

MINIMBAH PRIMARY SCHOOL

CHILD PROTECTION POLICY



This policy is for the NSW independent schools, supported by implementation procedures developed by the school.

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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 *Children’s Guardian Act 2019* (“Children’s Guardian Act”)
- Part 3A Child safe scheme (“Children’s Guardian Act”)
- the *Crimes Act 1900* (“Crimes Act”).

Child Safe Scheme and the Child Safe Standards

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 in the Education, Early Childhood, Health and Youth Justice sectors, must implement the Child Safe Standards.

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

The Child Safe Standards 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.

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 - sets out information about the standards of behaviour expected of all staff members;
- 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;
- Complaint Handling Procedures – provides the steps taken by the School in addressing complaints; and
- Behaviour Support Policy with reference to bullying

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 (WWCC clearance) verifications;
- mandatory reports to the Department of Communities and Justice (DCJ), previously known as Family and Community Services; and
- reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions.

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; and
- 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 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 complements this policy and provides information to staff about their legal responsibilities related to child protection and School expectations, including:

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

4. Working with children

The WWCC Act protects children by requiring a worker to have a WWCC 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 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); or
- 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 OGC 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:

- be aware and follow the expectations of conduct expressed in the School staff Code of Conduct.

4.1.2 The School

The School is required to:

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

The School is required to advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. 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 WWCC Directorate. Information must also be referred internally to the OCG's WWCC Directorate if it meets the threshold for consideration of an interim WWCC bar, as per Section 17 of the WWC Act, pending a formal risk assessment.

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.

4.4.2 Finding of misconduct involving children

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

When informing an employee of a finding of reportable conduct against them, the School should alert them to the consequent report to the WWCC Directorate in relation to sustained findings of sexual misconduct, a sexual offence or a serious physical assault.

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the School in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

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.

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 Communities and Justice

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.

In addition, the School may choose to make a report to the DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

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 the DCJ 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 the DCJ and where necessary, the Police. This is supported by the DCJ in accordance with best practice principles.

5.4 Process for reporting concerns about students

5.4.1 Staff members

The Care and Protection Act outlines a mandatory reporter's obligation to report to the DCJ concerns about risk of significant harm. However, to ensure centralised reporting, all staff members 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 confidentially and only disclose it to the Principal and any other person the Principal nominates.

6. Reportable conduct

Section 29 of the Children's Guardian Act 2019 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 involving an 'employee' and the outcome of the School's investigation of these allegations. Under the Children's Guardian Act 2019, 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.

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;
- 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 investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint or notification, if the OCG considers it appropriate to do so.

6.1 Reportable conduct

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

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

Reportable conduct does not extend to:

- conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or
- the use of physical force that, in all the circumstances, is trivial or negligible and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures; or
- conduct of a class or kind exempted from being reportable conduct by the Children's Guardian Act under section 30.

6.1.1 Definitions

The following definitions relate to *reportable conduct*:

- **Sexual offence:** an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child, such as:
 - sexual touching of a child;
 - a child grooming offence;
 - production, dissemination or possession of child abuse material.

Definitions of 'grooming', within child protection legislation, are complex. Under the Crimes Act, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual offence. The Crimes Act (s73) also extends the age of consent to 18 years when a child is in

a 'special care' relationship. Under Schedule 1(2) of the WWC Act, grooming is recognised as a form of sexual misconduct. The Children's Guardian Act 2019 and this Child Protection Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2).

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

- **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.

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

- **Assault:** an assault can occur when a person intentionally or recklessly (ie. knows the assault is possible but ignores the risk):
 - applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force); or
 - causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words and/or gestures regardless of whether the person actually intends to apply any force (apprehension of physical force)
- **Ill-treatment:** is defined as conduct towards a child that is:
 - unreasonable; and
 - seriously inappropriate, improper, inhumane or cruel.

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

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

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to 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 employees knew or ought to have known was unacceptable, and
 - Evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, and
 - An alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.
- **Reportable allegation** is an allegation that an employee has engaged in conduct that may be reportable conduct.
 - **Reportable conviction** means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.
 - **Employee** of an entity includes:
 - an individual employed by, or in, the entity
 - a volunteer providing services to children
 - a contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold, a WWCC clearance for the purposes of their work with an entity; and
 - a person engaged by a religious body where that person holds, or is required to hold, a WWCC clearance for the purposes of their work with the religious body.
 - **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 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 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 School's complaint handling procedures.

