

## Child Protection Policy ICSNSW

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# 1. INTRODUCTION

## 1.0 Summary Statement of Commitment to Student Safety

This policy demonstrates our commitment to creating and maintaining a child safe organisation, where our students are safe, happy and empowered.

ICSNSW is a child safe organisation which welcomes all young people and their families. We are committed to providing an environment where our students are safe and feel safe, where their participation is valued, their views respected, and their voices are heard about decisions that affect their lives.

Three of the Colleges values include the following:

**Connection** We show genuine interest in others and share experiences

**Humility** We appreciate and use our strengths to lift up others

**Care** We look out for each other

These values and underlying behaviours will help guide our commitment to child safety.

Our child safe policies and practices are intended to meet the needs of our students. We have zero tolerance for child abuse and take proactive steps to identify and manage any risks of harm to students in our care.

We promote positive relationships between students and adults and between students. We understand that some of our students will be nearing or will reach 18 years of age while at the College, so will seek to build relationships that are based on trust, understanding and respect. As emerging adults, we will encourage student agency and responsibility.

Whilst responsibilities for student safety are addressed in various policies, ICSNSW considers that student safety is a whole of school and community responsibility and we seek to involve the entire school community in ensuring the safety, protection and wellbeing of students.

In the specific context of child protection, it is our policy that:

- All staff members are required to:
  - hold a current Working with Children Check Clearance
  - complete training in child protection including with respect to identification of child abuse and grooming, students at risk of significant harm and reportable conduct more broadly and relevant procedures to follow.
- All:
  - suspected cases of child abuse or grooming and/or students at risk of significant harm are reported to the Department of Communities and Justice (DCJ) and/or the Police.
  - reportable allegations are reported to the Children's Guardian.
- We:
  - maintain up-to-date procedures to assist staff in identifying and reporting child abuse or grooming, students at risk of significant harm and reportable conduct more broadly.
  - act immediately to ensure the safety of at risk or abused students.

- provide ongoing support and assistance to students who have been abused.
- work collaboratively with relevant external agencies involved in student safety.

## 1.1 Purpose and Scope

### Purpose

This Policy forms the foundation of the Islamic College of Sport's (ICSNSW) procedures, practices, decision-making processes and ultimately our culture with respect to child safety and wellbeing. It outlines our approach as a child safe organisation and sets out expected standards of behaviour, and ICSNSW's strategies to ensure compliance with all laws, regulations and standards relevant to child protection in NSW.

This Policy sets out staff responsibilities for child protection and processes that staff must follow in relation to child protection matters. The Policy addresses and provides guidance on how to protect students who are suspected of being at risk of harm. It also addresses requirements around working with children and preventative strategies including training.

This Policy will be available to members of the Board, employees, contractors who work with children (including external providers) and volunteers engaged in child related work who are not covered by exemptions in the *Child Protection (Working with Children) Act 2012* (see part 4 below).

### Scope and Application

Unless an exemption applies or a person is not engaged in child related work, this policy applies to all adults in the school community, including staff, volunteers, contractors, external education providers, parents/carers and other family members. This policy applies in all school environments, both physical and online, and on-site and off-site School grounds (e.g. camps and excursions). Staff members who fail to adhere to this policy may be in breach of their terms of employment.

## 1.2 Key legislation and Child Safe Scheme

### 1.2.1 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 *Children's Guardian Act 2019* ("Children's Guardian Act") – including Part 3A dealing with the *Child Safe Scheme*.
- The *Crimes Act 1900* ("Crimes Act").

This Policy outlines the key concepts, definitions and obligations under the relevant legislation.

### 1.2.2 The Child Safe Scheme and the Child Safe Standards

Part 3A of the Children's Guardian Act sets out the Child Safe Scheme.

The Child Safe Scheme gives the Office of the Children's Guardian (OCG) additional powers to monitor and investigate how organisations implement the Child Safe Standards to support the safety and wellbeing of children and young people. Under the Scheme, certain child-related organisations including those in the education, early childhood, health and youth justice sectors, must implement the Child Safe Standards.

The OCG is an independent statutory body that promotes the interests, safety and rights of children and young people in NSW. The core functions of the OCG include administering Working with Children Checks, the Reportable Conduct Scheme and the implementation of the Child Safe Standards.

There are ten Child Safe Standards in NSW. They are:

1. Child safety is embedded in organisational leadership, governance and culture.
2. Children participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved.
4. Equity is upheld, and diverse needs are taken into account.
5. People working with children are suitable and supported.
6. Processes to respond to complaints of child abuse are child focused.
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
8. Physical and online environments minimise the opportunity for abuse to occur.
9. Implementation of the Child Safe Standards is continuously reviewed and improved.
10. Policies and procedures document how the organisation is child safe.

