



Child Protection Policy

1. Rationale

The safety, protection and well-being of all students is of fundamental importance to the School. This policy sets out staff responsibilities for child protection and processes that staff must follow in relation to child protection matters. This policy applies to all staff members, which includes employees, contractors and volunteers.

Staff members who fail to adhere to this policy may be in breach of their terms of employment.

Staff members and the School have a range of different obligations relating to the safety, protection and welfare of students including:

- a) a duty of care to ensure that reasonable steps are taken to prevent harm to students;
- b) obligations under child protection legislation; and
- c) obligations under work health and safety legislation.

Child protection is a community responsibility.

1.1. Source of Obligation

The NSW Registration Manual (3.6.1) requires the School to have in place policies and procedures to ensure that it meets its legislative obligations in relation to child protection.

1.2. Key Legislation

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

- a) the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the **Care and Protection Act**);
- b) the *Child Protection (Working With Children) Act 2012* (NSW) (the **WWC Act**) which links with the *Child Protection (Working With Children) Regulation 2013* (NSW) (the **WWC Regulation**); and
- c) the *Ombudsman Act 1974* (NSW) (the **Ombudsman Act**).

There are also additional pieces of legislation that may impose obligations on the School in certain circumstances. These include:

- d) the *Teacher Accreditation Act 2004* (NSW) (**TAA**);
- e) the *Crimes Act 1990* (NSW) (**Crimes Act**).

1.3. Obligations to Report

While we set out below circumstances in which the legislation requires reporting of particular child protection issues, the School requires you to report any concern you may have about the safety, welfare or wellbeing of a child or young person to the Principal or Deputy Principal. If the concern relates to harm caused by a member of staff or a volunteer you are required to report this directly to the Principal.

If the allegation involves the Principal, you are required to report to the Chair of the School Board.

This obligation is part of the School's overall commitment to the safety, welfare and well-being of children.

1.4. Other Policies and Statements

Please note that there are a number of other School policies and statements that relate to child protection which you need to be aware of and understand, including (but not limited to):

- a) the **Code of Conduct and the Professional Standards Policy** which set out information about the standards of behaviour expected of all employees, contractors and volunteers of the School;
- b) the **Work Health and Safety Statement** which summarises the obligations imposed by work health and safety legislation on the school and workers;
- c) the **Discrimination, Harassment and Bullying Statement** which summarises obligations in relation to unlawful discrimination, harassment and bullying;
- d) the **Behaviour Learning Policy and Procedures** that outline acceptable behaviour and responses to incidents of misbehaviour including bullying;
- e) the **LEA Valuing Safe Communities** Framework that is mandatory for all Lutheran schools within Australia;
- f) the **LEA Code of Ethics for Safe and Professional Relationships** that outlines principles and expectations for behaviour based on the values that Lutheran schools adhere to and promote;
- g) the **Working With Children: Volunteers and Visitors Requirements and Declaration** that is completed by all volunteers and visiting tutors to the school;
- h) the **Parent and Guardians Complaints Policy and Procedures** that outline the steps taken to report allegations of misconduct and reportable conduct; and
- i) the **Child Protection Procedures** that outline the school's approaches to ensuring a safe environment for its students.

1.5 Compliance and Records

The Principal, or their delegate, monitors compliance with this policy and securely maintains school records relevant to this policy, which includes:

- a) register of staff members who have read and acknowledged that they have read and understood this policy;
- b) Working with Children Check clearance verifications;
- c) mandatory reports to Family and Community Services; and
- d) reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions.

2. Mandatory Reporting

The Care and Protection Act provides for mandatory reporting of children at risk of significant harm.

NOTE: Any concern regarding the safety, welfare or wellbeing of a student must be reported to the Principal or Deputy Principal. If the concern involves a member of staff or volunteer, it must be reported directly to the Principal.

2.1 Who is a Mandatory Reporter?

Under the Care and Protection Act persons who:

- a) in the course of their employment, deliver services including health care; welfare, education, children's services and residential services, to children; or
- b) 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, are mandatory reporters.