6.2.3 The School

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

- Ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions
- Submit a 7-day notification form to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the entity (unless the Head of the Entity has a reasonable excuse),

The notification should include the following information:

- (a) that a report has been received in relation to an employee of the School, and
- (b) the type of reportable conduct, and
- (c) the name of the employee, and
- (d) the name and contact details of School and the Head of Entity, and
- (e) for a reportable allegation, whether it has been reported to Police, and
- (f) if a report has been made to the Child Protection Helpline, that a report has been made, and

- (g) the nature of the relevant entity's initial risk assessment and risk management action,
- The notice must also include the following, if known to the Head of Entity:
 - (a) details of the reportable allegation or conviction considered to be a reportable conviction,
 - (b) the date of birth and working with children number, if any, of the employee the subject of the report,
 - (c) the police report reference number (if Police were notified),
 - (d) the report reference number if reported to the Child Protection Helpline,
 - (e) the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.
- Maximum penalty for failure to notify within 7 business days –10 penalty units.

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 (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 the DCJ or Police);
- notify the OCG within 7 business days of receiving the allegation;
- carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- provide an initial letter to the ESOA advising that an allegation of reportable conduct has been made against them and the School's responsibility to investigate this matter under Section 34 of the Children's Guardian Act 2019; and
- investigate the allegation or appoint someone to investigate the allegation.

6.3.2 Investigation principles

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

- follow the principles of procedural fairness;
- inform 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, send the final report to the OCG within 30 days after having received the allegation, as per section 36 of the Children's Guardian Act 2019.
- should the final report be unfinished within 30 days, the Head of Entity must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as per section 38 of the Children's Guardian Act 2019.

Submission of an interim report must include;

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

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

An ESOA 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 ESOA;
- 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 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 child(ren) and the ESOA.

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 ESOA, the child(ren) 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.

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the School in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

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 in the School's safe room and will be accessible by the Principal/Principal's delegate.

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 (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 (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 (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 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 will expand special care offences to also apply to non-penetrative sexual touching. The offence will protect children aged 16-17 years from inappropriate sexual contact with teachers and others who have special care of the child.

Acknowledgement

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

Signed

Dated

ATTACHMENTS

The following documents are attached to this policy:

1. School Incident Reports.

REFERENCES

NSW Department of Communities and Justice

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

The Office of the Children's Guardian

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

Department of Premier and Cabinet – Child Story

www.keepthemsafe.nsw.gov.au

Minimbah Primary School Child Protection Procedures

Informing Staff of their Legal Obligations

- All full-time, part-time and casual staff are informed by the principal of their legal responsibilities related to Child Protection (Children's Guardian Act 2019) during Term One and through regular staff meetings throughout each year. New staff are informed their legal responsibilities related to Child Protection during induction and before commencing work and subsequently annually.
- The Principal will promote and arrange for Professional Learning training for All Staff in legal compliance with Child Protection legislation and matters contained in this Policy. This will be done through the Association of Independent Schools either face to face in-service or online. A register will be kept by the principal on the school server. Minutes will be taken and kept on the server and in a hard copy file, of all Child Protection training sessions and meetings.
- Staff who are newly employed or have not attended training will be asked to do the online component (AIS) as a requirement of their employment at Minimbah Primary School. The Principal will ensure that this is completed in a timely manner and recorded on the school register that is kept on the server.
- Volunteers and contractors will be informed by the principal of their obligations under the Child Protection Act before commencing at Minimbah Primary School.
- Records and documentation will be kept on the school server as evidence of informing staff. These will be:
 1. attendance/participation records (e.g. sign-on sheets, certificate of completion)
 2. training materials
 3. acknowledgement/sign-off of school documentation by staff
 4. records are kept on the school server and in staff files.

The following will be covered in annual Child Protection training:

- school expectations (including covering the school's child protection policy and procedures and staff code of conduct)
- mandatory reporting procedures
- reportable conduct procedures
- WWCC obligations (including maintaining a WWCC and reporting requirements)
- professional boundaries

Working with Children

Procedures:

- All employees of Minimbah Primary School undergo child protection screening checks (Working with Children Check) by the Principal before they commence work with students at Minimbah Primary School.
- The Principal will ensure that only suitable and eligible persons are employed in the school (people with a current Working with Children Check)
- Prior to employing a person the Principal must be satisfied that the person meets the required Working With Children Check
- The Principal will ask for WWCC numbers and date of birth at the time of interviews and check on the Office of Children's Guardian website for verification before employing any new staff
- Verification will be printed and placed in staff files in the central office as well as in a master file which is stored in a separate security room.
- The Principal will remind existing staff when their WWCC is due to be updated. This information will be kept on an electronic register on the school server.
- Minimbah Primary School maintains minutes of all staff meetings which includes informing staff of their legal responsibilities and the school's expectations. These are kept on the Sentral data base.
- The principal is responsible for monitoring and overseeing processes relating to Child Protection in the school. These responsibilities include keeping staff informed changes to the Legislation and maintaining records/documentation.

