



Child Protection Policy

Policy Classification		
Policy Number: Child Protection Policy	Date of Origin: February 2010	By Whom: Principal
Audience: Public Domain	Review Dates: February 2018 February 2020 March 2020	Next Review: 2023
Policy Approval: This policy was approved by the Board June 2020.		
This policy supersedes all previous policies relating to matters contained herein.		
This policy is in accord with the Safeguarding Standards of Catholic Professional Standards Ltd which align with the National Principles of Child Safe Organizations.		

1.0 Rationale

- 1.1 This document is to inform and remind all employees and volunteers of Oakhill College of their responsibilities and the standards of behaviour and other requirements including the College's safeguarding standards that must be adhered to when working with children.
- 1.2 Consistent with its mission and values, and in compliance with its legislative obligations, Oakhill College strives to ensure children in its care are safe and secure.
- 1.3 This document aims to:
 - Clarify the expectations of Oakhill College employees and volunteers who work with children
 - Provide a safe and supportive environment for children, employees and volunteers
 - Build and maintain a contemporary Catholic workplace that is safe, respectful, professional and legally compliant

This document is not exhaustive and does not identify every potential scenario of concern in the workplace.

2. Guiding Principles

- 2.1 The document applies to all staff members engaged to work in, or provide services to, Oakhill College.
- 2.2 Staff members are required to be familiar and comply with child protection legislation as varied from time to time, including but not limited to:
 - Child Protection (Working with Children) Act 2012 (NSW)
 - Child Protection (Working with Children) Regulation 2013 (NSW)
 - Children and Young Persons (Care and Protection) Act 1998 (NSW)
 - Children and Young Persons (Care and Protection) Regulation 2012 (NSW)
 - Crimes Act 1990 (NSW)
 - The Children's Guardian Act 2019
 - Ombudsman Act 1974 (NSW)
 - National Catholic Safeguarding Standards (NCSS) and the Catholic Professional Standards Ltd audit programme (CPSL)
- 2.3 Failure to comply with the child protection responsibilities and obligations required by legislation or this document will result in disciplinary action being taken, up to and including immediate termination of employment, termination of contractor agreement, notification to external agencies and/or criminal charges.
- 2.4 A staff member who becomes aware of a possible breach of this document or legislation by another staff member must report this to their supervisor, Deputy Principal or Principal immediately as required under mandatory reporting legislation to the Office of Children's Guardian. Failure to do so may result in disciplinary action.
- 2.5 The Principal or their delegate monitors compliance with this policy and securely maintains school records relevant to this policy, which includes:
 - register of staff members who have read and acknowledged that they read and understood this policy;
 - working with children check clearance (WWCC clearance) verifications;
 - mandatory reports to the Department of Communities and Justice (DCJ), previously known as Family and Community Services; and
 - reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions.

3.0 Child Protection Policy

The safety, protection and welfare of students is the responsibility of all staff members and encompasses:

- a duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen
- obligations under child protection legislation

3.1 Children Protection Concerns

There are different forms of child abuse. These include neglect, sexual, physical and emotional abuse.

- 3.1.1 Neglect is the continued failure by a parent or caregiver to provide a child with the basic things needed for his or her proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.
- 3.1.2 Sexual abuse is when someone involves a child or young person in a sexual activity by using their power over them or taking advantage of their trust. Often children are bribed or threatened physically and psychologically to make them participate in the activity. Child sexual abuse is a crime.
- 3.1.3 Physical abuse is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation. Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints. Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punishing a child (in a non-trivial way) is a crime.
- 3.1.4 Emotional abuse can result in serious psychological harm, where the behaviour of their parent or caregiver damages the confidence and self-esteem of the child or young person, resulting in serious emotional deprivation or trauma. Although it is possible for 'one-off' incidents to cause serious harm, in general it is the frequency, persistence and duration of the parental or carer behaviour that is instrumental in defining the consequences for the child. This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.

3.2 Child Wellbeing Concerns

Child wellbeing concerns are safety, welfare or wellbeing concerns for a child or young person that do not meet the mandatory reporting threshold, risk of significant harm in Sections 3.12 and 5.0.

3.3 Staff Member Responsibilities

Key legislation requires reporting of particular child protection concerns. However, as part of the school's overall commitment to child protection all staff are required to report any child protection or child wellbeing concerns about the safety, welfare or wellbeing of a child or young person to the Principal or their delegate. If the allegation involves the Principal, a report should be made to the Chairman of the School Board.