## The Child Safe Standards

**STANDARD 1:**  
Child safety is embedded in organisational leadership, governance and culture

**STANDARD 2:**  
**Children participate in decisions affecting them and are taken seriously**

**STANDARD 3:**  
Families and communities are informed and involved

**STANDARD 4:**  
Equity is upheld and diverse needs are taken into account

**STANDARD 5:**  
People working with children are suitable and supported

**STANDARD 6:**  
Processes to respond to complaints of child abuse are child focused

**STANDARD 7:**  
**Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training**

**STANDARD 8:**  
Physical and online environments minimise the opportunity for abuse to occur

**STANDARD 9:**  
Implementation of the Child Safe Standards is continuously reviewed and improved

**STANDARD 10:**  
Policies and procedures document how the organisation is child safe

 **Office of the Children's Guardian**

ICSNSW is committed to meeting these standards and continuously improving its child safe practices and culture. This Policy addresses some of the Standards.

### 1.3 Related Policies

There are other school policies, codes and procedures that relate to child protection that staff members must be aware of, understand and comply with. These include:

- Our Code of Conduct
- Policies regarding the use of ICT and social media.
- Our Complaints Policy.
- Our Bullying Prevention & Intervention Policy.

All volunteers are required to read and comply with our Code of Conduct.

ICSNSW has established procedures to enable members of the School community to have confidence that any concerns and grievances raised directly with the School will be treated seriously and managed appropriately. For more information about these procedures, please refer to the *Complaints Policy and Procedures - Allegations of Staff Misconduct*.

## 1.4 Meaning of Principal's Delegate(s)

As a small school, many of the matters under this and other policies will be the responsibility of the Principal. The phrase “the Principal or their delegate”, may be used to recognise that there will be times where delegation is appropriate or necessary.

If this occurs, the delegate will be an employee or director so nominated by the Principal at the time of the delegation and it also includes any other employee to whom the Principal delegates all or part of his functions as the Head of Entity, as necessary and appropriate at a particular point in time.

## 1.5 Compliance and Records – Responsibilities Generally

### Principal and Heads of Campus

The Principal or their delegate(s) are responsible for monitoring compliance with this Policy and securely maintaining School records relevant to this Policy, including:

- Ensuring verification of working with children check clearances is undertaken and registers kept of: clearances held by staff members; acknowledgements given by staff members of reading and understanding this Policy and the Staff Code of Conduct; and the completion of relevant training.
- Ensuring mandatory reports are made to the Department of Communities and Justice (DCJ), including:
  - determining whether concerns about the safety and wellbeing of students constitute risk of significant harm; and
  - if concerns about the safety or wellbeing of students constitute risk of significant harm, reporting these to the DCJ in accordance with this Policy.
- Notifying the OCG of all allegations of reportable conduct and reportable charges or convictions and the outcome of reportable conduct investigations.

### Staff

Staff are responsible for complying with this Policy; in particular, reporting to the Principal (or their delegate), any concerns they have about the safety and wellbeing of students that arise during their engagement with the School or interactions with students.

If there is an immediate danger that requires an emergency services response staff should immediately contact emergency services on triple zero (000) and the DCJ Helpline (on 132 111).

All staff must be aware of their mandatory obligation to report suspected risk of significant harm to students, and reportable conduct and of the procedures for doing so – dealt with below and following.

Staff must also keep matters confidential and all records secure.

Staff who fail to comply with this Policy may be in breach of their terms of employment or other engagement.

## 2. CHILD PROTECTION GENERALLY

### 2.0 Introduction

The safety, protection and welfare of students is the responsibility of all staff 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; and
- obligations under work health and safety legislation.

### 2.1 Child Protection Concerns

Child protection concerns are concerns regarding suspected or actual child abuse and concerns relating to reportable conduct.

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 a child 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 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.

A more comprehensive list of indicators of abuse is set out in Appendix One – Key Indicators of Abuse.

## **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, discussed below in this Policy.

### 2.3 Staff responsibilities

Key legislation requires reporting of particular child protection concerns. As part of the School's overall commitment to child protection, and student wellbeing more broadly, all staff are required to report any child protection concern(s) potentially giving rise to a mandatory reporting obligation, where a child is at risk of significant harm or concerns relating to reportable conduct, to the Principal.

Consistent with this approach, ICSNSW also requires all staff to report all allegations about staff misconduct (including reportable conduct) promptly to the Principal. This may be done face to face, by telephone, or by email.