The principal will inform volunteers and external providers of the Working with Children requirements and obligations under the Child Protection legislation on an individual basis before commencing work at Minimbah Primary School. Volunteers and outside contractors will be asked to sign a document acknowledging their understanding and obligations under Child Protection legislation. These will be kept in the secure room in the front office.

Mandatory Reporting: (See Appendix A)

All employees at Minimbah Primary School are mandatory reporters. Those who have reasonable grounds to suspect that a student is at risk of harm (including self-harm), has been abused or neglected or is at risk of abuse or neglect are required to inform the Principal, even against the wishes of the child. This report to the Principal will be made both verbally and in writing **(Appendix B and/or C)**.

All employees of Minimbah Primary School are required to report to the Principal when:

- an employee is aware that there has been an allegation of child abuse; or
- an employee has formed a belief on reasonable grounds that a child is in danger of being abused; or
- an employee is concerned that a child or young person is at risk of harm (see Definitions) Staff can be deemed legally liable if they have been negligent in relation to their responsibilities under the legislation as it pertains to the care and protection of children.

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

- Staff must take reasonable care to ensure that their students are not harmed. They have a duty to protect their students against foreseeable risks of personal injury or harm

Procedures:

- The Principal will provide a report to the Minimbah School Board relating to any allegations in regard to child protection issues.
- The Principal, in cases of sexual abuse, or a Reportable Suspicion, will mandatorily report such alleged offences to the relevant State authorities in accordance with mandatory requirements;
- The Principal will investigate reports of Inappropriate Behaviour internally and according to the principles of Natural Justice;
- The Principal will respond to concerns raised about psychological or emotional harm, neglect and exploitation including as appropriate by investigation and referral to the Department of Communities and Justice and/or the Child Story website;

- The Principal will take all necessary action in the standing down of any Staff/Student in relation to matters covered by this Policy and carrying out any disciplinary measures noted in the Policy;
- The Principal will report any investigation carried out regarding the conduct of a teacher to the New South Wales Education Authority (NESA).
- Teachers and all staff must inform the Principal of all incidents of harm, or where harm is reasonably suspected, or of sexual abuse, or suspected sexual abuse, or Inappropriate behaviour which are brought to their attention. This will be done either verbally or by filling in Appendix B and/or C.
- Teachers and all staff are informed at the beginning of the year or upon employment, by the Principal that it is their legal responsibility to comply with mandatory reporting obligations.
- It is an expectation of employment that all staff must comply with this Policy regarding protective procedures;
- All staff, must immediately on receipt of a complaint of Inappropriate Behaviour, or harm, or a reasonable suspicion of harm, must report to the Principal or Principal Delegate;
- The Principal will protect confidentiality, (under the Minimbah Confidentiality Agreement which all staff are required to sign upon employment) of the person disclosing the allegations and the details of the allegations.
- The Principal will inform all staff upon commencement of employment at Minimbah Primary School that they do not in any way investigate mandatory reporting matters. They will co-operate with the school and the State authority.
- For an action falling short of mandatory reporting, the Principal may decide on a number of responses including investigating the matter internally or with assistance of an external investigator.
- The school will provide information regarding the Minimbah Child Protection Policy both in the School Handbook and during enrolment interviews.

Breach of Policy

- Conduct which breaches the Child Protection Policy may result in criminal penalties as decided by legal process; and in all such cases the Principal will stand down a Staff Member pending the result of investigation by the Police.
- Any complaint concerning the Principal will be referred by the staff member to the Minimbah School Board who will then advise the next steps to be taken.
- other breaches of this policy, which may not result in external penalties, will result in consequences imposed by the Principal and may include:
 - a. apology
 - b. counselling
 - c. warning
 - d. suspension
 - e. termination
 - f. expulsion (in the case of a Student)
- Where a complaint/allegation is found to have no substance, every effort will be made to reinstate the alleged offender's status and reputation.