3.4 Training

3.4.1 The College

The school provides all staff members with a copy of this policy and provides all staff members with the mandatory child protection training annually.

3.4.2 Staff Members

All new staff members must read this policy and sign the acknowledgement that they have read and understood the policy.

All staff members must participate in annual child protection training and additional training, as directed by the Principal. The training complements this policy and provides information to staff about their legal responsibilities related to child protection and school expectations, including:

- mandatory reporting
- reportable conduct
- working with children checks, and
- professional boundaries.

3.5 Duty of Care

- 3.5.1 Employees and volunteers have a legal obligation to take reasonable care for their own safety and the safety of children and others with whom they come into contact as part of their

employment at Oakhill College. These obligations will arise from the specific roles and responsibilities of employees and volunteers and may include (but are not limited to) the following:

- providing adequate supervision;
 - following procedures relating to child safety, welfare and well-being (for example, reporting procedures)
 - demonstrating personal behaviours that promote the safety, welfare and well-being of children;
 - providing medical assistance (if competent to do so), or seeking assistance from a medically trained person to aid a child who is injured or becomes sick;
 - protecting a child from known hazards that pose a risk of harm and which can be reasonably predicted
 - taking appropriate action where a child's safety, welfare or well-being is at risk;
 - promoting and providing education in safeguarding standards for staff, students and parents;
 - reporting domestic violence and/or neglect.
- 3.5.2 The standard of care that is required needs to take into consideration various factors, such as a child's maturity, ability and circumstances.
- 3.5.3 Duty of care to children applies during all activities and functions conducted or arranged by the College where children are in the care of staff members including activities by third parties or contracted by the College such as camps, VET, Distance Education etc.
- 3.5.4 Employees and volunteers must assess and manage the risk associated with any activity before undertaking the activity.
- 3.5.5 Actual harm to a child, or potential to cause significant harm to a child, caused by:
- (a) a single serious failure to exercise appropriate duty of care; or
 - (b) repeated less serious failures to exercise appropriate duty of care
- may constitute misconduct, neglect or negligence and/or a breach of this document.
- 3.5.6 Employees and volunteers are not to put themselves in a position that may create a risk of an allegation of a child protection nature. For example, staff members must not:
- (a) transport a child or children in a car alone; and
 - (b) otherwise be alone with a child, unless they are in the view of others and/or there is a reasonable requirement to do so, for example not to be in an office or classroom with a child with blinds down and door closed.

3.6 Professional Conduct

- 3.6.1 Employees and volunteers must act professionally and appropriately when dealing with children and others with whom they come into contact as part of their employment at Oakhill College. This includes using appropriate language and tone toward children and others. Rude or insulting behaviour, including verbal aggression; abusive, threatening or derogatory language or conduct; or intimidating words or actions towards children are unacceptable. It is also unacceptable to engage in such conduct towards others in the presence of children.
- 3.6.2 Employees and volunteers must not behave in a way that could reasonably be construed as involving an inappropriate relationship with a child or young person or a group of children.
- 3.6.3 Employees and volunteers must not invite children or young persons to join their personal electronic social networking site/s or accept a child or young person's invitation to join theirs. They must not attend parties or socialise with children or young person or invite a child or young person to their home or attend a child or young person's home without an appropriate professional reason and without the parents/carers' invitation and/or consent.
- 3.6.4 If there are reasons for an employee and volunteer to communicate with children or their families using electronic information and communication technology (ICT) for reasons other than work purposes, it is important to discuss this with and gain the approval of the Assistant Principal Curriculum, Assistant Principal Pastoral Care, or Deputy Principal
- 3.6.5 An employee and volunteer must not engage in grooming behaviour. Grooming behaviour involves a pattern of conduct that is consistent with grooming a child for sexual activity, where there is no other reasonable explanation for it. Examples of grooming behaviours include:
- 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 or showing special favours to them but not other children, inappropriately allowing the child to overstep rules, or 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, or '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, letters, text messages, social media and web forums of a sexual nature).
- 3.6.6 Employees and volunteers must not make sexually explicit comments or engage in other sexually overt or implied behaviour towards or in the presence of children or young persons. Such behaviour may constitute sexual misconduct. Examples of sexual behaviours include:
- crossing professional boundaries;
 - sexually explicit comments and other overtly sexual behaviour;
 - grooming behaviour inappropriate conversations of a sexual nature;
 - unwarranted and inappropriate touching;
 - exposure of children to sexual behaviour of others;
 - watching children undress in circumstances where supervision is not required.
- 3.6.7 Employees and volunteers must not have an intimate, romantic or sexual relationship with any child or young person regardless of their age. It is irrelevant whether the relationship is consensual, non-consensual, known to or condoned by parents, guardians or caregivers.
- 3.6.8 Employees and volunteers must not commit a sexual offence. This encompasses all criminal offences involving a sexual element that is committed against, with or in the presence of a child or young person.
- 3.6.9 A personal or sexual relationship with a former child or young person entered into by any staff member may be considered sexual misconduct if it is established that the staff member used his or her position to develop and/or maintain an inappropriate personal or intimate relationship with the child or young person when they were a student of Oakhill College even if the child is currently over 18 years of age.
- 3.6.10 An employee and volunteer who is unsure about the appropriateness of a relationship with a child or young person or a child or young person's family must disclose it to the Deputy Principal.