If the allegation involves the Principal, a report must be made to the Chairperson of the School.

## 3. AWARENESS AND TRAINING – SCHOOL BASED PREVENTATIVE STRATEGIES

### 3.0 Policy Position

ICSNSW is opposed to all child abuse and is committed to providing comprehensive support for the prevention of harm to students and their protection from abuse, in order to minimise its occurrence. We adopt a risk management approach by identifying key risk indicators and assessing child safety risks based on a range of factors including the nature of our activities, physical and online environments and the characteristics of the student body. Some of these matters are outlined below. Amongst other things, ICSNSW will:

- Promote awareness of this Policy and other policies that help build a child safe culture.
- Maintain a child safety Risk Register.
- Provide professional development and training for staff members in child safety (including child protection).
- Address student (child) safety within the curriculum.
- Partner with parents and the wider community.
- Ensure that recruitment practices factor in child protection considerations.

#### *Child Safety Risk Register*

At our school we identify, assess and manage risks to child safety and wellbeing in our physical and online school environments. These risks are managed through our child safety and wellbeing policies, procedures and practices, and in our activity specific risk registers, such as those we develop for off-site overnight camps, adventure activities and facilities and services we contract through third party providers for student use.

To assist the College and staff to discharge their duty of care obligations, the College has also developed a Child Safety Risk Register, which is separate from but forms a part of the whole of College Risk Register. The Child Safety Risk Register involves the consideration of the following factors:

- identifying the risk of harm, linked to the 10 Child Safety Standards in NSW;
- assessing the likely seriousness or consequence should the risk of harm arise;
- the existing controls in place to manage or reduce the risk and whether any further controls are needed; and
- the social utility or benefit to students of the activity that creates the risk of harm

The Principal and Board will monitor and evaluate the effectiveness of the actions in the College's Risk Register, inclusive of its Child Safety Risk Register.

Should an incident arise, the Principal and Board review the cause of child safety incident and monitor for repeat issues or systemic failures, and where appropriate, update any child safety policy, procedure or practice where gaps or improvements are identified.

### **3.1 The School**

ICSNSW will provide all staff members with electronic access to, or a copy of, this Policy at the time of employment as part of induction.

Child protection training will be provided on an ongoing basis to all staff members (including annual refresher training) and must be provided without exception to all those who have direct contact with students, and to Mandatory Reporters. The training will generally cover:

- Mandatory Reporting under the Care and Protection Act,
- Reportable Conduct,
- Professional boundaries and
- Working with Children Checks (WWCCs)

### **3.2 Staff members**

All new staff members must read this Policy and acknowledge that they have read and understood the Policy before commencement of employment. All staff members must read this Policy and acknowledge that they have read and understood the Policy, on an annual basis, at the beginning of each new School year.

All staff members must participate in annual child protection training and additional training, as directed by the Principal.

### **3.3 Child Safety within the Curriculum**

Key elements of child safety will be covered at times within Halaqa. Core content may include reading and discussion on recognising abuse; power in relationships; protection strategies; non-violent ways of relating; peaceful resolution of conflict; right for children to say no.

### **3.4 Partnership with Parents and the wider Community**

The School recognises the importance of supporting our parents (and the Community) in maintaining positive relationships with their children. From time to time, the ICSNSW may provide parent information, which may include:

- Child/adolescent development; and
- Appropriate use of internet and social media.

The College will approach the student/parent/teacher relationship differently – adopting a partnering approach, with parents are included in substantive individual student meetings at the beginning of and other scheduled times through the year. The College will use the Individual Capability and Learner Profile of each student to provide a framework for such meetings and use the meetings to reinforce a collective approach to help each student feel safe and supported, and to aid their learning and to meet their goals.

### **3.5 Employment Procedures**

In addition to complying with legislation regarding the 'employment' screening, the School will seek to

recruit staff that are suitable to be at ICSNSW – staff who believe in the pedagogical approach of the ICSNSW, who are strongly supportive of the School’s values and have a focus on the pastoral needs and wellbeing of students.

## 4. WORKING WITH CHILDREN

### 4.0 Introduction

The WWC Act protects children by requiring a worker to have a WWCC clearance or current application to engage in child related work (dealt with below) and not permitting certain people to engage in child related work. Engaging in child related work without a WWCC clearance may result in a fine or imprisonment.

The Office of the Children's Guardian (OCG) is responsible for determining applications for a WWCC clearance. This 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); or
- refuse a WWCC clearance – impose a bar (further applications cannot be made for 5 years).