Protection for Notifier

- Clauses 68 and 69 of the Children's Guardian Act 2019, create immunity from liability for any person who gives a report, makes a complaint, gives the children's Guardian a notification of a reportable allegation, or complies with part 4.
- In accordance with this Act the School will protect the identity of the Notifier of information – unless required otherwise by Law.

Anonymous Complaints

Such complaints, by their very nature provide difficulties, however the school will investigate the validity of each one to the extent possible.

Record Keeping

Any staff member who has concerns about the safety or wellbeing of a Child, either suspicious or disclosed,

MUST:

- keep anecdotal records of observations, focusing on the persistence of indicators over time and the severity of effects;
- if speaking to a Child, keep questions to what/where/when;
- take only short notes – must not investigate;
- present such documentation to the Principal
- Should the Principal need to interview the Child further, the same procedures must be followed.
- Records will be kept in a locked file in the secure room by the Principal.

Review of Policy

- This Policy will be reviewed every two years or as required by legislation.

APPENDIX A

MANDATORY REPORTING OF SEXUAL ABUSE, PHYSICAL ABUSE

IF	THEN
<p>MANDATORY</p> <ul style="list-style-type: none"> • You are a School Staff Member; and • You are aware or reasonably suspect that a Student has been, or is likely to be, sexually abused by another person. 	<ol style="list-style-type: none"> 1. Complete the School’s reporting form. (Appendix B) 2. Discuss your concerns with your Principal. 3. The Principal will make a report to the Police and inform you. 4. If you suspect the Principal is involved in the abuse, directly inform the School Board who will report it to the Police. 5. Keep appropriate records
<p>MANDATORY</p> <ul style="list-style-type: none"> • You are a Principal or a member of the Board; and • A Staff Member, including a teacher, reports a concern that a Student has been, or is likely to be, sexually abused by another person. 	<ol style="list-style-type: none"> 1. Ensure that the School’s reporting form is completed. 2. Make a report to the Police immediately. 3. Inform the AIS of the report. 4. Keep appropriate records of your decisions and actions.
<p>MANDATORY</p> <ul style="list-style-type: none"> • You are a Teacher, or Staff Member (as included by Minimbah School Policy), and • There are reasonable grounds to suspect a child is at risk of significant harm and there are current concerns about the safety, welfare or wellbeing of the child. 	<ol style="list-style-type: none"> 1. Complete the School’s reporting form. 2. Discuss your concerns with your Principal. 3. The Principal will make a report to the Child Story website. 4. The Principal will inform you of their report. 5. If you suspect the Principal is involved in the abuse, directly inform the Minimbah School Board. 6. Keep appropriate records of your decisions and actions.
<ul style="list-style-type: none"> • You are a Principal or a Member of the Board; and • A teacher (or Staff Member under School Policy) reports a reportable suspicion to you. 	<ol style="list-style-type: none"> 1. Ensure that the School’s reporting form is completed. 2. Make a report to the Child Story website. 3. Inform the teacher of your report so that their own duty to report is fulfilled. 4. Inform the School Board of the Staff Member’s report. 5. Keep appropriate records of your decisions and actions

APPENDIX A

PSYCHOLOGICAL OR EMOTIONAL HARM, NEGLECT OR EXPLOITATION

IF	THEN
<p>You are a Staff Member and receive or have a concern of this nature.</p>	<ol style="list-style-type: none"> 1. Complete the School's reporting form. 2. Discuss the Student's report with the Principal. 3. The Principal will take appropriate action in the circumstances. 4. Keep appropriate records of your decisions and actions.
<ul style="list-style-type: none"> • You are a Principal; and • You receive a report or concern of this nature. 	<ol style="list-style-type: none"> 1. Interview the Staff Member. 2. Interview the Student reporting the behaviour. 3. Interview other persons who may be able to provide useful information. 4. Take appropriate action on the basis of your investigation <ul style="list-style-type: none"> * Utilise internal supports *Work in contractual partnership with parents. 5. Notify at your discretion to Police, Child Story website. 6. Refer to Department of Communities and Justice. 7. Report to the School Board as appropriate. 8. Keep appropriate records of your decisions and actions.
<ul style="list-style-type: none"> • You are a Principal and • The School is investigating an allegation of harm caused, or likely to be caused, to a Child because of the conduct of a teacher. 	<ol style="list-style-type: none"> 1. As soon as practicable after the investigation starts, give notice to NESA 2. The notice must include the following— <ol style="list-style-type: none"> a) the name of the Principal; b) the name of the School; c) the name of the relevant teacher; d) the day the investigation started; and e) the allegation, particulars of the allegation and any other relevant information.