All teachers are mandatory reporters. Other School employees may also be mandatory reporters. If you are not sure whether you are a mandatory reporter, you should speak to the Principal.

2.2 When Must a Report be Made to Community Services?

2.3 What is the Threshold?

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 Community Services as soon as practicable, the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

While St John's is a Kindergarten to Year 6 primary school, please be aware of the following statement:

In addition, while not mandatory, the School considers that a report should also be made to Community Services 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.

2.4 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:

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

'Reasonable grounds' does not mean that you are required to confirm your suspicions or have clear proof before making a report. If you have any concerns about whether you have 'reasonable grounds' you should immediately speak to the Principal.

2.5 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:

- 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,
- c) in the case of a child or young person who is required to attend school in accordance with the Education Act 1990 (Aged 6-17* years) —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, * end of Year 10 or 17 years old whichever comes first
- d) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- e) 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,
- f) 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,
- g) 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.

2.6 Other Relevant Definitions

Child

Child means a person under the age of 16 years for the purposes of the Care and Protection Act.

Young Person

Young person means a person who is aged 16 years or above but who is under the age of 18 years for the purposes of the Care and Protection Act.

Policy Definition of Significant Harm

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well-being of the child or young person are present to a significant extent.

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.

In the case of an unborn child, what is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child's birth.

The significance can result from a single act or omission or an accumulation of these.

Child Abuse and Neglect

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

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.

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.

Serious psychological harm can occur 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.

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.

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.

2.7 What should you do if you consider that a mandatory report is required?

Reporting by the School about these matters to the Department of Family and Community Services (FACS) and, where necessary, the police, is generally undertaken by the Principal or Deputy Principal. This is supported by FACS in accordance with best practice principles and is the expectation of the School.

If you have a concern that a child or young person is at risk of significant harm you should contact the Principal or Deputy Principal as soon as possible to discuss whether the case reaches the threshold of 'risk of significant harm' and the steps required to report the matter.

To determine the necessary response to the concern, the following steps are followed.

- 1) Immediately speak with the Principal or Deputy Principal about your concern
- 2) Together with the Deputy Principal (or Principal) work through the Mandatory Reporting Guide <https://reporter.childstory.nsw.gov.au/s/>
- 3) Follow the advice given by the decision report as to what action is to be taken
- 4) Deputy Principal (or Principal) prints a copy of the decision report and gives to the Principal together with any other relevant notes regarding the concern.
- 5) Principal files report in a locked filing cabinet in Principal's office and adds details to the school's Risk Register for reporting to the School Board.

However, if there is an immediate danger to the child or young person and the Principal or Deputy Principal or next most senior member of staff is not contactable you should speak to the Albury Police (ph 02 6023 9299) and/or the FACS Helpline (ph 13 21 11) directly and then advise the Principal or Deputy Principal or next most senior member of staff at the School as soon as possible.

You are not required to, and must not, undertake any investigation of the matter yourself.

You are not to inform the parents or caregivers that a report to Community Services has been made.

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

2.8 What should you do if you have a concern that is below the mandatory reporting threshold?

While the Care and Protection Act outlines a mandatory reporter's obligation to report to Community Services, as an employee of this School, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Principal or Deputy Principal.

You are required to deal with all reports regarding the safety, welfare or wellbeing of a student with confidentially and only disclose it to the Principal and any other person the Principal nominates. Failure to do so will be a breach of this policy.

If the Principal or their nominee reports the matter to Community Services and confirms this with you, you are not required to make a further report. If the Principal or their nominee advises you that they do not believe the circumstances warrant the matter being reported, then if you still consider that a child is at risk of significant harm, you should escalate the matter to the Chair of the School Board (Louise.McGrath@stjls.nsw.edu.au) or call the Community Services Child Protection Helpline (ph 132 111).

3. Training

3.1 The School

The school provides all staff members with a copy of this policy and provides all staff members with the opportunity to participate in child protection training annually.

3.2 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 compliments 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 Check, and
- Professional Boundaries.