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

ICSNSW employees, members of the School Council, certain contractors and volunteers not exempted by Part 4 of the *Child Protection (Working with Children) Regulation 2013* (the WWC Regulation) are required to:

- hold and maintain a valid WWCC clearance (the School acknowledges some exemptions do apply to volunteers);
- not engage in child-related work at any time that they are subjected to an interim bar or a bar;
- report to the Principal or their delegate if they are no longer eligible for a WWCC clearance, the status of their WWCC clearance changes or they are notified by the OGC that they are subjected to a risk assessment; and
- notify the OGC of any change to their personal details within 3 months of the change occurring. Failure to do so may result in a fine.

Parents and close relatives of (current) students volunteering at activities of the School are not required to have a WWCC clearance. However, all volunteers, including parent volunteers:

- attending an overnight camp;
- providing personal care service to children with disabilities, involving intimate contact such as assistance with toileting, bathing, or dressing; and
- mentoring services as part of a formal mentoring programme provided by a government or non-government agency,

must have a WWCC clearance.

It is the responsibility of each person engaged in child-related work to ensure that when they are eligible to apply for a WWCC clearance or when their Clearance is up for renewal they do apply or renew. It is an offence for a person to engage in child-related work when they do not hold a WWCC clearance or if they are subject to a bar.

#### 4.1.2 The School

ICSNSW must:

- Verify online and record the status of each child-related worker's WWCC clearance and maintain an up-to-date register of working with children clearances for all persons engaged in child-related work.
- Only employ or engage child-related workers or eligible volunteers who have a valid WWCC clearance; and remove from child-related work any staff member or volunteer who, after commencement, receives a bar or interim bar.
- Notify the OCG of the findings made after completing a reportable conduct investigation, including whether a finding of reportable conduct has been made. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's Working with Children Check Directorate (WWCC Directorate).

It is an offence for ICSNSW to knowingly engage a child-related worker who does not hold a WWCC Clearance or who has a bar.

The Principal or their delegate is responsible for the verification of each person's application or Clearance. A person must not verify their own application or Clearance. All documentation is to be maintained by the Principal or their delegate and copies of all documents are to be securely stored in the School.

#### 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. To qualify for a WWC screening, you must be over 18 years old. Consequently, as a matter of policy, ICSNSW will not employ anyone under 18 years of age. However, students under 18 may work as volunteers.

##### 4.2.1 Child-related work

Child-related work involves direct contact (physical or face to face) 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 schools and other educational institutions and private coaching or tuition of children, religious services, and transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings.

It includes, as an example, work carried out by a worker engaged as a school cleaner.

The School's position is that all employees, members of the Board, and most volunteers who work at ICSNSW are child-related workers. This Policy addresses the most common exemptions in a school. The WWCC Regulation should be checked where the requirement to have a WWCC clearance is not clear.

A visiting person performing work at or for the School is not required to have a WWCC clearance if the work is one-off and is carried out in the presence of one or more other adults.

Any queries about whether roles/duties engage in or involve 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. 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 WWCC 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 of, or against whom proceedings have been commenced for, a disqualifying offence outlined in Schedule 2 of the WWC Act. A disqualified person cannot be granted a WWCC clearance and is therefore restricted or barred 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 by the OCG 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, of the WWC Act, a pattern of behaviour or offences involving violence or sexual misconduct representing a risk to children and findings of misconduct involving children.

### 4.4 Process for reporting to OCG

#### 4.4.1 The School

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

The School is required to and will advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether it has made a finding of reportable conduct. The OCG must refer a finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault, or a determination that a conviction is a reportable conviction, to its Working with Children Check Unit (or Directorate). If the OCG is of the opinion that there is a real and appreciable risk to the safety of children during an investigation, the OCG must refer information about the employee the subject of the investigation to the WWCC Unit, for the purpose of considering an interim bar under section 17 of the WWC Act

With respect to 'serious physical assault' the OCG considers that:

A physical assault is not serious where:

- it only involves minor force; and
- it did not, and was not ever likely to, result in serious injury.

A physical assault is serious where:

- it results in the child being injured, beyond a type of injury like a minor scratch, bruise or graze; or
- it had the potential to result in a serious injury; or
- the injury suffered may be minor, but the assault is associated with aggravating circumstances (in this regard, aggravating circumstances might include associated inhumane or demeaning behaviour by the employee, for example kicking a child, pulling a child by grabbing the child around the neck).

The School may also be obliged to report, amend, or provide additional information to the OCG as outlined in the WWC Act and the Children's Guardian Act.

Section 35 of the WWC Act requires ICSNSW to notify the OCG of findings of misconduct involving children made against a child related worker. An Entity (final) Report to the OCG under s 36 of the Children's Guardian Act of the findings at the conclusion of an investigation into a reportable allegation or determination regarding a reportable conviction, will satisfy this requirement.