Appendix A

INAPPROPRIATE BEHAVIOUR

IF	THEN
<ul style="list-style-type: none">• You are a Student; and• A Staff Member at the School has behaved in a way you consider is inappropriate.	<ol style="list-style-type: none">1. Report the behaviour to the Principal or a trusted staff member.
You are a Staff Member; and receive or have a concern of this nature.	<ol style="list-style-type: none">1. Complete the School's reporting form.2. Discuss the Student's report with the Principal.3. The Principal may take appropriate action in the circumstances.4. Keep appropriate records of your decisions and actions.
<ul style="list-style-type: none">• You are a Principal/Delegate and receive a report of this nature.	<ol style="list-style-type: none">1. Interview the Student reporting the behaviour.2. Interview the Staff Member named in the report as engaging in Inappropriate Behaviour.3. Interview any other person who may be able to provide useful information.4. Investigate.5. Take appropriate action on the basis of your investigation.6. Report to the NESA as appropriate.7. Keep appropriate records of your decisions and actions.

APPENDIX B

FORM A: Reporting All Concerns Except Sexual Abuse and Physical Abuse

CONFIDENTIAL

- Staff are required under Policy to report any concerns regarding psychological or emotional harm, self-harm, neglect, exploitation or Inappropriate Behaviour to the Principal or Delegate
- This form is to be initiated by the Staff Member who has become aware of a concern and provide or forward it to the Principal or Principal Delegate.

Name of Student: _____ Gender: _____

Year Level: _____ DOB: ____/____/____

I first became aware of the situation (approx date)

Has the concern arisen internally to the School? Internally Externally

I became aware of this situation because the Student involved:

Spoke to me Observed

Spoke to another Student Other _____

Spoke to another Staff Member _____

Following is a brief description of what the Student said:

Identity of anyone else who may have supporting information:

Do you consider this matter to fall into one or more of the following categories:

Emotional

Psychological

Self Injury

Neglect

Exploitation

Inappropriate Behaviour of:

Student to Student

Student to Staff

Staff Member to Student

I confirm the details above (to the best of my knowledge) to be correct. I will maintain the confidentiality of all persons involved, and expect the information passed on will be acted upon and resolved in accordance with the Minimbah Child Protection Policy.

_____ / ____/____

Signed by Staff Member initiating process

Date

Provided to:

Principal on ____/____/____
Date

Signature of Person Receiving this Report Form: _____

Name: _____ Date: ____/____/____

Role: _____

APPENDIX C

Form B: Mandatory Reporting of Known/Suspected/Likely Sexual Abuse to Police

Reporting of all incidents is **mandatory** for Staff **whether the situation has occurred inside or outside Minimbah Primary School.**

This form is to be initiated by the Staff Member who has become aware of or is suspecting there may be sexual abuse of a Student and is to be forwarded to Principal or the Board of Directors immediately.

*Name of Student: _____

*Gender of Student _____ DOB: ____/____/____

Year Level: _____

Name of the Staff Member filling in this Form:

Role: _____

I first became aware of/suspected or considered abuse to be likely, (approx. date): _____

I became aware of this situation because the Student involved:

Spoke to me Other _____

Spoke to another Student _____

Spoke to another Staff Member _____

Staff Member/other observation comment _____

*Following is a brief description of what the Student said (details of abuse or suspected abuse).

Student Age _____

Identity of person suspected/likely to have caused abuse

Identity of anyone else who may have information about abuse

I confirm that the details above are to my belief correct. I will maintain the confidentiality of all persons involved, and expect the information passed on will be acted upon and resolved in accordance with the Minimbah Primary School Protection Policy.

***Signed** by Staff Member initiating process (and full name)

_____ /___/___ (Date)

Referred to Principal _____ /___/___ (Date)

Signed: by Principal

_____ /___/___ (Date)

Referred to Board member _____ /___/___ (Date)

Signed: by Director

Principal reported to Police _____ /___/___ (Date)

Signed: by Principal Date Referred

_____ /___/___ (Date)

*** IT IS A MANDATORY REQUIREMENT TO PROVIDE THESE DETAILS**

Acknowledgement

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

Signed

Dated

ATTACHMENTS

The following documents are attached to this policy:

2. School Incident Reports.

REFERENCES

NSW Department of Communities and Justice

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 – Child Story

<https://reporter.childstory.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