3.7 Physical Contact

Employees and volunteers must not engage in inappropriate physical contact with children, or act in ways that may cause a child to reasonably fear that unjustified force will be used against them. Examples of inappropriate physical contact include (but are not limited to):

- intentional and unjustified use of physical force;
- throwing an object to gain a child's attention in a hostile way;
- restraining a child (unless as part of an approved behaviour management plan);
- pushing, pulling, shoving, grabbing, pinching, poking, shaking or throwing a child;
- unwarranted and inappropriate touching.

Examples of conduct that involves the reasonable use of physical contact for exercising appropriate control over a child include (but are not limited to):

- disarming a child who is at risk of harming themselves or another person;
- separating children who are fighting;
- reasonable use of physical force for the protection of self or others.

3.8 Discipline

Employees and volunteers must not correct or discipline a child in excess of what is reasonable or appropriate for the situation and the child's maturity, ability and circumstances. Discipline is excessive if it is a disproportionate response to a child's behaviour. Examples of ill-treatment include (but are not limited to):

- locking a child in a cupboard as punishment;
- tying a child to a chair;
- in a school context - keeping a child on detention during lunch without allowing them to eat or go to the toilet.

3.9 Medication, Drugs and other Substances

Employees and volunteers must not purchase for, offer, supply, give or administer to children, condone or encourage illegal drugs, restricted substances, prescribed or non-prescribed medication (unless dealing with or administering medication in accordance with relevant policy), alcohol or tobacco.

3.10 Working with Children Checks

3.10.1 Staff Members & Volunteers

All staff members and volunteers who engage in child-related work (including coaches, music tutors and those working in cocurricular activities or overnight camps) are required to:

- hold and maintain a valid WWCC clearance;
- apply/renew their WWCC in a timely manner to maintain a valid WWCC clearance;
- not engage in child-related work at any time that they are subjected to an interim bar or a bar;
- report to the Principal if they are no longer eligible for a WWCC clearance, the status of their WWCC clearance changes or are notified by the OCG that they are subjected to a risk assessment; and
- notify the OCG of any change to their personal details within 3 months of the change occurring.

Employees and volunteers who do not have a Working with Children Check clearance or are barred from working with children, cannot continue to be engaged in child related work. Consequently, their employment or engagement with Oakhill College will be terminated.

All staff and volunteers are required to be aware and follow the expectations of conduct expressed in the College staff Code of Conduct.

3.10.2 The College

The College is required to:

- verify online and record the status of each child-related worker's WWCC clearance;
- only employ or engage child-related workers or eligible volunteers who have a valid WWCC clearance; and
- advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's Working with Children Check Directorate (WWCC Directorate).

3.10.3 Child-related Work

Child-related work involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work. Child related work includes, but is not limited to work in the following sectors:

- early education and child-care including education and care service, child-care centres and other childcare;
- schools and other educational institutions and private coaching or tuition of children;
- religious services;
- residential services including boarding schools, homestays more than three weeks, residential services and overnight camps;
- transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings; and
- counselling, mentoring or distance education not involving direct contact.

3.11 Process for Reporting to the Office of the Children's Guardian (OCG)

3.11.1 Oakhill College is required to advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding

of reportable conduct in relation to sexual misconduct, a sexual offence, or a serious physical assault. The College is also required to report, amend or provide additional information to the OCG as outlined in the WWC Act and the Children's Guardian Act.