#### 4.4.2 Finding of misconduct involving children

The School will report any finding of reportable conduct to the OCG.

The School will inform the person the subject of the finding that the OCG has been notified of a finding of reportable conduct and, where the finding is of sexual misconduct, a sexual offence or a serious physical assault involving children, that the finding will be referred to the OCG's WWCC Unit. 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 OCG in relation to the finding of misconduct involving children.

#### 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 OGC'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.

Staff are reminded that if they have a concern regarding the safety, welfare or wellbeing of a student below the threshold for mandatory reporting, they must still report the matter to the Principal, even though a mandatory reporting obligation does not exist under the Care and Protection Act.

### 5.0 Who Is a Mandatory Reporter?

All ICSNSW staff, (including teachers, instructors, management and administration), are mandatory reporters.

Volunteers other than those working in a professional capacity, are generally not mandatory reporters, under the Act.

Other staff may also be mandatory reporters. If you are not sure whether you are a mandatory reporter, or whether you are required to make a report, you should promptly speak to the Principal.

### 5.1 Reports to Communities and Justice – 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 the Department of Communities and Justice (DCJ) as soon as practicable. The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm. The Act allows for alternative reporting arrangements.

In addition, while not mandatory, ICSNSW considers that a report should also be made to the DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety and wellbeing of the young person.

This is particularly important at ICSNSW, as the school will initially only be delivering year 11 and 12 classes, so most of the students will 16 and 17 years of age.

At ICSNSW, it is preferred that any report be made by the Principal after they have assessed the matter. However, this is not intended to prevent any mandatory reporter from making a mandatory report directly.

Because of this reporting arrangement, a mandatory reporter will meet their obligation if they report the matter to the Principal. This centralised reporting model ensures that a person in the School has all 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.

If you consider that there is an immediate danger to a student and the Principal is not immediately contactable, you should speak to the Police and/or the Child Protection Helpline (on 13 21 11) directly and then advise the Principal as soon as possible.

#### 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; and
- 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. However, staff should consider whether another person, when faced with similar information, would also draw the same conclusion that there are reasonable grounds for suspecting that a student may be at risk of significant harm. That is, whether their suspicions are well founded. If you have any concerns about whether you have 'reasonable grounds' for suspecting that a student may be at risk of significant harm, you should immediately speak to the Principal.

### 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 consequently, 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; and
- 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.

The circumstances set out in the Act are broadly characterised as child abuse (maltreatment). There are different forms of child abuse. These include neglect, and physical, sexual, and emotional abuse as mentioned earlier in this Policy. All suspicions on reasonable grounds that a student is at risk of significant harm in the circumstances set out in the Act, must be reported.

Mandatory reporters should use the Mandatory Reporter Guide (MRG) available on the DCJ Website to help them determine whether a student is suspected to be at risk of significant harm. The MRG is a structured decision-making tool intended to complement mandatory reporters' professional judgment and critical thinking.

The circumstances in the Care and Protection Act considered above focus on the effect of acts or omissions on a student – not the person acting or failing to act. If this person is a staff member, the conduct may be reportable conduct – separately reportable to OCG. This is dealt with in the section below headed 'Reportable Conduct'.

### **5.3 Process for mandatory reporting**

#### **5.3.1 Staff members**

Staff members must raise concerns about a student who may be at risk of significant harm. The concern must be raised with the Principal. If the matter involves the Principal, the concern must be raised with the Chairperson of the School.

### 5.3.2 The School

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

## 5.4 Process for reporting concerns about students

### 5.4.1 Staff

The Care and Protection Act sets out a mandatory reporter's obligation to report to the DCJ 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.

#### **WHAT SHOULD YOU DO IF A MANDATORY REPORT MAY BE REQUIRED?**

Reporting by the School about these matters to the DCJ and, where necessary, the NSW Police, is generally undertaken by the Principal. This is supported by the DCJ in accordance with the Memorandum of Understanding with the former Community Services, covering the independent education sector and best practice principles, and is the expectation of ICSNSW.

If you have a concern that a student is at risk of significant harm you should document your concern, and the reasons for your concerns, and contact the Principal, as soon as possible in person, by telephone or by email to discuss whether the case reaches the threshold of 'risk of significant harm' and the process of reporting/steps required to report the matter.

If your concern arises from a disclosure by a student, you should document the actual words spoken and any information volunteered regarding when, where, what, how and who was involved or saw anything.

If you consider that there is an immediate danger to the student and the Principal is not immediately contactable, you should speak to the police and/or the Child Protection Helpline (on 13 21 11) directly and then advise the Principal as soon as possible.