4. Reportable Conduct

4.1. Part 3A of the Ombudsman Act requires the heads of certain agencies, including non-government schools in New South Wales, to notify the New South Wales Ombudsman of all allegations of reportable conduct by an 'employee' and the outcome of the School's investigation of these allegations.

An 'employee' includes employees, contractors, volunteers, work experience participants, clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services. In this part where there is a reference to an employee it includes all of these persons.

4.2 The Ombudsman

The Ombudsman:

- a) must keep under scrutiny the systems for preventing reportable conduct by employees of non-government schools and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions;
- b) must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions;
- c) is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable conduct or reportable convictions;
- d) must determine whether an investigation that has been monitored has been conducted properly and whether appropriate action has been taken as a result of the investigation;

- e) may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government school, or the handling of or response to such a matter (eg arising out of complaints by the person who is the subject of an allegation); and
- f) may undertake 'own motion' investigations of non-government schools where the Ombudsman considers it appropriate to do so, including where there is evidence of systemic failure or serious conflict of interests.

4.3 Head of Agency

Under a Memorandum of Understanding between the Lutheran Church of Australia (LCA) NSW District and Lutheran Education Victoria, NSW and Tasmania (LEVNT) the Head of Agency at the School is the Executive Director LEVNT.

The Head of Agency has delegated management of allegations at the School to the Principal (or the Chair of School Board if the allegation involves the Principal) and the Principal (or chair of the School Board) will liaise with the Head of Agency on each allegation of reportable conduct.

Under the Ombudsman Act the Head of Agency must:

- a) set up systems within their organisation to ensure that they are advised of any allegations of reportable conduct against employees;
- b) notify the Ombudsman (using a NSW O Part A notification form) as soon as possible and no later than thirty days after being made aware of an allegation;
- c) notify the Ombudsman whether or not the School plans to take disciplinary or other action in relation to an employee who is the subject of a reportable allegation or conviction, and the reasons for taking or not taking any such action as soon as practicable; and
- d) provide the Ombudsman with any documentary and other information as the Ombudsman may from time to time request to assist in the Ombudsman's monitoring of an investigation.

This will typically include the NSW O Part B notification form and risk assessments. Under the NSW Ombudsman's Class or Kind Agreement with the Association of Independent Schools of NSW reportable conduct of a class or kind (below head and neck, first time hitting, inappropriate but minor and transitory, one-off-incidents, inappropriate pushing or pulling, no hard or injury above transient level) is exempted from being reported the Ombudsman under section 25CA. Allegations of this type of behaviour will be managed by the School in conjunction with the NSW AIS rather than the Ombudsman.

4.4 Your Obligations to Report

You must report any concerns you may have about an employee engaging in reportable conduct or any allegation of 'reportable conduct' that has been made to you, to the Principal, including information about yourself. If you are not sure whether the conduct is reportable conduct but consider that it is inappropriate behaviour you must still report it.

You must also report to the Principal if you 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 yourself.

If the allegation involves the Principal, you are required to report to the Chair of the School Board.

4.5 Contact for Parents

The Principal is the contact point for parents if they wish to report an allegation of reportable conduct against an employee. Reports are to be in writing, marked 'Confidential' and emailed to:

Brad.Moss@stjls.nsw.edu.au

or posted to:

St John's Lutheran School, 154 Adams Street, Jindera, NSW, 2642

If the allegation involves the Principal, parents are required to report to the Chair of the School Board. Reports are to be in writing, marked 'Confidential' and emailed to:

Louise.McGrath@stjls.nsw.edu.au

or posted to:

St John's Lutheran School, 154 Adams Street, Jindera, NSW, 2642

The procedure for making a complaint about staff misconduct or reportable conduct is outlined in the school's Parent/Carer Complaints Policy that is available in the school's administration office and on the school website <http://www.stjls.nsw.edu.au>

4.6 What is Reportable Conduct?

4.7 Definition of reportable conduct

Reportable conduct is defined as:

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

Reportable conduct does not extend to:

- d) 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
- e) 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.

