



POLICY	PROCEDURE
Policy Name	Child Protection Policy
NESA Policy Category	Safe & Supportive Environment (3.6) Child Protection Policies & Procedures (3.6.1)
Related Policies & Procedures	Code of Conduct Child Protection Policy Code of Conduct for Staff, Ethical Conduct Statement Work Health & Safety Procedures Anti-Discrimination Policy Complaints & Grievance Handling & Resolution Policy and Procedures Anti-Bullying Procedure Working With Children Check Procedure Annual Child Protection Responsibilities Notification for Employees Procedure
Related Legislation	Children and Young Persons (Care and Protection) Act 1998 (NSW) (the Care and Protection Act) The Ombudsman Act 1974 (NSW) (the Ombudsman Act) Child Protection (Working With Children) Act 2012 (NSW) (the WWC Act) Crimes Act 1900 (the Crimes Act)
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Child Protection Policy

The safety, protection and well-being of all students is of fundamental importance to the Central Coast Montessori Primary School. Anyone can play a significant role in preventing child harm, abuse and neglect, and therefore make an enormous difference in a child's life. Child protection is a community responsibility.

The School and each staff member at CCMPS have a range of 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.

The purpose of this Policy is to summarise the obligations imposed by child protection legislation on CCMPS and on its employees, contractors and volunteers and to provide guidelines as to how the School will deal with certain matters.

Key Legislation

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

- the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* (the **Care and Protection Act**);
- The *Ombudsman Act 1974 (NSW)* (the **Ombudsman Act**); and
- the *Child Protection (Working With Children) Act 2012 (NSW)* (the **WWC Act**).
- the *Crimes Act 1900* ("**Crimes Act**")

*These four key pieces of child protection legislation are available to be viewed in hardcopy in the Administration Office.

Child Protection Policy (continued):

Staff Obligations to Report

While this Policy (and attached Parts) set out your legal responsibilities related to child protection and circumstances in which the legislation requires reporting of particular child protection issues, CCMPS requires you to report ANY concern you may have about the safety, welfare or wellbeing of a child or young person to the Principal.

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

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

Distribution of CCMPS Child Protection Policy

This Policy (and attached Parts) are made available to staff including employees and contractors during their employment or engagement with CCMPS to ensure a clear understanding of their duties and obligations under the key items of child protection legislation in NSW.

The Principal of CCMPS is responsible for informing staff of any changes to legislation.

Other Policies

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

- a) the **Code of Conduct Child Protection Policy** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the School;
- b) the **Code of Conduct for Staff, Ethical Conduct Statement** which summarises the expectations and obligations of staff conduct;
- c) **Work Health and Safety Statement** - identifies the obligations imposed by work health and safety legislation on the school and staff members;
- d) **Discrimination, Harassment and Bullying Statement** - summarises obligations in relation to unlawful discrimination, harassment and bullying;
- e) **Complaints and Grievance Handling and Resolution Policy and Procedures** – provides the steps taken by the school in addressing complaints;
- f) the **Anti Bullying Policy and Procedure** which summarises your obligations in relation to bullying;
- g) the **Working With Children Check Procedure**; and
- h) the **Annual Child Protection Responsibilities Notification for Employees Procedure**.

ACKNOWLEDGEMENT

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

I have read Clause 5 'Mandatory Reporting' of this policy and understand that as a mandatory reporter it is my duty to disclose any information that might impact on the safety, welfare and wellbeing of a child or member of the community.

I have read Clause 6 'Reportable Conduct' of this policy and understand that I am required to notify and investigate allegations of reportable conduct and am required to respond to reportable matters in accordance with legislative requirements.

Signed

Dated

1. INTRODUCTION

1.1 Purpose and scope

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.

1.2 Key legislation

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 *Ombudsman Act 1974* (NSW) (“Ombudsman Act”); and
- the *Crimes Act 1990* (“Crimes Act”).

1.3 Related policies

There are a number of other School policies that relate to child protection that staff members must be aware of and understand including (but not limited to):

- **Code of Conduct Child Protection Policy** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the School;
- **Code of Conduct for Staff, Ethical Conduct Statement** which summarises the expectations and obligations of staff conduct;
- **Work Health and Safety Statement** - identifies the obligations imposed by work health and safety legislation on the school and staff members;
- **Discrimination, Harassment and Bullying Statement** - summarises obligations in relation to unlawful discrimination, harassment and bullying;
- **Complaints and Grievance Handling and Resolution Policy and Procedures** – provides the steps taken by the school in addressing complaints;
- **Anti-Bullying Policy and Procedure** – summarises obligations in relation to bullying;
- **Working With Children Check Procedure**; and
- **Annual Child Protection Responsibilities Notification for Employees Procedure.**

1.4 Compliance and records

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 verifications;
- mandatory reports to Family and Community Services; and
- reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions.

2. CHILD PROTECTION

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

2.1 Children protection concerns

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.

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.