If the Principal reports the matter to the DCJ and confirms this with you, you are not required to make a further report. If the Principal does not confirm to you that the matter has been reported to the DCJ, or advises you that they do not believe the circumstances warrant the matter being reported, then if, having spoken with the Principal, you still consider that a student is at risk of significant harm, you should escalate the matter to the Chairperson and/or call the Community Services Child Protection Helpline on 132 111.

If you have a concern that a student is at risk of significant harm, in complying with your obligations as a mandatory reporter you are:

- not required to, and must not, undertake any investigation of the matter yourself;
- not to inform the parents or caregivers that a report to the DCJ has been or may be made; and
- required to deal with the matter confidentially and only disclose it to the persons referred to above, and any/or other person the Principal, or as required to comply with your mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this Policy, but it could also expose you to potential civil proceedings for defamation.

#### **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 the DCJ, as a staff member of ICSNSW, any concern that you may have regarding the safety, welfare or wellbeing of a student must be reported as set out above.

Staff members are required to deal with all reports regarding the safety, welfare or wellbeing of a student confidentially and only disclose it to the Principal.

## REPORTING STUDENT-TO-STUDENT CONDUCT

There are a range of circumstances in which student-to-student conduct may be reportable, either to the DCJ or to the NSW police.

In the case of mandatory reporting to the DCJ, mandatory reporters are required to report circumstances of problematic sexual behaviour by a student toward another student (that is, conduct outside the bounds of normal sexual behaviour), including child-to-child sexual abuse.

Child-to-child sexual abuse can occur when a student involves another student in sexual activity. It can be physical, verbal, or emotional and can include, but is not limited to, a student:

- kissing or holding another student in a sexual manner;
- exposing a sexual body part to a student;
- having sexual relations with a student;
- talking in a sexually explicit way;
- making obscene phone calls or remarks to a student;
- sending obscene messages to a student via technology including social media; and/or
- fondling a student in a sexual manner.

If you have any concern that problematic sexual behaviour by a student towards another student (including child-to-child sexual abuse) is occurring, you must immediately inform the Principal. If you are not sure whether the sexual behaviour is problematic, you should report the behaviour to the Principal.

## 6. REPORTABLE CONDUCT

### 6.0 Introduction

Part 4, of the Children's Guardian Act requires the Heads of Entities, including non-government schools in New South Wales, to notify the OCG of all allegations of reportable conduct and convictions considered to be reportable convictions involving an 'employee' and the outcome of the School's investigation of these allegations. Under the Children's Guardian Act, allegations of child abuse only fall within the reportable conduct jurisdiction if the involved individual is an employee of the relevant entity at the time when the allegation becomes known by the Head of Entity, being the Principal.

Reportable Conduct:

- involves a child (a person under the age of 18 years) at the time of the alleged incident; and
- involves certain defined conduct as described in the Act (see below).

The OCG:

- 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 conduct 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; and
- may:
  - directly investigate an allegation of reportable conduct or make a determination about a conviction considered to be a reportable conviction against an employee of a non- government school, or the handling of or response to such a matter (e.g. arising out of complaints by the person who is the subject of an allegation); and
  - investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint, or notification,

if the OCG reasonably believes it is in the public interest to do so.

## 6.1 Reportable conduct

Under the Children’s Guardian Act, reportable conduct is defined as:

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

Offences under sections 43B and 316A of the Crimes Act are dealt with at Part 7 below,

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 (for example, a school teacher raising his or her voice in order to attract attention or restore order in a classroom); or
- the use of physical force that, in all the circumstances, is trivial or negligible and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate (workplace) procedures (for example: touching a child to guide or comfort the child or in order to attract the child’s attention or momentarily restraining a child to prevent the child hurting themselves or others).
- Conduct of a class or kind exempted from being reportable conduct by the Children’s Guardian under s30 of the Children’s Guardian Act.

### 6.1.1 Definitions

The following definitions relate to reportable conduct:

- **Sexual offence:** an offence of a sexual nature under a law of NSW, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child, such as:
  - sexual touching of a child;
  - sexual assault;
  - sexual intercourse and attempted sexual intercourse;
  - a child grooming offence;
  - production, dissemination, or possession of child abuse material; and
  - deemed non-consensual sexual activity based on special care relationships (the Crimes Act (s73) extends the age of consent to 18 years when a child is in a ‘special care’ relationship).

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. Under Schedule 1(2) of the WWC Act, grooming is recognised as a form of sexual misconduct. Grooming behaviours are dealt with further below. The Children’s Guardian Act and this Child Protection Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2 of Part 4 of the Children’s Guardian Act).