4.8 Other Relevant Definitions

Set out below are definitions of the various terms referred to above in relation to reportable conduct.

Behaviour that causes **psychological harm** to a child is behaviour that is obviously or very clearly unreasonable and results in significant 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.

Child is a person under the age of 18 years for the purposes of the Ombudsman Act.

Ill-treatment captures those circumstances where a person treats a child in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner. The focus is on the alleged conduct rather than the actual effect of the conduct on the child.

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

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

1 - Supervisory Neglect:

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

2 - Carer Neglect:

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

3 - Failure to Protect from Abuse:

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

4 - Reckless Act (or failure to act):

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

Physical Assault is any act by which a person intentionally inflicts unjustified use of physical force against another. An assault can also occur if a person causes another person to reasonably apprehend that unjustified force is going to be used against them. Even if a person who inflicts physical harm or causes another person to reasonably apprehend physical harm does not actually intend to inflict the harm or cause fear, they may still have committed an assault if they acted 'recklessly'.

'Recklessness' in this context relates to circumstances when the person ought to have known that their actions would cause a person physical harm or cause them to fear injury.

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

PSOA 'person subject to the allegation'.

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.

Sexual misconduct has three categories which include:

- a) crossing professional boundaries, and
- b) sexually explicit comments and other overtly sexual behaviour.
- c) grooming behaviour.

The alleged conduct must have been committed against, with or in the presence of a child.

Crossing professional boundaries

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

- a) relationship with;
- b) conduct towards; or
- c) focus on;

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

The School's [Professional Standards Policy and the LEA Code of Ethics for Safe and Professional Relationships](#) outline the nature of the professional boundaries which should exist between employees and children/young people. Employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately may face disciplinary action.

Sexually explicit comments and other overtly sexual behaviour

Behaviour involving sexually explicit comments and other overtly sexual behaviour which can constitute sexual misconduct. Some forms of this behaviour also involve crossing professional boundaries. This conduct may include:

- a) inappropriate conversations of a sexual nature
- b) comments that express a desire to act in a sexual manner
- c) and inappropriate touching
- d) sexual exhibitionism
- e) personal correspondence (including electronic communications such as e-mails and text messages) with a child or young person in relation to the adult's sexual feelings for a child or young person
- f) exposure of children and young people to sexual behaviour of others including display of pornography
- g) watching children undress. For example, in change rooms or toilets when supervision is not required or justified.

Sexual offences 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:

- a) indecent assault
- b) sexual assault
- c) aggravated sexual assault
- d) sexual intercourse and attempted sexual intercourse
- e) possession/ dissemination/ production of child pornography or child abuse material
- f) using children to produce pornography
- g) grooming or procuring children under the age of 16 years for unlawful sexual activity
- h) deemed non-consensual sexual activity on the basis of special care relationships

Grooming behaviour refers to patterns of behaviour or conduct aimed at engaging with an alleged victim for sexual activity.

- a) Types of grooming behaviours may include:
- b) Persuading child/ren that there is a 'special' relationship'
- c) Inappropriate gift giving
- d) Special favours / breaking rules

- e) Inappropriate amounts of time
- f) Secret relationship, tactics to keep relationship secret
- g) Testing boundaries (touching, physical contact, undressing in front of child, talking about sex)
- h) Extending relationship outside of work
- i) Personal communication about personal or intimate feelings
- j) Personal communication using electronic media

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 *Child Protection (Working With Children) Act*, grooming is recognised as a form of **sexual misconduct**. The *NSW Ombudsman Act, 1974* and this Child Protection Policy reflect all of these definitions within the context of the Reportable Conduct Scheme (Part 3A).

4.9. What happens when an allegation of reportable conduct is made?

4.10 Initial Steps

Once an allegation of reportable conduct against an employee is received by the Principal, or the Chair of the Board (if the allegation is against the Principal,) they are required to:

- a) determine on face value whether it is an allegation of reportable conduct;
- b) assess whether Community Services or the Police need to be notified (ie 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;
- c) notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by Community Services or the Police);
- d) report to the Head of Agency who will notify the Ombudsman within 30 days of receiving the allegation;
- e) carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- f) investigate the allegation or appoint someone to investigate the allegation.