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.

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.

2.2 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 section 5.1.2.

2.3 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.

If the allegation involves the Principal, a report should be made to the Chairman of the School Board.

3. TRAINING

3.1 The school

The school provides all staff members with a copy of this policy and will provide 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. WORKING WITH CHILDREN

The WWC Act protects children by requiring a worker to have a working with children's check clearance or current application to engage in child related work. Failure to do so may result in a fine or imprisonment.

The Office of the Children’s Guardian (OCG) is responsible for determining applications for a working with children check clearance (WWCC clearance). It involves a national criminal history check and review of reported workplace misconduct findings. The result is either to:

- grant a WWCC clearance (generally valid for 5 years)
- refuse a WWCC clearance (further applications cannot be made for 5 years)

In addition, the OGC may impose an interim bar on engaging in child related work for both applicants and WWCC clearance holders.

WWCC clearance holders are subject to ongoing monitoring by the OGC.

4.1 Responsibilities for working with children checks

4.1.1 Staff members

Staff members who engage in child-related work and eligible volunteers (including those volunteers working at overnight camps) are required to:

- hold and 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 OGC that they are subjected to a risk assessment; and
- notify the Children’s Guardian of any change to their personal details within 3 months of the change occurring. Failure to do so may result in a fine.

It is an offence for an employee to engage in child-related work when they do not hold a WWCC clearance or if they are subject to a bar.

All volunteers are required to:

- to be aware and follow the expectations of conduct expressed in the school staff Code of Conduct.
- [Consider adding the additional requirement of ‘sign the Volunteer Statutory Declaration. Some volunteers engaged in high risk roles may be required to have a Check’]

4.1.2 The school

The school is required to:

- verify online and record the status of each child-related worker’s Check;
- only employ or engage child-related workers or eligible volunteers who have a valid Check; and
- report sustained findings of serious physical assault or sexual misconduct findings involving children made against child-related workers or volunteers to the OGC.

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

4.2 Working with children check clearance

A WWCC clearance is authorisation under the WWC Act for a person to engage in child-related work.

4.2.1 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 child care;
- 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.
- Any queries about whether roles/duties engage in child-related work should be directed to the Principal.

4.2.2 Application/Renewal

An application or renewal can be made through Service NSW or its replacement agency. The process for applying for and renewing a WWCC clearance with the OCG involves a national police check and a review of findings of misconduct. If the OCG grants or renews a WWCC clearance the holder will be issued with a number which is to be provided to the School to verify the status of a staff member's WWCC clearance.

4.2.3 Refusal/Cancellation

The OCG can refuse to grant a working with children check clearance or cancel a WWCC clearance. The person is then restricted from engaging in child-related work and not able to apply for another clearance for five years. Employers are notified by the OGC and instructed to remove such persons from child-related work.

4.2.4 Interim bar

The OCG may issue an interim bar, for up to 12 months, to high risk individuals to prevent them from engaging in child-related work while a risk assessment is conducted. If an interim bar remains in place for six months or longer, it may be appealed to 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.

4.2.5 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 cannot be granted a working with children check clearance and is therefore restricted from engaging in child related work.

4.3 Ongoing monitoring

The OCG will continue to monitor criminal records and professional conduct findings of all WWCC clearance holders through a risk assessment process.

4.3.1 Risk assessments

A 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 the OCG by the Ombudsman.

4.4 Process for reporting to OCG

4.4.1 The school

Independent Schools are defined as a reporting body by the WWC Act.

The school is required to notify the OCG sustained findings of serious physical assault or sexual misconduct findings involving children made against child-related workers or volunteers to the OGC.

The school may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act.

4.4.2 Finding of misconduct involving children

The school will report to the OCG when a sustained finding has been made against an employee that they engaged in:

- sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
- any serious physical assault of a child.¹

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 sustained 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 once final findings are made. The entitlements of a person to access information in terms of section 46 of the CPWWC Act is enlivened when a finding of misconduct involving children has been made.

A request for records should be made directly to the OCG.

4.4.3 Other information

The school 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.

5. MANDATORY REPORTING

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.

Under the Care and Protection Act 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, are mandatory reporters.

All teachers are mandatory reporters. Other staff members may also be mandatory reporters. Any queries about whether other staff members are mandatory reporters should be directed to the Principal.

5.1 Reports to Family and Community Services

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 Department of Family and Community Services (FACS) 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 FACS 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.

In the independent school sector 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.

5.1.1 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.

5.1.2 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.

5.3 Process for mandatory reporting

5.3.1 Staff members

Staff members must raise concerns about a child or young person who may be at risk of significant harm with the Principal 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 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.

Staff members 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 FACS has been made.

Staff members 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.

5.3.2 The school

In general, the Principal will report these matters to FACS and, where necessary, the police. This is supported by FACS in accordance with best practice principles.