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

- **Sexual misconduct:** conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence). The Act provides the following (non-exhaustive) examples:
  - descriptions of sexual acts without a legitimate reason to provide the descriptions;
  - sexual comments, conversations, or communications;
  - comments to a child that express a desire to act in a sexual manner towards the child, or another child.

In addition to the examples above, this conduct may include:

- unwarranted and inappropriate touching involving a child that is not a sexual offence;
- sexual behaviour with or towards a child (sexual exhibitionism);
- exposure of children and young people to sexual behaviour of others including display of pornography; and
- watching children undress in circumstances where supervision is not required, and it is clearly inappropriate. For example, in change rooms or toilets when supervision is not required or justified.

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

- **Grooming behaviour:** Grooming refers to patterns of behaviour or conduct aimed at engaging with an alleged victim for sexual activity. Types of grooming behaviour may include (but are not limited to) the following:
  - persuading a child or group of children that they have a “special” relationship;
  - inappropriately giving gifts to a child;
  - inappropriately showing special favours to a child, but not other children;
  - inappropriately allowing a child to overstep rules;
  - spending inappropriate special time with a child;
  - testing boundaries (touching, encouraging inappropriate physical contact (even when not overtly sexual) undressing in front of a child);
  - talking about sex;
  - asking a child to keep the relationship to themselves (an adult requesting that a child keep any aspect of their relationship secret or using tactICSNSW to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring);
  - inappropriately extending a relationship outside of work (except where it may be appropriate – for example where there was a pre-existing friendship with the child’s family or as part of a normal social interactions in the community); and
  - inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.
  
- **Assault:** an assault can occur when a person intentionally or recklessly:
  - applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching, or dragging a child (actual physical force); or
  - causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words and/or gestures regardless of whether the person intends to apply any force (apprehension of physical force).

'Reckless' in this context relates to circumstances when the person knows or ought to know that their actions would likely cause a person physical harm or cause them to fear injury and ignores the risk.

Note - allegations of 'serious physical assault', if proven, must be reported to the OCG for the purpose of the Working with Children Check. Therefore, in any investigation into an allegation of assault it is important to obtain the information necessary to determine whether the alleged assault, if proven, will constitute a serious physical assault.

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

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

The focus is on the alleged conduct rather than the actual effect of the conduct on the child.

- **Neglect:** a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm - by a person who has care and/or has responsibility towards a child.

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfill a duty or obligation, resulting in actual harm to a child where there is the potential for significant harm to a child. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

- **Behaviour that causes significant emotional or psychological harm to a child** is conduct that is intentional or reckless (without reasonable excuse), obviously or very clearly unreasonable and which results in significant emotional harm or trauma to a child.

For a reportable allegation involving psychological harm, the following elements must be present:

- an obviously or very clearly unreasonable or serious act or series of acts that the employee knew or ought to have known was unacceptable;
- evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm; and
- an alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.
- **Reportable allegation** is an allegation that an employee has engaged in conduct that may be reportable conduct.
- **Reportable conviction** means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.
- **Child** means an individual under 18.
- **Contractor** includes:
  - a subcontractor, and
  - an employee of, or volunteer for, the contractor.
- **Employee of an entity** includes:
  - an individual employed by, or in, the entity;
  - a volunteer providing services to children;
  - a contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold, a WWCC clearance for the purposes of their work with an entity; and
  - a person engaged by a religious body where that person holds, or is required to hold, a WWCC clearance for the purposes of their work with the religious body.
- **Employment** includes engagement of a person as a volunteer or contractor taken to be an employee (under the Children's Guardian Act).
- **ESOA** (Employee Subject of the Allegation).

## 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 it 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 Chairperson of the School.

### 6.2.2 Parents, carers and community members

Parents, carers and community members are encouraged to report any conduct that in their view is inappropriate, reportable, or criminal conduct to the Principal. All such reports will be dealt with in accordance with the School's *Complaint Policy* and related procedures.

### 6.2.3 The School

The Head of Entity at ICSNSW is the Principal. The Principal may delegate all or some of his functions as Head of Entity to another staff member of the School.

Under the Children's Guardian Act, the Principal must ensure that ICSNSW has systems in place for:

- preventing and detecting reportable conduct by an employee of the entity;
- requiring an employee of the relevant entity to give a report, as soon as possible, in relation to a reportable allegation or conviction considered to be a reportable conviction involving an employee of the entity;
- enabling a person, other than an employee of the relevant entity, to give a report to the head of the relevant entity about a reportable allegation or conviction considered to be a reportable conviction involving an employee of the relevant entity;
- handling or responding to a reportable allegation or conviction considered to be a reportable conviction involving an employee of the relevant entity, having regard to principles of procedural fairness;
- receiving, handling and disclosing information relating to reportable allegations, convictions considered to be reportable convictions and information relating to investigations and determinations; and
- identifying and dealing with matters relating to the prevention of reportable conduct by employees of the relevant entity.