3.11.2 When informing an employee of a finding of reportable conduct against them, the College is required to alert them to the consequent report to the WWCC Directorate in relation to sustained findings of sexual misconduct, a sexual offence or a serious physical assault. [The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the school in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made]

3.11.3 The College may also be required to provide information to the OGC that is relevant to an assessment of whether a person poses a risk to the safety of children or the OCG's monitoring functions.

3.12 Mandatory Reporting

3.12.1 All teachers and volunteers at Oakhill College are mandatory reporters.

Under the Care and Protection Act and Children's Guardian Act 2019 mandatory reporting applies to persons who:

- in the course of their employment, deliver services including health care; welfare, education, children's services and residential services, to children; or
- hold a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services and residential services, to children.

The Care and Protection Act provides for mandatory reporting of children at risk of significant harm. A child is a person under the age of 16 years and a young person is aged 16 years or above but who is under the age of 18, for the purposes of the Care and Protection Act.

3.12.2 A mandatory reporter must, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, report to the Office of the Children's Guardian and Department of Communities and Justice (DCJ) as soon as practicable. The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm. In addition, the school may choose to make a report to the DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

At Oakhill College a mandatory reporter will meet their obligation if they report to the Principal in the School. This centralised reporting model ensures that a person in the school has all of the information that may be relevant to the circumstances of the child at risk of significant harm and addresses the risk of the school not being aware of individual incidences that amount to cumulative harm.

3.12.2.1 Reasonable Grounds

'Reasonable grounds' refers to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm, based on:

- first-hand observations of the child, young person or family
- what the child, young person, parent or another person has disclosed
- what can reasonably be inferred based on professional training and/or experience.

'Reasonable grounds' does not mean a person is required to confirm their suspicions or have clear proof before making a report.

3.12.2.2 Significant Harm

A child or young person is 'at risk of significant harm' if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

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

What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent. What is significant, is not minor or trivial and, may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or well-being. The significance can result from a single act or omission or an accumulation of these.

3.12.3 Process for Mandatory Reporting

3.12.3.1 Staff Members & Volunteers

Staff members and volunteers must raise concerns about a child or young person who may be at risk of significant harm with the Principal or their delegate as soon as possible to discuss whether the matter meets the threshold of 'risk of significant harm' and the steps required to report the matter.

However, if there is an immediate danger to the child or young person and **the** Principal or their delegate or next most senior member of staff is not contactable staff members should contact the Police and/or the Child Protection Helpline (13 21 11) directly and then advise the Principal or next most senior member of staff at the school as soon as possible.

The Care and Protection Act outlines a mandatory reporter's obligation to report to the DCJ concerns about risk of significant harm. However, to ensure centralised reporting all staff members and volunteers are required to report any concern regarding the safety, welfare and wellbeing of a student to the Principal or their delegate.

Staff members and volunteers who are unsure as to whether a matter meets the threshold of 'risk of significant harm' should report their concern to the Principal regardless.

Staff members and volunteers are not required to, and must not, undertake any investigation of the matter. Staff members are not permitted to inform the parents or caregivers that a report to the DCJ has been made.

Staff members and volunteers are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy but could incite potential civil proceedings for defamation.

3.12.3.2 The College

In general, the Principal will report these matters to the DCJ and, where necessary, the Police.

3.13 Reportable Conduct

Under the Children's Guardian Act 2019 **reportable conduct** is defined as:

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

Reportable conduct does not extend to:

- 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
- the use of physical force that, in all the circumstances, is trivial or negligible and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures; or
- conduct of a class or kind exempted from being reportable conduct by the Children's Guardian Act under section 30.

3.13.1 Definitions

The following definitions relate to reportable conduct.

Sexual offence: an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child, such as:

- sexual touching of a child;
- a child grooming offence [Refer to Explanatory Note: 3];
- production, dissemination or possession of child abuse material.

Sexual misconduct: conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence). The Act provides the following (non-exhaustive) examples [Refer also to Explanatory Note 5]:

- descriptions of sexual acts without a legitimate reason to provide the descriptions;
- sexual comments, conversations or communications;

- comments to a child that express a desire to act in a sexual manner towards the child, or another child.

Note – crossing professional boundaries comes within the scope of the scheme to the extent that the alleged conduct meets the definition of sexual misconduct. That is, the conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence).