4.11 Investigation Principles

The Principal or Principal's delegate will:

- a) be mindful of the principles of procedural fairness;
- b) as soon as practical, inform the person subject of the allegation (PSOA) of the substance of any allegations made against them and provide them with a reasonable opportunity to respond to the allegations
- c) make reasonable enquiries or investigations before making a decision;
- d) avoid conflicts of interest;
- e) conduct the investigation without unjustifiable delay;
- f) handle the matter as confidentially as possible; and
- g) provide appropriate support for all parties including the child/children, witnesses and the PSOA.

4.12 Investigation Steps

In an investigation the Principal (Chair of the Board in consultation with the Head of Agency if the allegation is against the Principal) or appointed investigator will generally:

- a) interview relevant witnesses and gather relevant documentation;
- b) provide a letter of allegation to the PSOA;
- c) interview the PSOA;
- d) consider relevant evidence and make a preliminary finding in accordance with the NSW Ombudsman guidelines;
- e) inform the PSOA of the preliminary finding and provide them with an opportunity to respond;
- f) consider any response provided by the PSOA;
- g) make a final finding in accordance with the NSW Ombudsman Guidelines;
- h) decide on the disciplinary action, if any, to be taken against the PSOA;
- i) apply the NSW Office of the Children's Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG; and
- j) send the final report to the Ombudsman and report to the OCG (where required) (see Part C).

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 Community Services or the NSW 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.

4.13 Risk Management

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 Head of Agency (or delegate) 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.

4.14 Initial Risk Assessment

One of the first steps following an allegation of reportable conduct against an employee is for the Principal (Chair of the Board, or the Chair's delegate, if the allegation is against the Principal) to conduct a risk assessment. The purpose of this initial risk assessment is to identify and minimise the risks to:

- a) the child(ren) who are the subject of the allegation;
- b) other children with whom the employee may have contact;
- c) the PSOA;
- d) the School, and
- e) the proper investigation of the allegation.

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

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

The Head of Agency 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, or being suspended from duty. If a PSOA is suspended from duty it will be paid leave. When taking action to address any risks identified, the School will take into consideration both the needs of the child(ren) and the PSOA.

Please Note: 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.

4.15 Ongoing Risk Management

The Principal (Chair of the Board, or the Chair's delegate, if the allegation is against the Principal) will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

4.16 Risk Management at the Conclusion of the Investigation

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

4.17 What information will be provided to the PSOA?

The PSOA will be advised:

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

The PSOA does not automatically have the right to:

- a) know or have confirmed the identity of the person who made the allegation; or
- b) be shown the content of the Ombudsman notification form or other investigation material that reveals all information provided by other employees or witnesses.

The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the School in relation to the finding of misconduct involving children (see Part C section 3).

4.18 Disciplinary Action

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

In relation to any disciplinary action the School will:

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

4.19 Confidentiality

It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible.

The School requires that all parties maintain confidentiality during and after 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 in the Principal's office or at the LEVNT office if the allegation is against the Principal, and will be accessible by the Principal or with the Principal's express authority if the records are held at the school, or by the Head of Agency, or with the Head of Agency's express authority, if the records are held at the LEVNT office.

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

If you become aware of a breach of confidentiality in relation to a reportable conduct allegation you must advise the Principal.

5. Working with Children

5.1 The Office of the Children's Guardian (OCG) is responsible for employment screening for child related employment. A Working with Children Check (WWCC) 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 WWCC 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 WWCC being revoked.

It is the responsibility of the child-related worker to ensure that when they are eligible to apply for a WWCC or when their WWCC is up for renewal that they do so.

The School's position is that all employees and eligible volunteers who work at the School must have a WWCC. All volunteers attending overnight school excursions (eg school camps) must have a valid WWCC.

5.2 Responsibilities

The object of the WWC Act is to protect children:

- (a) by not permitting certain persons to engage in child-related work; and
- (b) by requiring persons engaged in child-related work to have working with children check clearances.