This includes ensuring that they:

- 1) Are advised of any allegations of reportable conduct against employees.

- 2) Notify the OCG using a 7-day Notification Form as soon as possible and no later than seven business days after being made aware of a reportable allegation or conviction unless the Head of Entity has reasonable excuse.
- 3) Investigate or arrange for an investigator to investigate the reportable allegation or determine whether the reportable conviction is a reportable conviction and complete the investigation within a reasonable time.
- 4) Provide a (final) Entity report to the OCG after the investigation or determination is completed and within 30 days of receiving the report of the reportable allegation or conviction (or an interim report if this is not possible).
- 5) As part of completing the 7-day notification form, notify the OCG whether or not ICSNSW 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.
- 6) Provide the OCG with any documentary and other information the OCG may from time-to-time request to assist in the OCG's monitoring of the School's response to a notification including its investigation as well as any consideration of whether it is in the public interest that the OCG carry out an investigation.

The OCG may at any time by written notice require information about the School's systems.

### **6.3 Process for investigating an allegation of reportable conduct**

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

#### **6.3.1 Initial steps**

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

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

### 6.3.2 Investigation principles

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

- follow the principles of procedural fairness;
- inform the ESOA 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 ESOA.

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

If it is completed, the Principal will send the final report to the OCG within 30 days after having received the allegation, in accordance with s 36 of the Children's Guardian Act.

If the final report is not completed within 30 days, the Principal is required to provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as per section 38 of the Children's Guardian Act.

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

An ESOA may have an appropriate support person with them during any 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 is to conduct an initial risk assessment to identify and minimise the risks to:

- the student(s) who are the subject of the allegation;
- other students with whom the employee may have contact;
- the ESOA;
- the School; and
- the proper investigation of the allegation.

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

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

The Principal will take appropriate action to minimise risks. This may include the ESOA 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 student(s) and the ESOA.

A decision to act based on 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 ESOA, the student(s) involved and any other parties.

#### 6.4.4 Information for the ESOA The ESOA

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 ESOA does not automatically have the right to:

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

Section 46 of the WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records in relation to the finding of misconduct involving children once final findings are made.

#### 6.4.5 Disciplinary action

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

In relation to any disciplinary action the School will give the ESOA:

- 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 securely and will be accessible by the Principal (or other person delegated to be Head of Entity) or with their express authority.

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

Staff members who become aware of a breach of confidentiality in relation to a reportable conduct allegation must inform the Principal or his delegate.

## 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 (s43B Crimes Act 1900 – NSW)**

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.

### **7.2 Failure to report offence (s316A Crimes Act 1900 – NSW)**

Any adult, and 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.

### **7.3 Special Care Relationships (Subdivision 11, Division 10 Crimes Act 1900 – NSW)**

It is a crime in NSW for a staff member, volunteer, or contractor to have a sexual relationship with a student where there is a special care relationship. The Act provides that a young person (aged 16-17) is under an adult's special care if the adult is a member of the teaching staff of the School at which the young person is a student; or has an established personal relationship with the young person in connection with the provision of religious, sporting, musical or other instruction.

The Special Care (sexual intercourse) offence under s73 was supplemented by an additional special care offence involving sexual touching now under s73A of the Crimes Act. The new offence under s73A expands special care offences to also apply to non-penetrative sexual touching. The offence protects students aged 16-17 years from inappropriate sexual contact with teachers and others who have special care of the student.

## **8. EVALUATION AND REVIEW**

The Principal is responsible for the implementation of this Policy and for its effective operation.

This Policy is to be reviewed every 2 years near the end of the school year, so that any changes can be made in time for the next year.

This Policy and associated procedures may be amended at other times to take into account changes to legislation and regulations.

## 9. REFERENCES

NSW Department of Communities and Justice: <https://www.dcj.nsw.gov.au>

The Office of the Children's Guardian:

<https://ocg.nsw.gov.au/>



## 10. ACKNOWLEDGEMENT FORM

I \_\_\_\_\_ (insert name)

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

I confirm that I continue to hold and maintain a current Working with Children Check clearance, for the continuation of my employment at ICSNSW.

I also confirm that I have not been charged with or found guilty of an offence involving reportable conduct.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date