Assault: an assault can occur when a person intentionally or recklessly (i.e. knows the assault is possible but ignores the risk):

- applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force); or
- causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words and/or gestures regardless of whether the person actually intends to apply any force (apprehension of physical force)

Ill-treatment: is defined as conduct towards a child that is:

- unreasonable; and
- seriously inappropriate, improper, inhumane or cruel.

Ill-treatment can include a range of conduct such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and using inappropriate forms of behaviour management towards a child.

Neglect: defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm - by a person who has care and/or has responsibility towards a child. Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfil a duty or obligation, resulting in actual harm to a child where there is the potential for significant harm to a child. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

Emotional or psychological harm Behaviour that causes significant emotional or psychological harm to a child is conduct that is intentional or reckless (without reasonable excuse), obviously or very clearly unreasonable and which results in significant emotional harm or trauma to a child. For a reportable allegation involving psychological harm, the following elements must be present:

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

Reportable allegation is an allegation that an employee has engaged in conduct that may be reportable conduct.

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

Employee of an entity includes:

- an individual employed by, or in, the entity
- a volunteer providing services to children

- a contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold, a WWCC clearance for the purposes of their work with an entity; and
- a person engaged by a religious body where that person holds, or is required to hold, a WWCC clearance for the purposes of their work with the religious body.

PSOA (Person Subject of the Allegation).

3.13.2 Process for Reporting of Reportable Conduct Allegations or Convictions

3.13.2.1 Staff Members and Volunteers

Any concerns about any other employee engaging in conduct that is considered inappropriate, or reportable conduct, or any allegation of inappropriate or reportable conduct made to the employee or about the employee themselves must be reported to the Principal or their delegate. Where it is uncertain if the conduct is reportable conduct but is considered inappropriate behaviour this must also be reported.

Staff members must also report to the Principal or their delegate when they become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct. This includes information relating to the employee themselves. If the allegation involves the Principal, the staff member must report to the Chairman of the School Board.

3.13.2.2 Parents, Carers and Community Members

Parents, carer and community members are encouraged to report any conduct that is in their view inappropriate, reportable or criminal conduct to the Principal or their delegate. All such reports will be dealt with in accordance with the School's complaint handling procedures.

3.13.2.3 The College

The Principal, as the Head of Agency under the Children's Guardian Act 2019, must:

- Ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions;
- Submit a 7-day notification form to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the entity (unless the Head of the Agency has a reasonable excuse),
The notification should include the following information:
 - (a) that a report has been received in relation to an employee of the School; and
 - (b) the type of reportable conduct; and
 - (c) the name of the employee; and
 - (d) the name and contact details of School and the Head of Agency; and
 - (e) for a reportable allegation, whether it has been reported to Police; and
 - (f) if a report has been made to the Child Protection Helpline, that a report has been made; and
 - (g) the nature of the relevant entity's initial risk assessment and risk management action.
- The notice must also include the following, if known to the Head of Agency:
 - (a) details of the reportable allegation or conviction considered to be a reportable conviction;
 - (b) the date of birth and working with children number, if any, of the employee the subject of the report;
 - (c) the police report reference number (if Police were notified);
 - (d) the report reference number if reported to the Child Protection Helpline;

- (e) the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.
- Maximum penalty for failure to notify within 7 business days —10 penalty units.

3.13.3 Process for Investigating an Allegation of Reportable Conduct

The Principal is responsible for ensuring that the following steps are taken to investigate an allegation of reportable conduct.

3.13.3.1 Initial Steps

Once an allegation of reportable conduct against an employee is received, the Principal is required to:

- determine whether it is an allegation of reportable conduct;
- assess whether the DCJ or the Police need to be notified (i.e., if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek clearance from these statutory agencies prior to the school proceeding with the reportable conduct investigation;
- notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by the DCJ or Police);
- notify the OCG within 7 business days of receiving the allegation;
- carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- provide an initial letter to the PSOA advising that an allegation of reportable conduct has been made against them and the School's responsibility to investigate this matter under Section 34 of the Children's Guardian Act 2019; and
- investigate the allegation or appoint someone to investigate the allegation.

3.13.3.2 Investigation Principles

During the investigation of a reportable conduct allegation the College will:

- follow the principles of procedural fairness;
- inform PSOA of the substance of any allegations made against them, at the appropriate time in the investigation, and provide them with a reasonable opportunity to respond to the allegations;
- make reasonable enquiries or investigations before making a decision;
- avoid conflicts of interest;
- conduct the investigation without unjustifiable delay;
- handle the matter as confidentially as possible; and
- provide appropriate support for all parties including the child/children, witnesses and the PSOA.