Schools are required to:

- (a) verify online and record the status of each child-related worker's Check;
- (b) only employ or engage child-related workers or eligible volunteers who have a valid Check; and
- (c) report findings of misconduct involving children made against child-related workers or volunteers.

Child-related workers and eligible volunteers are required to:

- (a) hold and maintain a valid Check;
- (b) not engage in child-related work at any time that they are subjected to an interim bar or a bar; and
- (c) report to the Principal if they are no longer eligible for a Check, the status of their Check changes or are notified by the OCG that they are subjected to a risk assessment.

All volunteers are required to:

- (a) be aware and follow the expectations of conduct expressed in the School Staff Code of Conduct.
- (b) complete a Volunteers Induction session with a senior member of school staff.
- (c) hold a valid WWC Check if they are over 18 and not a parent or close relative of a student currently enrolled at the school.

5.3 Relevant Definitions

5.4 Final bar

This bar is applied based on a decision made by the OCG, following a risk assessment. This person is barred against working with children.

Interim bar

An interim bar is issued to high risk individuals to prevent them from continuing to work with children while a risk assessment is conducted. An interim bar may be applied for up to 12 months. If an interim bar remains in place for six months or longer, it may be appealed against through the Administrative Decisions Tribunal.

Not everyone who is subject to a risk assessment will receive an interim bar; only those representing a serious and immediate risk to children.

Interim bars are issued only for risks considered likely to result in a final bar.

5.5 Child-related Work

Child-related work includes, but not limited to work in the following sectors:

- a) early education and child care including education and care service, child care centres and other child care;
- b) education schools and other educational institutions and private coaching or tuition of children;
- c) religious services;
- d) mentoring and counselling services for children;
- e) clubs, associations, movements, societies or other bodies (including bodies of a cultural, recreational or sporting nature) providing programs or services for children;
- f) residential services including boarding schools, homestays more than three weeks, residential services and overnight camps; or
- g) transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings.

5.6 Child-related Worker

A person who has direct contact with children in work outlined above in 5.2, including schools. This may include volunteer work.

Direct contact is defined by the WWC Act as any contact between a person and a child that involves:

- a) physical contact; or
- b) face to face contact; or
- c) contact by post or other written communication; or
- d) contact by telephone or other oral communication; or
- e) contact by email or other electronic communication.

A child-related worker may commence work once they have completed the Check application process. An application is completed when the online application form is complete and the worker's identity has been proven at a NSW Service Centre and the fee has been paid (if in paid work).

If you are unclear if your role is child-related you should speak with the Principal.

5.7 Disqualified Person

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of WWC Act.

A disqualified person is a person who has a bar preventing them from working with children in child-related work.

It is an offence for an employer to knowingly engage a child-related worker when they do not hold a Check or who has a bar or an interim bar.

It is an offence for an employee to engage in child-related worker when they do not hold a Check or has a bar or an interim bar.

5.8 Findings of Misconduct Involving Children

The Principal will report to the OCG when a finding has been made that the person (an employee of the school) subject to the finding engaged in:

- (a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
- (b) any serious physical assault of a child.

The School will advise the person that the OCG has been notified of a finding of misconduct involving children.

The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the School in relation to the finding of misconduct involving children.

5.9 Reporting Body

As an independent school in NSW, the School is defined as a reporting body by the WWC Act.

Section 35 of the WWC Act requires this School to notify the OCG findings of misconduct involving children made against a child-related worker. The school may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act.

5.10 Risk Assessment

Risk assessment is an evaluation of an individual's suitability for child-related work.

The OCG will conduct a risk assessment on a person's suitability to work with children when a new record is received which triggers a risk assessment. This may include an offence under Schedule 1, pattern of behaviour or offences involving violence of sexual misconduct representing a risk to children, findings of misconduct involving children or notification made to OCG by the Ombudsman.

