NSW Police Force prior to commencing an employment-related child protection investigation. Agencies are encouraged to refer police to the NSW Police Force's Standard Operating Procedures regarding employment-related child abuse allegations, which require that the employing agency be kept informed of the police investigation and any action that can be taken by the employing agency during the police investigation.
PART B

Outcome of the Investigation

To be completed at the conclusion of the investigation of the reportable allegation(s) or conviction(s). Please attach copies of supporting documentation and complete the following.

1. Agency details
   Name of agency: 
   Your case/reference number: 
   Ombudsman reference: 
   Employee the subject of the allegations: 

2. Procedural fairness
   2.1 Describe the allegation(s) that you put to the employee. Attach copies of all relevant documents, including correspondence, emails and records of interview with the employee.
   
   2.2 How was the employee informed of and asked to respond to the allegation(s)?
   
   [ ] In writing
   [ ] Verbally
   [ ] Not informed – Reason: 

   2.3 By what method did the employee respond to the allegation(s):
   
   [ ] Written statement
   [ ] Interview
   [ ] Did not provide a response

   2.4 If the employee was interviewed, was the employee invited to have a support person attend the interview with them?
   
   [ ] Yes
   [ ] No – why?

   2.5 Did the employee opt for a support person?
   
   [ ] Yes
   [ ] No

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2.6 What was the employee’s response to the allegation(s) that were put to them?

3. Charges and convictions

3.1 Was the employee charged?

☐ Yes  ☐ No (please go to 4.1)

3.2 Please list each specific charge:

3.3 What was the outcome of court proceedings for each specific charge (if known)?

4. Agency finding and reporting to the Office of the Children’s Guardian

Reporting bodies have a legal obligation to report findings of sexual misconduct and serious physical assault involving children by a child-related worker to the Office of the Children’s Guardian (OCG), although the Ombudsman may report other misconduct to the Office of the Children’s Guardian. Further information about reporting bodies and relevant definitions can be found on the Office of the Children’s Guardian’s website at www.kidsguardian.new.gov.au

4.1 Does this notification concern more than one reportable allegation?

☐ Yes* – how many? ☐

☐ No

*NOTE: PLEASE COMPLETE SECTION 4.2 FOR EACH ALLEGATION
4.2 Summary of allegation

<table>
<thead>
<tr>
<th>Finding</th>
<th>Category of conduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alleged conduct was found to be:</td>
<td></td>
</tr>
</tbody>
</table>
| ☐ Sustained

| ☐ Sexual offence |
| ☐ Sexual misconduct |
| ☐ Physical assault |
| ☐ Behaviour causing psychological harm to a child |
| ☐ Neglect |
| ☐ Ill-treatment |
| Not sustained – insufficient evidence | |
| Not sustained – lack of evidence of weight | |
| False | |
| Not reportable conduct | |

4.3 Was the matter sent to the OCG?

☐ Yes  ☐ No (please go to 5.1)

4.4 Date sent to the OCG: ____________

Available findings

<table>
<thead>
<tr>
<th>Sustained</th>
<th>There is sufficient evidence that the reportable conduct occurred.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not sustained – insufficient evidence</td>
<td>There is some evidence that reportable conduct occurred, however, there is not enough evidence to make a conclusive finding.</td>
</tr>
<tr>
<td>Not sustained – lack of evidence of weight</td>
<td>A reportable allegation has been made, however, there is no evidence of weight that the reportable conduct occurred.</td>
</tr>
<tr>
<td>False</td>
<td>There is clear evidence to show that the alleged conduct did not occur. Some of these matters may be vexatious, for example, where inquiries into the matter show the allegation was made without substance and to cause distress to the person against whom the allegation was made.</td>
</tr>
<tr>
<td>Not reportable conduct</td>
<td>Inquiries show that the conduct was not reportable conduct. For example, conduct that constituted misconduct but did not reach the threshold of reportable conduct, the use of force that was trivial or negligible in the circumstances, conduct that was reasonable in the circumstances or accidental. This may also include “misconceived” matters, where inquiries show that, even though the allegation was made in good faith, it was based on a misunderstanding of what actually occurred and the incident was not reportable conduct.</td>
</tr>
</tbody>
</table>

1. Although there may be some circumstances where a sexual offence or physical assault may be sustained on the balance of probabilities, taking into account the Benjamin Principles, caution should be exercised when reaching a sustained finding of a sexual offence or physical assault in the absence of a conviction. In a court has not found that such an offence has occurred, agencies consider whether or not sexual misconduct or ill-treatment (the inappropriate use of physical force) has occurred.

2. In certain circumstances where a child has been exposed to prolonged and serious domestic violence it may be appropriate to infer psychological harm; however, in such cases it would be appropriate to discuss the proposed findings with this office prior to making a determination.
5. Final action taken at the end of the agency investigation

5.1 Describe the action taken by your agency (including risk assessment and management) at the conclusion of the investigation in respect to the employee who was the subject of the reportable allegation:

Relevant disciplinary action:
- [ ] No action after investigation
- [ ] Caution or warning
- [ ] Training
- [ ] Performance monitoring
- [ ] Restrict/change duties
- [ ] Other disciplinary action
- [ ] Dismissed
- [ ] Allowed to resign
- [ ] Other - specify

5.2 What other action has been taken or is proposed by your agency as a result of the investigation? (e.g., review of procedures, training, changes to policies):

5.3 What other issues arose during the investigation that your agency considers relevant?

5.4 Date investigation completed: __________

5.5 Name, title and signature of person completing notification to Ombudsman:

Name: __________
Title: __________
Signature: __________