3.13.3.3 Investigation Steps

In an investigation the Principal or appointed investigator will generally:

- interview relevant witnesses and gather relevant documentation;
- provide a letter of allegation to the PSOA;
- provide the PSOA with the opportunity to provide a response to the allegations either in writing or at Interview;
- consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines;
- inform the PSOA of the preliminary finding in writing by the Head of Entity and provide them with a further opportunity to respond or make a further submission prior to the matter moving to final findings;
- consider any response provided by the PSOA;
- make a final finding in accordance with the OCG guidelines;
- decide on the disciplinary action, if any, to be taken against the PSOA;

- if it is completed, send the final report to the OCG within 30 days after having received the allegation, as per section 36 of the Children's Guardian Act 2019.
- should the final report be unfinished within 30 days, the Head of Entity must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as per section 38 of the Children's Guardian Act 2019.

Submission of an interim report must include;

- a reason for not providing the final report within 30 days and an estimated time frame for completion of the report;
- specific information, including (if known); the facts and circumstances of the reportable allegation; any known information about a reportable conviction; action taken since the OCG received a notification about the reportable allegation or reportable conviction; further action the Head of Agency proposes to take in relation to the reportable allegation or reportable conviction; including if the Head of Entity proposes to take no further action; the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action; other information prescribed by the regulations; and
- be accompanied by copies of documents in the School's possession, including transcripts of interviews and copies of evidence.

The steps outlined above may need to be varied on occasion to meet particular circumstances. For example, it may be necessary to take different steps where the matter is also being investigated by the DCJ or Police.

A PSOA may have an appropriate support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.

3.13.4 Risk Management Throughout an Investigation of a Reportable Conduct Allegation

Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence. The Principal is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

3.13.4.1 Initial Risk Assessment

Following an allegation of reportable conduct against an employee, the Principal conducts an initial risk assessment to identify and minimise the risks to:

- the child(ren) who are the subject of the allegation;
- other children with whom the employee may have contact;
- the PSOA;
- the College, and
- the proper investigation of the allegation.

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

- the nature and seriousness of the allegations;
- the vulnerability of the child(ren) the PSOA has contact with at work;
- the nature of the position occupied by the PSOA;
- the level of supervision of the PSOA; and
- the disciplinary history or safety of the PSOA and possible risks to the investigation.

The Principal will take appropriate action to minimise risks. This may include the PSOA being temporarily relieved of some duties, being required not to have contact with certain students, being asked to take paid leave, or being suspended

from duty. When taking action to address any risks identified, the College will take into consideration both the needs of the child(ren) and the PSOA.

A decision to take action on the basis of a risk assessment is not indicative of the findings of the matter. Until the investigation is completed and a finding is made, any action, such as an employee being suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

3.13.4.2 Ongoing Risk Assessment

The Principal will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

3.13.4.3 Findings

At the completion of the investigation, a finding will be made in relation to the allegation and a decision made by the Principal regarding what action, if any, is required in relation to the PSOA, the child(ren) involved and any other parties.

3.13.4.4 Information for the PSOA

The PSOA will be advised:

- that an allegation has been made against them (at the appropriate time in the investigation); and
- of the substance of the allegation, or of any preliminary finding and the final finding.

The PSOA does not automatically have the right to:

- know or have confirmed the identity of the person who made the allegation; or
 - be shown the content of the OCG notification form or other investigation material that reveals information provided by other employees or witnesses.
- The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the school in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

3.13.4.5 Disciplinary Action

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

In relation to any disciplinary action the College will give the PSOA:

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

3.13.4.6 Confidentiality

It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible. The College requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.

Records about allegations of reportable conduct against employees will be kept in a secure area and will be accessible by the Head of Agency or with the Head of Entity's express authority.

No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the Principal to do so.

Staff members who become aware of a breach of confidentiality in relation to a reportable conduct allegation must advise the Principal.

3.14 Criminal Offences

In 2018 the Crimes Act was amended to adopt recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The new offences are designed to prevent child abuse and to bring abuse that has already occurred to the attention of the Police.

3.14.1 Failure to Protect Offence

An adult working in a school, therefore all staff members and volunteers, will commit an offence if they know another adult working there poses as serious risk of committing a child abuse offence and they have the power to reduce or remove the risk, and they negligently fail to do so either by acts and/or omissions. This offence is targeted at those in positions of authority and responsibility working with children who turn a blind eye to a known and serious risk rather than using their power to protect children.