5.11 Working with Children Check Clearance

A Working with Children Check (WWCC) means authorisation under the WWC Act to engage in child-related work. An employee will be issued with a number which is to be provided to the School to verify the status of an employee's WWCC.

Anyone who holds a WWCC has a responsibility to keep their details, including such information as address or name change, up to date with the Office of the Children's Guardian (OCG). Your personal details recorded must match your current details; if you change any details since you first applied, or since any renewal, the OCG must be advised. You have three months from the date of change to notify the OCG or risk a fine. It is the individual's responsibility to do so and any fines for failing to comply are the individual's responsibility.

Should a staff member's WWCC expire and not be renewed, they cannot be employed by the school while they do not have a current WWCC.

6. Teacher Accreditation Act 2004 (NSW)¹ (TAA)

6.1 The NSW Education Standards Authority (NESA) has the sole authority to revoke or suspend a teacher's accreditation. NESA requires the St John's Lutheran School Limited Teacher Accreditation Authority to notify NESA of certain matters which can include child protection related matters.

6.2 Reporting Obligations

The Principal must notify NESA of a decision to dismiss a teacher from employment for any of the reasons outlined below under 6.3 Grounds for revocation.

If the School becomes aware of any information that is or may be relevant to any of the grounds for which a teacher's accreditation may be suspended or revoked by NESA, the Principal must notify NESA of that information. This includes the requirement for the Principal to notify NESA when a teacher is the subject of a reportable conduct investigation. All grounds are listed below at 6.3 Grounds for Revocation and 6.4 Grounds for Suspension.

6.3 Grounds for Revocation

NESA may revoke the accreditation of a person on any of the following grounds:

- (a) being a disqualified person within the meaning of the Working With Children Act;
- (b) being found guilty:
 - 1. of an offence punishable by imprisonment for 12 months or more;
 - 2. of an offence under the TAA; or
 - 3. more than once during the 5 years immediately before the revocation of any other type of offence that, in the opinion of the authority, involves an act or conduct that is of a nature that would reflect adversely on a teacher's professional standing or integrity or suitability or competence to teach;
- (c) has:
 - 1. been dismissed from employment as a teacher (whether on a permanent, temporary, part-time or casual basis) or has resigned from such employment before being dismissed; or
 - 2. been included in the list of persons maintained by the Secretary under section 7 (1)(e) of the Teaching Service Act 1980 (NSW) as a person who is not to be employed in the Teaching Service, because of any misconduct that, in the opinion of the authority, is of a nature that would reflect adversely on a teacher's professional standing or integrity or suitability or competence to teach;
- (d) has failed to comply with any condition of the person's accreditation; or
- (e) has failed to comply with any of the requirements of the professional teaching standards that apply to the person.

6.4 Grounds for Suspension

NESA may suspend the accreditation of a person on any of the following grounds:

- (a) on any ground outlined above under grounds for revocation, or
- (b) if disciplinary proceedings against the person are pending in relation to alleged misconduct. This includes reportable conduct investigations.
- (c) if proceedings against the person for an offence are pending and, were the person to be found guilty of the offence, NESA would have grounds to revoke the accreditation.

7. Criminal Offences

7.1 If an employee of the School knows or believes that another person has committed a serious indictable offence they should report that information to the Principal of the School or directly to the Police or other appropriate authority. The Principal must report the information directly to Police.

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.

7.2 Failure to Protect Offence

An adult working in a school, therefore all staff members, will commit an offence if they know another adult working there poses a 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.

7.3 Failure to Report Offence

Any adult, therefore all staff members, 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.

ACKNOWLEDGEMENT

I _____ have read, understood and agree to comply with the terms of this Child Protection Policy.

Signed

Dated

REFERENCES

NSW Family and Community Services

www.community.nsw.gov.au

NSW Mandatory Reporter Guide (MRG)

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

NSW Ombudsman

www.ombo.nsw.gov.au

The Children's Guardian (formerly the NSW Commission for Children and Young People)

www.kids.nsw.gov.au

The NSW Education Standards Authority

<http://educationstandards.nsw.edu.au/wps/portal/nesa/home>

Document Information

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