5.4 Process for reporting concerns about students

5.4.1 Staff members

While the Care and Protection Act outlines a mandatory reporter's obligation to report to FACS concerns about risk of significant harm. However, to ensure centralised reporting all staff members are required to report any concern regarding the safety, welfare and wellbeing of a student to the Principal. Staff members 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 are required to deal with all reports regarding the safety, welfare or wellbeing of a student with confidentiality and only disclose it to the Principal and any other person the Principal nominates.

6. REPORTABLE CONDUCT

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 and convictions involving an 'employee' and the outcome of the School's investigation of these allegations. Under the Ombudsman Act allegations of child abuse only fall within the reportable conduct jurisdiction if the involved individual is an employee of the relevant agency at the time when the allegation becomes known by the head of agency.

- any employee, whether or not employed in connection with work or activities that relates to children, and any individual engaged by the agency to provide services to children (e.g. contractors, volunteers, work experience participants, clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services); and
- involves a child (a person under the age of 18 years) at the time of the alleged incident; and
- involves conduct that meets the definition of reportable conduct as defined in the act.

The Ombudsman:

- 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;
- must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions;
- is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable or reportable convictions;
- 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;
- 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
- 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.

6.1 Reportable conduct

Under the Ombudsman Act *reportable conduct* means:

- 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);
 - any assault, ill-treatment or neglect of a child; and
 - any behaviour that causes psychological harm to a child whether or not, in any case, with the consent of the child.
- whether or not, in any case, with the consent of the child concerned. 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, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures; or
- conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

6.1.1 Definitions

The following definitions relate to *reportable conduct*:

psychological harm is caused by 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 and/or responsibility towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

supervisory neglect

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

carer neglect

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

failure to protect from abuse

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

reckless act (or failure to act)

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

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

- relationship with;
 - conduct towards; or
 - focus on;
- a child or young person, or a group of children or young persons.

The School's [Code of Conduct Policies](#) 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:

- inappropriate conversations of a sexual nature
- comments that express a desire to act in a sexual manner
- unwarranted and inappropriate touching
- sexual exhibitionism
- 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
- exposure of children and young people to sexual behaviour of others including display of pornography
- 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:

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

grooming refers to patterns of behaviour or conduct aimed at engaging with an alleged victim for sexual activity. Types of grooming behaviours may include:

- persuading child/ren that there is a 'special' relationship'
- inappropriate gift giving
- special favours / breaking rules
- spending inappropriate amounts of time with a child
- secret relationship, tactics to keep relationship secret
- testing boundaries (touching, physical contact, undressing in front of child, talking about sex)

- extending relationship outside of work
- personal communication about personal or intimate feelings

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).

6.2 Process for reporting of reportable conduct allegations or convictions

6.2.1 Staff members

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. 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 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.

6.2.2 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 schools Complaint Handling procedures.

6.2.3 The school

The Principal, as the Head of Agency under the Ombudsman Act, must:

- set up systems within their organisation to ensure that they are advised of any allegations of reportable conduct against employees;
- 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;
- 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
- 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.

6.3 Process for investigating an allegation of reportable conduct

The Principal ensures that the following steps are taken to investigate an allegation of reportable conduct.

6.3.1 Initial steps

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

- determine on face value whether it is an allegation of reportable conduct;
- assess whether FACS 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;

- notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by FACS or police);
- notify the Ombudsman within 30 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 Part 3A of the *Ombudsman Act 1974*; and investigate the allegation or appoint someone to investigate the allegation.

6.3.2 Investigation principles

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

- follow the principles of procedural fairness;
- inform the person subject of the allegation (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.

6.3.3 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 NSW Ombudsman guidelines;
- inform the PSOA of the preliminary finding in writing by the Head of Agency 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 NSW Ombudsman guidelines;
- decide on the disciplinary action, if any, to be taken against the PSOA;
- inform the PSOA of the school's legal reporting obligations in accordance with the NSW Ombudsman Act 1974, Part 3A and in accordance with the Child Protection (Working with Children) Act 2012.
- in accordance with the *Children (Working with Children) Act 2012*, as a reporting body decide if a report of the findings of the investigation to the Office of the Children's Guardian is required; and
- 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 FACS 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.

6.4 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.

6.4.1 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 School, 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 School 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.

6.4.2 Ongoing risk assessment

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

6.4.3 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.

6.4.4 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 Ombudsman notification form or other investigation material that reveals 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).

6.4.5 Disciplinary action

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

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

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

6.4.6 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 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 Agency'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.

7. 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.

7.1 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 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.

7.2 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.

ATTACHMENTS

The following documents are attached to this policy:

1. CCMPS Incident Report.

REFERENCES

NSW Family and Community Services

www.community.nsw.gov.au

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

Department of Premier and Cabinet – Keep Them Safe

www.keepthemsafe.nsw.gov.au

Further details of obligations of employers can be found in the *Information for Employers* guidelines and/or *Information for reporting bodies* factsheet developed by the OCG found at www.kids.nsw.gov.au