3.14.2 Failure to Report Offence

Any adult, and therefore all staff members and volunteers, will commit an offence if they know, believe or reasonably ought to know that a child abuse offence has been committed and fail to report that information to Police, without a reasonable excuse. A reasonable excuse would include where the adult has reported the matter to the Principal and is aware that the Principal has reported the matter to the Police.

4 Policy Review

The College, via the Principal, is to ensure that this Policy is monitored and reviewed. Next review date is 2021.

5 Explanatory Notes and Definitions

1. **“Staff member”** includes:
 - paid employees whether employed on a permanent, temporary or casual basis
 - religious, volunteers, contractors, sub-contractors, consultants and students on tertiary practicum placements
2. **“Child”** or “children” refers to any person under the age of 18 years.
3. **Child-related work** involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work. Child related work includes, but is not limited to work in the following sectors:
 - early education and child-care including education and care service, child-care centres and other childcare;
 - schools and other educational institutions and private coaching or tuition of children;
 - religious services;
 - residential services including boarding schools, homestays more than three weeks, residential services and overnight camps;
 - transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings; and
 - counselling, mentoring or distance education not involving direct contact.
4. Definitions of **‘grooming’**, within child protection legislation, are complex. Under the Crimes Act, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual offence. The Crimes Act (s73) also extends the age of consent to 18 years when a child is in a ‘special care’ relationship. Under Schedule 1(2) of the WWC Act, grooming is recognised as a form of sexual misconduct. The Children’s Guardian Act

2019 and this Child Protection Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2). An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of sexual offence.

Elements of grooming include any conduct in which an adult:

- exposes a child to indecent material; or
 - provides a child with an intoxicating substance or financial or other material benefit; and
 - does so with the intention of making it easier to procure the child for unlawful sexual activity with an adult or any other person.
 - Grooming behaviour is 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. Grooming behaviours include but are not limited to:
 - persuading a child or young person that they have a special relationship by showing special favours;
 - spending extra time with the child or young person;
 - testing boundaries by undressing in front of the child or young person;
 - talking about sex or 'accidental' intimate touch;
 - inappropriately extending a relationship outside of work;
 - developing a relationship with the family of a child's family with the intent to procure a child;
 - inappropriate personal communication (including email, social media etc that explore intimate and/or personal feelings (See also 3.6.3 above)
5. A single serious '**crossing of professional boundaries**' by an employee or volunteer, repeated less serious breaches of professional conduct, or exercise of poor judgment may constitute misconduct or sexual misconduct and a breach of this policy. However, 'crossing of professional boundaries' does not of itself equate to sexual misconduct. (Children's Guardian Act 2019)
6. **Sexual misconduct** is defined as conduct with, towards or in the presence of a child that is sexual in nature. The following (non-exhaustive) are examples of sexual misconduct referred to:
- descriptions of sexual acts without legitimate reason to provide the descriptions;
 - sexual comments, conversations or communications;
 - comments to a child that express a desire to act in a sexual manner towards the child or another child.

Sexually explicit comments and other overtly sexual behaviour include a broad range of sexualised behaviour with or towards children including but not limited to:

- sexual 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 communication (including emails, social media etc.) 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 persons to sexual behaviour of others including pornography; and
- watching children undress in circumstances where supervision is not required and is clearly inappropriate.

6 Supporting Documents

There are four key pieces of child protection legislation in New South Wales:

- the *Children and Young Persons (Care and Protection) Act 1998* (“**Care and Protection Act**”);
- the *Child Protection (Working with Children) Act 2012* (“**WWC Act**”);
- the *Children’s Guardian Act 2019* (“Children’s Guardian Act”)
- the *Crimes Act 1990* (“*Crimes Act*”).

Related Policies:

- Oakhill College Code of Conduct
- Work Health & Safety Policy
- Bullying & Harassment Policy
- Complaints Policy

Further information about any of the matters outlined in this document can be sought from the Principal or Deputy Principal.

References

NSW Department of Communities and Justice

<https://www.dcj.nsw.gov.au>

The Office of the Children’s Guardian

<https://www.kidsguardian.nsw.gov.au>

Department of Premier and Cabinet – Keep Them Safe

www.keepthemsafe.nsw.gov.au